



REPORT NO. PC-16-079

DATE ISSUED: October 20, 2016

ATTENTION: **Planning Commission, Agenda of October 27, 2016**

SUBJECT: Appeal of the Civic San Diego Board of Directors' Decision to Approve Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit No. 2015-73 for the 7th & Market Project – Process Three

**OWNER/
APPLICANT:** City of San Diego
Cisterra 7th & Market, LLC

SUMMARY

Issue: Should the Planning Commission (“Commission”) approve or deny an appeal of the Civic San Diego (“CivicSD”) Board of Directors’ (“Board”) decision to approve Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit (CCDP/CCPDP/NUP) 2015-73 for the 7th & Market Project (“Project”)?

Staff Recommendation: Deny the appeal and uphold the CivicSD Board’s decision to approve CCDP/CCPDP/NUP Permit No. 2015-73 for the Project.

CivicSD Board Action: On September 28, 2016, the CivicSD Board voted 7-0 to grant CCDP/CCPDP/NUP No. 2015-73 subject to the approval of the associated Disposition and Development Agreement (DDA) by the City Council.

Community Planning Group: On July 20, 2016, the Downtown Community Planning Council (DCPC) voted 20-0 to recommend approval of CCDP/PDP/NUP No. 2015-73.

Environmental Review: Development within the Downtown Community Plan (DCP) area (“Downtown”) is covered under the following documents, all referred to as the “Downtown FEIR”: Final Environmental Impact Report (FEIR) for the San Diego DCP, Centre City Planned District Ordinance (CCPDO), and 10th Amendment to the Centre City Redevelopment Plan, certified by the former Redevelopment Agency (“Former Agency”) and the City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively); subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724)

and July 14, 2014 (City Council Resolution R-309115); and, the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561). The Downtown FEIR was adopted prior to the requirement for documents prepared under the California Environmental Quality Act (CEQA) to consider a project's impacts related to greenhouse gas emissions. The effect of greenhouse gas emissions on climate change, and the subsequent adoption of guidelines for analyzing and evaluating the significance of data, is not considered "new information" under State CEQA Guidelines Section 15162 triggering further environmental review because such information was available and known before approval of the Downtown FEIR. Nonetheless, development within Downtown is also assessed for consistency under the following documents, all referred to as the "CAP FEIR": FEIR for the City of San Diego Climate Action Plan (CAP), certified by the City Council on December 15, 2015 (City Council Resolution R-310176), and the Addendum to the CAP, certified by the City Council on July 12, 2016 (City Council Resolution R-310596). The Downtown FEIR and CAP FEIR are both "Program EIRs" prepared in compliance with CEQA Guidelines Section 15168. Consistent with best practices suggested by Section 15168, a Downtown 15168 Consistency Evaluation has been completed for the project. The Evaluation concluded that the environmental impacts of the project were adequately addressed in the Downtown FEIR and CAP FEIR, the project is within the scope of the development program described in the Downtown FEIR and CAP FEIR, and therefore adequately described within both documents for the purposes of CEQA, and that none of the conditions listed in Section 15162 exist; therefore, no further environmental documentation is required under CEQA.

The Downtown FEIR is available at this link:

www.civicsd.com/planning/environmental-documents.html

The CAP FEIR is available at this link:

www.sandiego.gov/sites/default/files/legacy//planning/programs/ceqa/2015/151123capfinalpeir.pdf

Fiscal Impact Statement: None

Code Enforcement Impact: None

Housing Impact Statement: None

BACKGROUND

This item is an appeal of the CivicSD Board's decision to approve CCDP/CCPDP/NUP No. 2015-73 that proposes the construction of 39-story and 19-story towers (approximately 475 feet and 227 feet tall, respectively) and is comprised of 218 DUs (34 affordable units, 125 market-rate apartments, 59 hotel-branded condominiums); approximately 156,000 SF of office space; a proposed 153-room hotel with a ballroom and 20th-level restaurant/bar; an estimated 40,000 SF retail space for a grocer; and, 887 automobile parking spaces including a minimum of 200 public parking spaces. Five levels of subterranean parking and three levels of above-grade parking are

proposed with all public parking spaces being located in the above-ground levels. A detailed description of the Project program can be found in Attachment #4, the CivicSD Board Staff Report dated September 21, 2016.

It should be noted that CivicSD originally approved the Project at a public hearing on July 27, 2016; however, after this date, CivicSD staff discovered an error in the administrative record requiring CivicSD to reconsider the Project at a de novo public hearing. Specifically, CivicSD staff discovered that the required Water Supply Assessment ("WSA") prepared by the City of San Diego Public Utilities Department for the Project dated April 6, 2016, which concluded that sufficient water supplies would be available for the Project, had not been formally adopted by the City Council as required by the San Diego Municipal Code prior to the consideration of the Project at a public hearing by CivicSD. The City Council adopted the Project's WSA on September 20, 2016.

DISCUSSION

On September 28, 2016, the CivicSD Board considered the Project at a public hearing with the approved WSA (please See Attachment #4 for the CivicSD Board Staff Reports). Public testimony was presented in favor and in opposition to the Project during the public hearing. Neighbors of the Project site and the Downtown Partnership spoke in favor of the Project during the public hearing, while a representative from Unite Here Local 30 and Sergio Gonzalez raised a number of concerns in their comments to the CivicSD Board at the public hearing including issues regarding living wages for hotel workers and the adequacy of the environmental review that was completed for the Project. On October 11, 2016, CivicSD received an appeal application submitted by Sergio Gonzalez ("Appellant"), which has been included as Attachment #3. The following summarizes the appeal issues raised in the appeal application with a corresponding response by staff. The full text of the appeal issues submitted by the Appellant may be found in Attachment #3.

Appeal Issue #1:

The Board made factual errors in its July 12, 2016 and August 27, 2016 Downtown FEIR Consistency Evaluation prepared for the Project used for the Approvals. The Civic Board did not have as part of their packet all applicable environmental review documents upon which the Downtown FEIR Consistency Analysis was based. Furthermore, the Appellant maintains that the Downtown FEIR is outdated and the baseline data contained within the Downtown FEIR is "faulty" and "stale".

Development within the Downtown Community Planning area is covered under the following documents, all referred to as the "Downtown FEIR": Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Centre City Redevelopment Plan, certified by the former Redevelopment Agency ("Former Agency") and the City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively); subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified

by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115); and, the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561). The Downtown FEIR was adopted prior to the requirement for CEQA documents to consider a project's impacts related to greenhouse gas emissions. The effect of greenhouse gas emissions on climate change, and the subsequent adoption of guidelines for analyzing and evaluating the significance of data, is not considered "new information" under State CEQA Guidelines section 15162 triggering further environmental review because such information was available and known before approval of the Downtown FEIR. Nonetheless, development within Downtown is also assessed for consistency under the following documents, all referred to as the "CAP FEIR": FEIR for the City of San Diego Climate Action Plan (CAP), certified by the City Council on December 15, 2015 (City Council Resolution R-310176), and the Addendum to the CAP, certified by the City Council on July 12, 2016 (City Council Resolution R-310596). The Downtown FEIR and CAP FEIR are both "Program EIRs" prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. Consistent with best practices suggested by Section 15168, a Downtown 15168 Consistency Evaluation has been completed for the project. The Evaluation concluded that the environmental impacts of the project were adequately addressed in the Downtown FEIR and CAP FEIR, the project is within the scope of the development program described in the Downtown FEIR and CAP FEIR, and therefore adequately described within both documents for the purposes of CEQA, and that none of the conditions listed in Section 15162 exist; therefore, no further environmental documentation is required under CEQA.

CEQA specifically provides for the use of Program EIRs as they "provide for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual project" and "ensure consideration of cumulative impacts that might be slighted in a case by case analysis." Program EIRs therefore ensure a comprehensive evaluation of cumulative impacts and, therefore, a fuller disclosure of potential impacts consistent with the goals and intent of the CEQA statutes and review processes. Especially in an established urban setting, Program EIRs avoid duplicative reconsideration of basic policy considerations and allow for a reduction in paperwork. CEQA documents on which the Consistency Determination was made are readily available for review on both the City of San Diego website and CivicSD website and in the offices of the City of San Diego and CivicSD.

A program EIR does not need to prescribe a specific development project or use on each individual site, but provides for the program (assumed land uses and intensities) to be evaluated within a specific defined geographic area. The Downtown FEIR and CAP FEIR both evaluated the potential build-out of the DCP area under the assumptions included in the DCP. The following table illustrates the existing land uses (base conditions) of the DCP in August 2004, the build-out assumptions of the DCP, and the current 2016 cumulative growth which includes all projects constructed since August 2004:

LAND USE	DCP BASE CONDITION	DCP BUILD-OUT	2016 CONDITION
Residential Units	14,600	53,100	23,939
Office (1,000 SF)	9,473	22,028	10,628
Retail (1,000 SF)	2,658	6,070	3,340
Hotel Rooms	8,800	20,000	13,175

As this chart demonstrates, Downtown growth is well within the overall program projected in the DCP and fully evaluated in the Downtown FEIR and CAP FEIR. Therefore, a project level analysis is not required as there are not new circumstances or a different development program than previously evaluated.

Under the Program FEIR, mitigation measures are established in the Mitigation Monitoring and Reporting Program (MMRP) which are applied to every Downtown development project to ensure that the potential adverse environmental impacts are mitigated as prescribed by the City Council in their certification of the Program FEIR. This comprehensive approach in urban settings is fully appropriate and consistent with recent CEQA streamlining efforts for infill projects consistent with Smart Growth practices.

Appeal Issue #2:

The GHG analysis is inadequate and the CivicSD Board did not have the GHG analysis when approving the Project.

GHG emissions are best analyzed on a cumulative, regional level which was done with the CAP and the CAP FEIR. Individual projects are then analyzed on their consistency with the CAP through the use of the CAP Checklist approved by the City Council. The Applicant has demonstrated compliance with the CAP Checklist, and all appropriate measures from this compliance have been included in the conditions of approval for the project. Therefore, the Downtown 15168 Consistency Evaluation concluded that the project is consistent with the CAP FEIR and no further project specific analysis is required. The October 2015 GHG study referenced in the letter relied on previous analytical methods utilized prior to the adoption of the CAP and CAP Checklist and is therefore no longer valid and part of the consistency evaluation.

Appeal Issue #3:

Additional, feasible air quality mitigation measures for mobile sources for all of the Project's car trips were discarded.

Air quality impacts were fully evaluated in the Downtown FEIR and all applicable Air Quality mitigation measures of the Downtown FEIR were included in the MMRP prepared for the Project's Consistency Evaluation.

Appeal Issue #4:

The significant presence of hazardous materials on site was ignored and was not analyzed in the 2006 FEIR or the Addenda to the 2006 FEIR.

The Project site is known to contain hazardous soils as disclosed in a Phase I Environmental Site Assessment that was conducted for the site. The Downtown FEIR determined that compliance with applicable federal, state and local regulations regarding hazardous materials will mitigate the potential impact to less than significant. When existing laws, codes and regulations ensure no significant impacts from an activity, CEQA does not require additional mitigation.

Appeal Issue #5: *The traffic analysis prepared for the Project is inadequate, and furthermore, the CivicSD Board did not have the Project's traffic analysis before it.*

The Downtown FEIR requires that projects that generate over 2,400 Average Daily Trips (ADTs) conduct a traffic study to analyze if any of the mitigation measures in the Downtown FEIR for build-out are now required due to cumulative growth and/or the project itself. The scope of the Project's traffic study, and its conclusions, have been accepted by the City Development Services Department traffic staff responsible for this review.

Appeal Issue #6

The noise study failed to study noise on neighbors during construction and the CivicSD Board did not have the Project's noise study before it.

The Downtown FEIR concluded that the City's regulations for construction noise mitigate the potential impact to less than significant and therefore no mitigation is required beyond compliance with established regulations. When existing laws, codes and regulations ensure no significant impacts from an activity, CEQA does not require additional mitigation.

Appeal Issue #7:

The review of historic resource impacts on the Clermont Hotel and cultural resources was deferred.

Any proposed alterations of the Clermont Hotel will have to be consistent with the Secretary of the Interior's Standards for Historic Preservation to the satisfaction of the City's Historic Review Staff. Please reference Condition of Approval No. 9 in CCDP/CCPDP/NUP 2015-73 that stipulates the treatment of the Clermont Hotel.

Appeal Issue #8:

The Consistency Evaluation relied on a "faulty", "old" CEQA statement of overriding considerations from the 2006 FEIR that did not review and does not consider job quality.

Job quality is not an issue that is required to be reviewed under the CEQA Statutes.

Appeal Issue #9:

The CivicSD Board's actions conflicted with CEQA's purpose of disclosing to the public significant environmental effects of a proposed discretionary project.

The potential environmental effects of the Project were fully examined in the Downtown FEIR and CAP FEIR which have been available to the public. A Downtown 15168 Consistency

Evaluation was prepared for the Project and was completed and made available to the public for review on August 26, 2016, over a month ahead of the CivicSD Board's consideration of the Project.

Appeal Issue #10:

The Project approvals were in conflict with various governing City and CivicSD land use plans and ordinances (see Attachment #3 for a complete list).

The Project was found to be consistent with applicable land use plans and ordinances including the DCP, the CCPDO, and the San Diego Municipal Code as outlined in the CivicSD Staff Report dated September 21, 2016 and in CivicSD Board Resolution No. 2016-22 (see Attachment No's. 4 and 2, respectively).

Appeal Issue #11:

The City of San Diego unlawfully delegated its land use decision making authority to CivicSD. As such, CivicSD has improperly exercised authority in connection with the Project approval.

This is in reference to a lawsuit filed against CivicSD and the City of San Diego. CivicSD's permitting authority is established in the San Diego Municipal Code and the Consulting Agreements between the City of San Diego and CivicSD.

Appeal Issue #12:

The findings for a Neighborhood Use Permit and Centre City Planned Development Permit cannot be made – particularly, with the language of the findings for each permit that states, "the proposed development will not adversely affect applicable land use plan," and "will not be detrimental to the public, health, safety and welfare."

Findings demonstrating that the Project would not adversely affect the applicable land use plan and would not be detrimental to the public, health, safety and welfare were included in the CivicSD Staff Report dated September 21, 2016, and in the CivicSD Board Resolution No. 2016-22 (see Attachments #4 and #2, respectively).

Appeal Issue #13:

Failure to consider the associated Development and Disposition Agreement (DDA) and the Community Benefits Agreement together with the Project's discretionary permit requests violates CEQA as improper piecemealing and also amounts to new information warranting reversal of the Board's Project approvals.

The DDA and the Project's development permit approvals require distinct approvals through distinct processes. The DDA requires a recommendation from the CivicSD Board and approval by the City Council. The development permit approvals are a Process Three decision by the CivicSD Board, subject to appeal to the Planning Commission. These separate and distinct discretionary actions do not constitute "piecemealing" as both actions, and the environmental review completed for each, examine the totality of the Project and any potential impacts from the Project. The Downtown 15168 Consistency Evaluation determined that the Project is covered by

the Downtown FEIR and CAP FEIR. The Evaluation concluded that the environmental impacts of the project were adequately addressed in the Downtown FEIR and CAP FEIR, the project is within the scope of the development program described in the Downtown FEIR and CAP FEIR, and therefore adequately described within both documents for the purposes of CEQA, and that none of the conditions listed in Section 15162 exist; therefore, no further environmental documentation is required under CEQA.

CONCLUSION

Staff recommends that the Planning Commission denies the appeal and upholds the CivicSD Board's approval of CCDP/CCPDP/NUP No. 2015-73 for the Project.

Respectfully submitted:

Concurred by:



Aaron Hollister
Senior Planner



Reese A. Jarrett
President



Brad Richter
Assistant Vice President, Planning

- Attachments:
- 1 – Ownership Disclosure Statements
 - 2 – CivicSD Board Resolution with CCDP/CCPDP/NUP No. 2015-73
 - 3 – Appeal Application
 - 4 – CivicSD Board Staff Report dated September 21, 2016
 - 5 – DCP/CAP FEIR Consistency Evaluation
 - 6 – Applicant's Responses to Appeal Application
 - 7 – Draft Resolution with Findings
- Basic Concept/Schematic Drawings dated April 4, 2016

the Downtown FEIR and CAP FEIR. The Evaluation concluded that the environmental impacts of the project were adequately addressed in the Downtown FEIR and CAP FEIR, the project is within the scope of the development program described in the Downtown FEIR and CAP FEIR, and therefore adequately described within both documents for the purposes of CEQA, and that none of the conditions listed in Section 15162 exist; therefore, no further environmental documentation is required under CEQA.

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Senior Planner



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 - 7 – Draft Resolution with Findings
- Basic Concept/Schematic Drawings dated April 4, 2016



Ownership Disclosure Statement

Approval Type: Check appropriate boxes for type of approval(s) requested:

- | | | |
|--|--|--|
| <input type="checkbox"/> Limited Use Approval | <input type="checkbox"/> Neighborhood Development Permit | <input checked="" type="checkbox"/> Centre City Development Permit |
| <input type="checkbox"/> Temporary Use Permit | <input type="checkbox"/> Planned Development Permit | <input type="checkbox"/> Gaslamp Quarter Development Permit |
| <input type="checkbox"/> Neighborhood Use Permit | <input type="checkbox"/> Site Development Permit | <input type="checkbox"/> Marina Development Permit |
| <input type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Coastal Development Permit | <input type="checkbox"/> Other: _____ |

Project Title: 7th & Market Mixed Use Project - Clement Hotel Parcel

Project Address: _____

Assessor Parcel Number(s): APN 535.112.04

Part 1 – To be completed by property owner when property is held by individual(s)

By signing this Ownership Disclosure Statement, the property owner(s) acknowledges that an application for a permit, map, or other matter, as identified above, will be filed with Civic San Diego on the premises that is the subject of the application, with the intent to record an encumbrance against the property or properties. List below the owner(s) and tenant(s) (if applicable) of the above referenced property or properties; all subject properties must be included. The list must include the names and addresses of all persons who have an interest in the property or properties, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property or properties). Original signatures are required from at least one property owner for each subject property. Attach additional pages if needed. Note: The Applicant is responsible for notifying the Project Planner of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Planner at least thirty days prior to any public hearing on the subject property or properties. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached: ☐ Yes ☐ No

Name of Individual (type or print):

Assessor Parcel Number(s): _____

Street Address: _____

City/State/Zip Code: _____

Phone Number: _____

E-mail: _____

Signature: _____ Date: _____

Name of Individual (type or print):

Assessor Parcel Number(s): _____

Street Address: _____

City/State/Zip Code: _____

Phone Number: _____

E-mail: _____

Signature: _____ Date: _____

Project Title: 7th & Market Mixed Use Project. clermont Hotel parcel

Part 2 – To be completed by property owner when property is held by a corporation or partnership
By signing this Ownership Disclosure Statement, the property owner(s) acknowledges that an application for a permit, map, or other matter, as identified above, will be filed with Civic San Diego on the premises that is the subject of the application, with the intent to record an encumbrance against the property or properties. List below the names, titles, and addresses of all persons who have an interest in the property or properties, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all corporate officers, and/or all partners in a partnership who own the property or properties). Original signatures are required from at least one corporate officer or partner who own the property for each subject property. Attach additional pages if needed. Provide the articles of incorporation, articles of organization, or partnership agreement identifying all members of the corporation or partnership. Note: The applicant is responsible for notifying the Project Planner of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Planner at least thirty days prior to any public hearing on the subject property or properties. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached: ☐ Yes ☐ No

Corporation/Partnership Name (type or print):

☐ Corporation ☒ LLC ☐ Partnership

Assessor Parcel Number(s):

535-112-0400

Street Address:

402 W Broadway, 25th Floor

City/State/Zip Code:

SAN DIEGO CA 92101

Name of Corporate Officer/Partner (type or print):

Anthony R. Lavetti

Title:

MANAGING MEMBER

Phone Number:

619 236-8700

E-mail:

arl@lavettilaw.com

Signature:

[Signature]

Date:

12/22/15

Corporation/Partnership Name (type or print):

☐ Corporation ☐ LLC ☐ Partnership

Assessor Parcel Number(s):

Street Address:

City/State/Zip Code:

Name of Corporate Officer/Partner (type or print):

Title:

Phone Number:

E-mail:

Signature:

Date:

ALS INVESTMENT GROUP, LLC
402 WEST BROADWAY, SUITE 2500
SAN DIEGO, CA 92101
TELEPHONE NO. (619) 696-7005
FACSIMILE (619) 696-7026

February 4, 2016

To Whom It May Concern

RE: The Clearmont Hotel

Dear Sir or Madam:

Please be advised that the Clearmont Hotel is owned by ALS Investment Group, LLC. The only three members of the LLC are Anthony R. Laureti, Vincent Jackson and Larry J. Sidiropoulos. There are no other members. I, Anthony R. Laureti, am the managing member of the LLC and is authorized to execute documents on behalf of the entity.

If you have any questions, please feel free to give me a call.

Thank you for your anticipated courtesy and cooperation.

Sincerely,



Anthony R. Laureti

Project Title: THH & Market Mixed Use Project - Clermont Hotel parcel

Part 3 – To be completed by all other financially interested parties

List below the names, titles, and addresses of all financially interested parties and state the type of financial interest (e.g., applicant, architect, lead design/engineering professional). Original signatures are required from at least one individual, corporate officer, and/or partner with a financial interest in the application for a permit, map, or other matter, as identified above. Attach additional pages if needed. Note: The applicant is responsible for notifying the Project Planner of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Planner at least thirty days prior to any public hearing on the subject property or properties. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached: ☐ Yes ☐ No

Name of Individual (type or print):

☐ Applicant ☐ Architect ☐ Other _____

Street Address: _____

City/State/Zip Code: _____

Phone Number: _____

E-mail: _____

Signature: _____

Date: _____

Corporation/Partnership Name (type or print):

☐ Corporation ☒ LLC ☐ Partnership

☒ Applicant ☐ Architect ☐ Other _____

Street Address: _____

3580 Carmel Mountain Road, 460

City/State/Zip Code: _____

San Diego, Ca 92130

Name of Corporate Officer/Partner (type or print): _____

Jason Wood

Title: _____

Member

Phone Number: _____

858-204-9858

E-mail: _____

jwood@cisterra.com

Signature: _____

Date: _____

12-22-15

Name of Individual (type or print):

☐ Applicant ☐ Architect ☐ Other _____

Street Address: _____

City/State/Zip Code: _____

Phone Number: _____

E-mail: _____

Signature: _____

Date: _____

Corporation/Partnership Name (type or print):

☒ Corporation ☐ LLC ☐ Partnership

☐ Applicant ☒ Architect ☐ Other _____

Street Address: _____

1301 3rd Ave

City/State/Zip Code: _____

San Diego CA 92101

Name of Corporate Officer/Partner (type or print): _____

Vincent Mudd

Title: _____

MANAGING PRINCIPAL

Phone Number: _____

619-239-2353

E-mail: _____

Ven@carriecjohanson.com

Signature: _____

Date: _____

12/21/2015

Cisterra 7th & Market, LLC, a California limited liability company

99% - Sierra Summit Partners, LLC, a Delaware limited liability company
1% - Steven L. Black

Sierra Summit Partners, LLC

98.5% - Kaweah Partners, LLC, a Delaware limited liability company
1% - Cisterra Capital, Inc., a Delaware corporation
.5% - Steven L. Black

Kaweah Partners, LLC

99% - Steven L. Black
1% - Cisterra Capital, Inc.

Cisterra Capital, Inc.

100% - Steven L. Black

**CIVIC SAN DIEGO
RESOLUTION NO. 2016-22
CENTRE CITY DEVELOPMENT PERMIT
CENTRE CITY PLANNED DEVELOPMENT PERMIT
NEIGHBORHOOD USE PERMIT
NO. 2015-73**

WHEREAS, City of San Diego, Owner, and Cisterra 7th & Market, LLC, Permittee, filed an application for Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit (CCDP/CCPDP/NUP) No. 2015-73 on December 24, 2015 with Civic San Diego ("CivicSD") for the construction of a mixed-use development containing a 39-story and 19-story tower (approximately 475 feet and 227 feet tall, respectively) comprised in total of approximately 218 dwelling units (DU) including indoor and outdoor amenity space, approximately 156,000 SF of office space, a proposed 153-room hotel, an estimated 40,000 SF retail space for a grocer and 887 automobile parking spaces including a minimum of 200 public parking spaces, commonly referred to as 7th & Market ("Project");

WHEREAS, a 60,000 square-foot (SF) full-block premises bounded by Market Street and Island, Seventh and Eighth avenues in the East Village neighborhood of the Downtown Community Plan (DCP) area and within the Centre City Planned District (CCPD);

WHEREAS, on September 28, 2016, the CivicSD Board of Directors ("Board") held a duly noticed public hearing and considered CCDP/CCPDP/NUP 2015-73, including a staff report and recommendation, and public testimony; and,

WHEAREAS, Development within the Downtown Community Planning area is covered under the following documents, all referred to as the "Downtown FEIR": Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Centre City Redevelopment Plan, certified by the former Redevelopment Agency ("Former Agency") and the City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively); subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115); and, the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561). The Downtown FEIR was adopted prior to the requirement for CEQA documents to consider a project's impacts related to greenhouse gas emissions. The effect of greenhouse gas emissions on climate change, and the subsequent adoption of guidelines for analyzing and evaluating the significance of data, is not considered "new information" under State CEQA Guidelines section 15162 triggering further environmental review because such information was available and known before approval of the Downtown FEIR. Nonetheless, development within the Downtown Community Planning area is also assessed for consistency with the City of San Diego FEIR for the Climate Action Plan ("CAP FEIR") certified by the City Council on December 15, 2015 (City Council Resolution R-310176) and Addendum to the CAP FEIR certified by the City Council on July 12, 2016. The Downtown FEIR and CAP FEIR are both "Program EIRs" prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. Consistent with best practices suggested by Section 15168, a Downtown 15168 Consistency Evaluation ("Evaluation") has

been completed for the project. The Evaluation concluded that the environmental impacts of the project were adequately addressed in the Downtown FEIR and CAP FEIR, and therefore adequately described within both documents for the purposes of CEQA, and that none of the conditions listed in Section 15162 exist; therefore, no further environmental documentation is required under CEQA.

NOW, THEREFORE, BE IT RESOLVED that the CivicSD Board hereby finds and determines the following:

CENTRE CITY DEVELOPMENT PERMIT FINDINGS

1. *The proposed development is consistent with the DCP, CCPDO, San Diego Municipal Code (SDMC), and all other adopted plans and policies of the City of San Diego pertaining to the CCPD.*

The proposed development is consistent with the DCP, CCPDO, SDMC, and all other adopted plans and policies of the City of San Diego pertaining to the CCPD as the development advances the goals and objectives of the DCP and CCPD by:

- Providing for an overall balance of uses;
- Adding to the range of Downtown housing opportunities;
- Contributing to the vision of Downtown as a major residential neighborhood;
- Increasing the Downtown residential population;
- Providing the production of affordable housing;
- Reinforcing the evolving high-intensity Market Street corridor; and,
- Continuing East Village's evolution as a thriving high-intensity residential and mixed use neighborhood.

In addition, with approval of CCDP/CCPDP/NUP No. 2015-73, this Project will be consistent with the requirements of the SDMC and CCPDO.

CENTRE CITY PLANNED DEVELOPMENT PERMIT FINDINGS

1. *The proposed development will not adversely affect the applicable land use plan;*

The proposed Project is generally consistent with the objectives of the DCP, CCPDO, and the DDGs in that the Project provides a well-designed mixed-use development that is consistent with the orderly growth and scale of the neighborhood. The requested deviation for tower separation will add a unique, signature tower feature to the San Diego skyline via the connecting portion of the Project between the two towers and will move building massing towards the center of the Project site. The streetwall deviation allows for a practical garage ventilation solution, and furthermore, the deviation is not anticipated to affect the streetwall experience on Eighth Avenue. Permitting valet tandem parking for the hotel use will allow for more efficient car parking within the Project and maximizes the amount of public parking that can be provided by the Project. These requested deviations will provide relief from the strict application of the development standards and will have a negligible impact on the surrounding neighborhood.

2. *The proposed development will not be detrimental to the public health, safety, and welfare;*

The granting of the deviations and approval of the Project will not negatively impact the public health, safety, and general welfare. Overall, the proposed development is consistent with the plans for this neighborhood and will contribute to its vitality by providing an attractive streetscape and a contextual development.

3. *The proposed development will comply with the regulations of this Division, except for any proposed deviations which are appropriate for this location and will result in a more desirable project than would be achieved if designed in conformance with the strict regulations of this Division; and,*

The proposed development will meet all of the requirements of the SDMC and CCPDO with the approval of the deviations, which are allowable under a CCDP. The requested deviations will result in a more desirable project than would be achieved if designed in conformance with the strict regulations of the CCPDO. The tower separation deviation will allow for a signature tower feature. The streetwall deviation will allow for the appropriate location of garage ventilation, while not affecting the streetwall experience on Eight Avenue. The hotel valet tandem parking deviation will allow for further parking efficiency within the Project. With approval of the CCPDP for these foregoing deviations, the Project will comply to the maximum extent feasible with all applicable regulations.

4. *The proposed deviations are consistent with the Downtown Design Guidelines (DDG) and exhibits superior architectural design.*

Approval of the requested deviations will result in a mixed-used development consistent with the surrounding area and the DDGs. The mixed-use Project exhibits appropriate massing in scale with the long-term development plans for the East Village neighborhood, and furthermore, will add a unique form on the Downtown skyline. Overall, the Project will result in a distinctive development compatible with the surrounding neighborhood that exhibits superior architectural design.

NUP – Comprehensive Sign Plan

1. *That the proposed sign, as a whole, is in conformance with the intent of the sign regulations and any exceptions result in an improved relationship among the signs and building facades on the premises;*

The proposed signs, as whole, are in conformance with the intent of the sign regulations, suitable for the location, and do not interfere with the existing design of the building. The requested sign areas and placements are proportional to the heights and widths of the towers on which they will be placed and are consistent with other high-rise signage in the surrounding neighborhood. The proposed signage is designed in a fashion that maintains a balanced relationship with the architecture of the building so as to not detract from the Project design.

2. *That the proposed use will not adversely affect the applicable land use plan;*

The proposed Comprehensive Sign Plan is located within the ER Land Use District of the DCP area. High-rise building identification signage within this land use district is permitted through a Comprehensive Sign Plan with approval of an NUP and typical of high-rise office and hotel buildings in order to identify major tenants. Therefore, the proposed Comprehensive Sign Plan does not adversely affect the applicable land use plan as the proposed use with approval of an NUP is consistent with the regulations of the CCPDO.

3. *That the proposed use will not be detrimental to the public health, safety and welfare; and,*

The proposed Comprehensive Sign Plan will not be detrimental to the public health, safety, and welfare of the community when installed in compliance with the recommended conditions of approval, which include size limitations and additional standard conditions to ensure that the use is compatible with the surrounding neighborhood.

4. *That the proposed use will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.*

The proposed use will comply to the maximum extent feasible with the regulations of the CCPDO and City of San Diego Land Development Code with approval of an NUP, including obtaining all additional applicable permits as required by the City of San Diego Development Services Department.

NOW, THEREFORE, BE IT FURTHER RESOLVED that based on these findings, hereinbefore adopted by the CivicSD Board, CCDP/CCPDP/NUP No. 2015-73 is hereby **GRANTED** to the referenced Owner and Permittee, subject to the approval of the associated Disposition and Development Agreement by the City Council and subject to the terms and conditions set forth in the Permit, a copy of which is attached hereto and made part hereof.

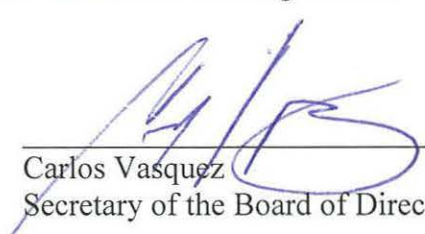
AYES: 7

NOES: 0

ABSTENTIONS: 0

CERTIFICATION

I, Carlos Vasquez, Secretary of CivicSD, do hereby certify that the above is a true and correct copy of a resolution adopted by the CivicSD Board at a meeting held on September 28, 2016.



Carlos Vasquez
Secretary of the Board of Directors

RECORDING REQUESTED BY:

Civic San Diego
Planning Department
401 B Street, Suite 400
San Diego, CA 92101

AND WHEN RECORDED MAIL TO:

Civic San Diego
Planning Department
401 B Street, Suite 400
San Diego, CA 92101

THIS SPACE FOR RECORDER'S USE ONLY

*NOTE: COUNTY RECORDER, PLEASE RECORD AS
RESTRICTION ON USE OR DEVELOPMENT OF
REAL PROPERTY AFFECTING THE TITLE TO OR
POSSESSION THEREOF*

**DRAFT CENTRE CITY DEVELOPMENT PERMIT
PLANNED DEVELOPMENT PERMIT
NEIGHBORHOOD USE PERMIT
NO. 2015-73**

**7TH & MARKET
ASSESSOR PARCEL NUMBER
535-112-01-00 THRU 11-00**

**CENTRE CITY PLANNED DISTRICT
DRAFT CENTRE CITY DEVELOPMENT PERMIT
PLANNED DEVELOPMENT PERMIT
NEIGHBORHOOD USE PERMIT
NO. 2015-73**

**7TH & MARKET
ASSESSOR PARCEL NUMBER
535-112-01-00 THRU 11-00**

This Centre City Development Permit / Planned Development Permit / Neighborhood Use Permit (CCDP/PDP/NUP) No. 2015-73 is granted by Civic San Diego (“CivicSD”) to the City of San Diego, Owner, and Cisterra 7th & Market, LLC, Permittee, to allow the construction of a mixed-use development containing a 39-story and 19-story tower (approximately 475 feet and 227 feet tall, respectively) comprised in total of approximately 218 dwelling units (DU) including indoor and outdoor amenity space, approximately 156,000 SF of office space, a proposed 153-room hotel, an estimated 40,000 SF retail space for a grocer and 887 automobile parking spaces including a minimum of 200 public parking spaces, on a 60,000 square-foot (SF) full-block premises bounded by Market Street and Island, Seventh and Eighth avenues in the East Village neighborhood of the Downtown Community Plan (DCP) area and within the Centre City Planned District (CCPD); and more particularly described as Lots A, B, C, D, E, F, G, H, I, J, K & L in Block 98 of Horton’s Addition in the City of San Diego, County of San Diego, State of California, according to partition map thereof, made by L.L. Lockling, filed in the Office of the County Recorder of San Diego County.

Subject to the terms and conditions set forth in this Permit, permission is granted to the Owner and/or Permittee to construct and operate a development and uses as described and identified by size, dimension, quantity, type, and location as follows and on the approved Basic Concept / Schematic Drawings and associated Color and Materials Boards dated April 4, 2016, on file at CivicSD.

1. General

The Owner and/or Permittee shall construct, or cause to be constructed on the site, a 39-story and 19-story tower (approximately 475 feet and 227 feet tall, respectively) comprised in total of approximately 218 dwelling units (DU) including indoor and outdoor amenity space, approximately 156,000 SF of office space, a proposed 153-room hotel, and an estimated 40,000 SF retail space for a grocer. The development shall not exceed a height of 475 feet above average grade level, measured to the top of the parapet of the uppermost floor, with roof equipment enclosures, elevator penthouses, mechanical screening, and architectural elements above this height permitted per the Centre City Planned District Ordinance (CCPDO).

2. Disposition and Development Agreement

The Project shall be subject to all terms and conditions of the associated Disposition and Development and Agreement and are incorporated into the conditions of approval for CCDP/PDP/NUP No. 2015-73 by reference herein.

3. Floor Area Ratio (FAR) Bonus

- a. Green Building FAR – An increase in the Floor Area Ratio (FAR) by a factor of 1.0 is hereby granted under CCPDO Section 156.0309 (e)(8): FAR Green Building Program. The development is entitled to 1.0 FAR for the provision of Centre City Green (CCG) Building Incentive Program awards development incentives for buildings that exceed the California Green Building Standards Code (CALGreen). The Applicant shall construct a LEED-Certified Silver building in accordance with the US Green Building Council (USGBC) standards for new construction. CC&Rs shall be recorded on the property to ensure the LEED Certification level for construction of building. Such CC&Rs shall be in a form approved by CivicSD and the City Attorney's Office and shall be recorded prior to issuance of a Building Permit.

Prior to the issuance of any building permits, the Permittee shall provide a financial surety, deposit, or other suitable guarantee approved by the Civic San Diego President and the City Attorney's Office to ensure that the applicant completes the LEED certification for the development as proposed to obtain a FAR Bonus under this Section.

LEED certification must be demonstrated through an independent report provided by the USDBC that confirms achievement of a LEED Silver (or higher) level of performance. The financial surety, deposit, or other suitable guarantee shall be in an amount equivalent to the values which would be required to purchase an equivalent amount of FAR under the FAR Payment Bonus Program, including any subsequent amendments in effect at the time of the development permit application. Within 180 days of receiving the final Certificate of Occupancy for a development, the applicant shall submit documentation that demonstrates achievement of the applicable LEED rating as proposed under this Section.

If the applicant fails to submit a timely report or demonstrate LEED certification, payment shall be deducted against the financial security, deposit, or other suitable guarantee and deposited in the FAR Bonus Fund established under the FAR Payment Bonus Program. The amount of payment shall be calculated according to the following formula:

$$P = \text{FAR} \$ \times ((\text{LCP} - \text{CPE}) / \text{LCP})$$

P= the payment amount shall be paid to the FAR Bonus Fund

FAR\$ = the amount of money which would be required to purchase FAR under the FAR Payment Bonus Program

LCP + LEED Certification Points needed to achieve the proposed LEED certification level (Silver or higher)

CPE = LEED Certification Points actually earned by the development as certified by the USGBC

All funds provided by the applicant for the LEED certification surety, deposit, or other suitable guarantee that are not paid to the FAR Bonus Fund shall be refunded to the applicant. In the event that the applicant submits a timely report and demonstrates the necessary level of LEED certification for the applicant's desired FAR Bonus, the entire amount of the surety, deposit, or other suitable guarantee shall be refunded to the applicant.

- b. Three-Bedroom Units – The Project is entitled up to a 0.5 FAR bonus for the provision of 22 three-bedroom units, equivalent to 10 percent of the total amount of dwelling units, within the development. Eligible three-bedroom units shall not exceed 1,300 square feet with each bedroom in a dwelling unit used to earn the FAR bonus containing a minimum of 70 square feet (with additional area for enclosed closet). Covenants, Conditions and Restrictions (CC&R's) shall be recorded on the property to ensure the number of bedrooms in the units used to earn the FAR are not reduced. Such CC&Rs shall be in a form approved by CivicSD and the City Attorney's Office and shall be recorded prior to issuance of a Building Permit.
- c. Urban Open Space – The development is entitled up to a 0.5 FAR bonus (20,000 square feet) under the provisions of the CCPDO for the provision of 6,014 square feet (10% of total site area) of Urban Open Space designed as approved during the Design Review process and as shown in the Basic/Concept Drawings. Specifications for the design of the Urban Open Space shall be submitted with 100% Construction Drawings and approved by CivicSD prior to issuance of a Building Permit. The Urban Open Space shall also be subject to the following:
 - i. The Urban Open Space shall be open to the general public at least between the hours of 6:00a.m. and 10:00p.m. every day. The open space area shall have signs indicating that the public is welcome and the hours of closure, if applicable.
 - ii. CC& R's shall be recorded on the property providing for the development and on-going maintenance of the open space area to City standards in perpetuity. These provisions shall be approved by CivicSD and the City Attorney's Office prior to issuance of a Building Permit.
- d. Public Parking – The development is entitled to an additional 2.25 FAR (135,311 SF) for every square foot of parking area made permanently available for public use. A public parking easement shall be executed for such facilities, with restrictions and covenants acceptable to Civic San Diego and the City of San Diego.

- e. Affordable Housing Bonus – The development is entitled to an additional 1.43 FAR (85,776 square feet). The Owner/Permittee shall provide a minimum of 22 affordable units restricted to 51% -80% of Area Median Income (AMI) for a minimum of 55 years. An agreement with the San Diego Housing Commission shall be executed to enforce and monitor the affordability restrictions prior to issuance of any Building Permit for construction of any residential unit.

4. Centre City Planned Development Permit

The CivicSD Board hereby grants a Centre City Planned Development Permit (CCPDP) pursuant to Sections 156.0304(d) and (f) of the CCPDO for deviations to the following development regulations within the CCPDO:

- a. CCPDO 156.0310(d)(3)(C) Tower Separation – Allowing less than 60 feet of separation between the towers on the project site.
- b. CCPDO 156.0310(d)(1)(D) Minimum Streetwall Height – Reducing from 45 feet to 31 feet for the streetwall height along a portion of Eighth Avenue.
- c. CCPDO 156.0313(k)/SDMC 142.0555(b) Valet, Tandem Parking for the Hotel Use – Allowing valet, tandem parking to meet the minimum required parking for the hotel use.

5. Comprehensive Sign Plan

The CivicSD Board of Directors hereby grants a Comprehensive Sign Plan pursuant to San Diego Municipal Code (SDMC) Chapter 14, Article 1 Division 11 and Section 156.0314 (a)(4) of the CCPDO subject to the following criteria:

CSP High-Rise Signage Criteria for 39-Story Tower	
Location	North and South Elevations
Overall Area	Overall High-Rise Signage Not Exceed 735 SF
Overall Size	Not to Exceed 450 SF (North Elevation) Not to Exceed 285 SF (South Elevation)
Logo Height	Maximum 10' North Elevation Maximum 5' South Elevation
Letter Height	Maximum 5' tall letters on Both Elevations
Materials	Painted Metal or Plexiglass Face, No Box Signs Permitted
Lighting	Remotely Illuminated, Halo-Lit or Backlit

CSP High-Rise Signage Criteria for 19-Story Tower	
Location	South and East Elevations
Overall Area	Overall High-Rise Signage Not Exceed 400 SF
Overall Size	Not to Exceed 300 SF (South Elevation) Not to Exceed 200 SF (East Elevation)

Logo Height	Maximum 10' wide x 10' high
Letter Height	Maximum 5' tall letters
Materials	Painted Metal or Plexiglass Face, No Box Signs Permitted
Lighting	Remotely Illuminated, Halo-Lit or Backlit

- a. All other signs on the site and building shall comply with the City Signage Regulations outlined in Chapter 14 of the SDMC and the CCPDO.
- b. Before issuance of any sign permits, the signage plans shall be submitted to Civic SD for approval. Plans shall be in substantial conformity to the approved Basic/Concept Plans for the project.

6. Affordable Housing Density Bonus Development Incentive

Per SDMC Section 143.0740, a development incentive shall be utilized to allow the proposed east-west tower dimension of the 39-story tower to exceed the maximum 130-foot-wide east-west tower dimension established in CCPDO 156.0310(d)(3)(B). The maximum east-west tower dimension allowed under the incentive shall be a dimension of 141 feet for levels 30-39 only. All applicable requirements of SDMC Sections 143.0720 and 143.0725 shall be met and incorporated herein.

7. Parking

- a. The development includes approximately 887 automobile parking spaces. A minimum of 184 spaces (or an equivalent number based on the exact number of DU) shall be dedicated to the development's market-rate residential component and seven spaces (or an equivalent number based on the exact number of DU) shall be dedicated to visitors and guests of the residents; and all shall be designed to meet City Standards. These automobile parking spaces shall be allocated for exclusive use by the development's residential units. All guest parking should be located near the garage entrance. If any additional parking spaces are designed with dimensions less than the City Standards, future buyers (if converted to condominium) of the residential units shall be informed of the dimensional size of their parking spaces prior to the sale of such units. All tandem parking spaces must be for residential units within the Project with the exception of select hotel tandem parking spaces. Additional parking spaces above the minimum requirements for the project may be made available to the public.
- b. A minimum of 15 spaces (or an equivalent number based on the exact number of affordable DU) shall be dedicated to the development's affordable residential component. An additional eight spaces (or an equivalent number based on the exact number of affordable DU) shall be provided for the visitors and staff of affordable residential component of the Project and shall be designed to meet City Standards. These automobile parking spaces shall be allocated for exclusive use by the development's affordable residential units.

- c. A minimum of 41 spaces must be dedicated to the development's retail component (or an equivalent number based on the exact retail area) and all shall be designed to meet City Standards. These automobile parking spaces shall be allocated for exclusive use by the development's retail component.
- d. A minimum of 243 spaces must be dedicated to the development's office component (or an equivalent number based on the exact office area) and all shall be designed to meet City Standards. These automobile parking spaces shall be allocated for exclusive use by the development's office component.
- e. A minimum of 46 spaces must be dedicated to the development's hotel component (or an equivalent number based on the exact number of hotel rooms). Per the hotel parking deviation, the hotel parking spaces may be valet-parked and up to 23 of the hotel spaces may be tandem parking spaces. These automobile parking spaces shall be allocated for exclusive use by the development's hotel component.
- f. Per the conditions and terms of the Disposition and Development Agreement, a minimum of 200 parking spaces must be public parking spaces and must remain accessible to the general public in perpetuity. All public parking spaces shall be designed to meet City Standards.
- g. A minimum of 38 motorcycle parking spaces and secured storage space for a minimum of 71 bicycles shall be provided (or an equivalent number based on the exact number of DU and/or use areas).

8. Loading

- a. A minimum of one off-street loading space shall be required for the residential component of the development with minimum dimensions of 35 feet in depth, 13 feet in width, and 13 feet in height (measured from the inside walls).
- b. A minimum of one off-street loading space shall be required for the commercial component of the development with minimum dimensions of 35 feet in depth, 14 feet in width, and 14 feet in height (measured from the inside walls).

9. Historical Resources

The project includes a designated historical resources; the Clermont Hotel (Historical Resources Board (HRB) Site No. 509) located on the southwest corner of the site. The building shall be retained on site and rehabilitated in accordance with the Secretary of the Interior Standards to the satisfaction of the City of San Diego Historic Resources staff. A Historical Treatment Plan, including a Historical Monitoring Plan, for the resource shall be provided to, and approved by, the City of San Diego Historical Resources Department prior to work commencing on the site.

10. Transportation Demand Management

The project is required to implement measures to reduce single-occupant vehicle trips for the project, per Table 0313-D of Section 156.0313(o) of the CCPDO, achieving a minimum of 25 points, for the life of the project. Such measures shall be demonstrated prior to issuance of Building Permits for the project.

11. Public Art

The Owner/Permittee shall comply with public art requirements of San Diego Municipal Code Chapter 2, Article 6, Division 7 Art in Private Development Ordinance and shall provide confirmation of compliance from the City of San Diego Commission for Arts and Culture prior to issuance of Building Permits.

PLANNING AND DESIGN REQUIREMENTS

12. Residential Amenities and Facilities

The development includes the following residential amenities and facilities as illustrated on the approved Basic Concept/Schematic Drawings on file at CivicSD, which shall be required to be maintained within the development in perpetuity:

- a. Common Outdoor Open Space – Approximately 12,027 SF of common outdoor space shall be provided. The dimensions of the common outdoor open space(s) must not be reduced for the life of the development. A minimum of 10% of each common outdoor open space area must be planted area and each area must be accessible to all residents of the development through a common accessway.
- b. Common Indoor Space – A minimum of 500 SF of common indoor amenity space shall be provided. The space(s) shall be maintained for use by residents of the development and must be accessible through a common corridor. The area may contain active or passive recreational facilities, meeting space, computer terminals, or other activity space.
- c. Private Open Space - At least 50 percent of all dwelling units shall provide private open space on a balcony, patio, or roof terrace, with a minimum area of 40 square feet (SF) each and an average horizontal dimension of 6 feet. Balconies should be proportionately distributed throughout the development in relationship to floor levels and sizes of units. Living unit developments are exempt from this requirement.
- d. Pet Open Space – A minimum of 200 SF of pet open space shall be provided and improved for use by pets and clearly marked for such exclusive use. Such areas shall include permeable surfaces, a hose bib, and be drained to the public sewer system (except for at-grade lawn areas).

13. Urban Design Standards

The proposed development, including its architectural design concepts and off-site improvements, shall be consistent with the CCPDO and Centre City Streetscape Manual (CCSM). These standards, together with the following specific conditions, will be used as a basis for evaluating the development through all stages of the development process.

- a. Architectural Standards – The architecture of the development shall establish a high quality of design and complement the design and character of the East Village neighborhood as shown in the approved Basic Concept/Schematic Drawings on file with CivicSD. The development shall utilize a coordinated color scheme consistent with the approved Basic Concept/Schematic Drawings.
- b. Form and Scale – The development shall consist of a mixed-use development containing with a maximum height of 39 stories (up to 475 feet tall) measured to the top of the roofline, with roof equipment enclosures, elevator penthouses, and mechanical screening above this height permitted per the CCPDO and the Federal Aviation Administration (FAA). All building elements shall be complementary in form, scale, and architectural style.
- c. Building Materials – All building materials shall be of a high quality as shown in the Basic Concept/Schematic Drawings and approved materials board. All materials and installation shall exhibit high-quality design, detailing, and construction execution to create a durable and high quality finish. The base of the buildings shall be clad in upgraded materials and carry down to within one inch of finish sidewalk grade, as illustrated in the approved Basic Concept/Schematic Drawings on file with CivicSD. Any plaster materials shall consist of a hard troweled, or equivalent, smooth finish. Any stone materials shall employ larger modules and full-corner profiles to create a substantial and non-veneer appearance. Any graffiti coatings shall be extended the full height of the upgraded base materials or up to a natural design break such a cornice line. All downspouts, exhaust caps, and other additive elements shall be superior grade for urban locations, carefully composed to reinforce the architectural design. Reflectivity of the glass shall be the minimum reflectivity required by Title 24 of the California Code of Regulations (“Title 24”).

All construction details shall be of the highest standard and executed to minimize weathering, eliminate staining, and not cause deterioration of materials on adjacent properties or the public right of way. No substitutions of materials or colors shall be permitted without the prior written consent of the CivicSD. A final materials board which illustrates the location, color, quality, and texture of proposed exterior materials shall be submitted with 100% Construction Drawings and shall be consistent with the Materials Board approved with the Basic Concept/Schematic Drawings.

- d. Street Level Design – Architectural features such as awnings and other design features which add human scale to the streetscape are encouraged where they are consistent with the design theme of the structure. Exit corridors including garage/motor-court entrances shall provide a finished appearance to the street with street level exterior finishes wrapping into the openings a minimum of ten feet. The garage door on Eighth Avenue

shall provide an upgraded architectural design and/or finish and obscure views into the garage. The garage door and loading bay doors on Seventh Avenue shall contain graphics that obscure the glass of these doors and shall depict the cultural heritage of the Clermont Hotel. These doors shall remain in the closed position when not in use.

All exhaust caps, lighting, sprinkler heads, and other elements on the undersides of all balconies and surfaces shall be logically composed and placed to minimize their visibility, while meeting code requirements. All soffit materials shall be high quality and consistent with adjacent elevation materials (no stucco or other inconsistent material), and incorporate drip edges and other details to minimize staining and ensure long-term durability.

- e. Utilitarian Areas – Areas housing trash, storage, or other utility services shall be located in the garage or otherwise completely concealed from view of the ROW and adjoining developments, except for utilities required to be exposed by the City or utility company. The development shall provide trash and recyclable material storage areas per SDMC sections 142.0810 and 142.0820. Such areas shall be provided within an enclosed building/garage area and shall be kept clean and orderly at all times.
- f. Mail and Delivery Locations – It is the Owner's and/or Permittee's responsibility to coordinate mail service and mailbox locations with the United States Postal Service and to minimize curb spaces devoted to postal/loading use. The Owner and/or Permittee shall locate all mailboxes and parcel lockers outside of the ROW, either within the building or recessed into a building wall. Individual commercial spaces shall utilize a centralized delivery stations within the building or recessed into a building wall, which may be shared with residential uses sharing a common street frontage address.
- g. Access – Vehicular access to the development's parking shall be limited to one driveway on Eighth Avenue with a curb cut not exceeding 26 feet in width and one driveway on Seventh Avenue with a curb cut not exceeding 23 feet in width. Loading access to the development's loading spaces shall be limited to two driveways on Seventh Avenue with respective curb cuts of 26 feet and 24 feet in width.
- h. Circulation and Parking – The Owner and/or Permittee shall prepare a plan which identifies the location of curbside parking control zones, parking meters, fire hydrants, trees, and street lights to the satisfaction of Civic San Diego. Such plan shall be submitted in conjunction with construction permits.

All on-site parking shall meet the requirements of the City Building Official, Fire Department, and Engineer. All parking shall be mechanically ventilated. The exhaust system for mechanically ventilated structures shall be located to mitigate noise and exhaust impacts on residential units, adjoining properties, and the ROW according to applicable building codes.

- i. Open Space and Development Amenities – A landscape plan that illustrates the relationship of the proposed on and off-site improvements and the location of water and

electrical hookups to the satisfaction of Civic San Diego shall be submitted with construction permit drawings.

- j. Roof Tops – A rooftop equipment and appurtenance location and screening plan shall be prepared and submitted to the satisfaction of Civic San Diego with 100% Construction Drawings. Any roof-top mechanical equipment shall be grouped, enclosed, and screened from surrounding views (including views from above).
- k. Signage – All signs shall comply with the City Sign Regulations and the CCPDO with the exception of the proposed tower signage approved under the Comprehensive Sign Program.
- l. Noise Control – All mechanical equipment, including but not limited to, air conditioning, heating and exhaust systems, shall comply with the City Noise Ordinance and California Noise Insulation Standards as set forth in Title 24. Owner and/or Permittee shall provide evidence of compliance at 100% Construction Drawings.
- m. Street Address – Building address numbers shall be provided that are visible and legible from the ROW.

14. On-Site Improvements

All off-site and on-site improvements shall be designed as part of an integral site development. An on-site improvement plan shall be submitted to the satisfaction of Civic San Diego with the construction permit drawings.

15. Removal and/or Remedy of Soil and/or Water Contamination

The Owner/Permittee shall (at its own cost and expense) remove and/or otherwise remedy as provided by law and implementing rules and regulations, and as required by appropriate governmental authorities, any contaminated or hazardous soil and/or water conditions on the Site. Such work may include without limitation the following:

- a. Remove (and dispose of) and/or treat any contaminated soil and/or water on the site (and encountered during installation of improvements in the adjacent public rights-of-way which the Owner/Permittee is to install) as necessary to comply with applicable governmental standards and requirements.
- b. Design and construct all improvements on the site in a manner which will assure protection of occupants and all improvements from any contamination, whether in vapor or other form, and/or from the direct and indirect effects thereof.
- c. Prepare a site safety plan and submit it to the appropriate governmental agency, CivicSD, and other authorities for approval in connection with obtaining a building permit for the construction of improvements on the site. Such site safety plan shall assure workers and other visitors to the site of protection from any health and safety

hazards during development and construction of the improvements. Such site safety plan shall include monitoring and appropriate protective action against vapors and/or the effect thereof.

- d. Obtain from the County of San Diego and/or California Regional Water Quality Control Board and/or any other authorities required by law any permits or other approvals required in connection with the removal and/or remedy of soil and/or water contamination, in connection with the development and construction on the site.
- e. If required due to the presence of contamination, an impermeable membrane or other acceptable construction alternative shall be installed beneath the foundation of the building. Drawings and specifications for such vapor barrier system shall be submitted for review and approval by the appropriate governmental authorities.

PUBLIC IMPROVEMENTS, LANDSCAPING AND UTILITY REQUIREMENTS

16. Off-Site Improvements

The following public improvements shall be installed in accordance with the Centre City Streetscape Manual (CCSM). The CCSM is currently being updated and the Owner and/or Permittee shall install the appropriate improvements according to the latest requirements at the time of Building Permit issuance:

	Island Avenue	Market Street	Seventh /Eighth avenues
Paving	Island Avenue Paving	Market Street Paving	Ballpark Paving
Street Trees	Chinese Evergreen Elm	Raywood Ash	Brisbane Box
Street Lights	CCDC Standard	CCDC Gateway	CCDC Standard

- a. Street Trees – Street tree selections shall be made according to the CCSM. All trees shall be planted at a minimum 36-inch box size with tree grates provided as specified in the CCSM, and shall meet the requirements of Title 24. Tree spacing shall be accommodated after street lights have been sited, and generally spaced 20 to 25 feet on center. All landscaping shall be irrigated with private water service from the subject development.

No trees shall be removed prior to obtaining a Tree Removal Permit from DSD per City Council Policy 200-05.

- b. Street Lights – All existing lights shall be evaluated to determine if they meet current CivicSD and City requirements, and shall be modified or replaced if necessary.
- c. Sidewalk Paving – Any specialized paving materials shall be approved through the execution of an Encroachment Removal and Maintenance Agreement (EMRA) with the City at the time of construction permit issuance.

- d. Litter Containers – The development shall provide a minimum of six litter receptacles and shall be located as specified in the CCSM.
- e. Landscaping – All required landscaping shall be maintained in a disease, weed and litter free condition at all times. If any required landscaping (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction documents is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent in size per the approved documents and to the satisfaction of the CivicSD within 30 days of damage or Certificate of Occupancy, whichever occurs first.
- f. Planters – Planters shall be permitted to encroach into the ROW a maximum of two feet for sidewalk areas measuring at least twelve feet and less than fourteen feet in width. For sidewalk areas fourteen feet or wider, the maximum permitted planter encroachment shall be three feet. The planter encroachment shall be measured from the property line to the face of the curb to the wall surrounding the planter. A minimum six foot clear path shall be maintained between the face of the planter and the edge of any tree grate or other obstruction in the ROW.
- g. On-Street Parking – The Owner and/or Permittee shall maximize the on-street parking wherever feasible.
- h. Public Utilities – The Owner and/or Permittee shall be responsible for the connection of on-site sewer, water and storm drain systems from the development to the City utilities located in the ROW. Sewer, water, and roof drain laterals shall be connected to the appropriate utility mains within the street and beneath the sidewalk. The Owner and/or Permittee may use existing laterals if acceptable to the City, and if not, Owner and/or Permittee shall cut and plug existing laterals at such places and in the manner required by the City, and install new laterals. Private sewer laterals require an EMA.

If it is determined by the City Engineer or CivicSD that existing water and sewer services are not of adequate size to serve the proposed development, the Owner and/or Permittee will be required to abandon any unused water and sewer services and install new services and meters. Service abandonments require an engineering permit and must be shown on a public improvement plan. All proposed public water and sewer facilities, including services and meters, must be designed and constructed in accordance with established criteria in the most current edition of City's Water and Sewer Facility Design Guidelines and City regulations standards and practices pertaining thereto.

Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the Building Permit plan check. If and when the Owner and/or Permittee submits for a tentative map or tentative map waiver, the Water Department will require Covenants, Conditions, and Restrictions ("CC&Rs") to address the operation and

maintenance of the private on-site water system serving the development. No structures or landscaping of any kind shall be installed within ten feet of water facilities.

All roof drainage and sump drainage, if any, shall be connected to the storm drain system in the public street, or if no system exists, to the street gutters through sidewalk underdrains. Such underdrains shall be approved through an Encroachment Removal Agreement with the City. The Owner and/or Permittee shall comply with the City's Storm Water Management and Discharge Control Ordinance and the storm water pollution prevention requirements of Chapter 14, Article 2, Division 1 and Chapter 14, Article 2, Division 2 of the SDMC.

- i. Franchise Public Utilities – The Owner and/or Permittee shall be responsible for the installation or relocation of franchise utility connections including, but not limited to, gas, electric, telephone and cable, to the development and all extensions of those utilities in public streets. Existing franchise utilities located above grade serving the property and in the sidewalk ROW shall be removed and incorporated into the adjoining development. All franchise utilities shall be installed as identified in the Basic Concept Drawings. Any above grade devices shall be screened from view from the ROW.
- j. Fire Hydrants – If required through the construction permit review, the Owner and/or Permittee shall install fire hydrants at locations satisfactory to the City's Fire Department and DSD.
- k. Water Meters and Backflow Preventers – The Owner and/or Permittee shall locate all water meters and backflow preventers in locations satisfactory to the Public Utilities Department and CivicSD. Backflow preventers shall be located outside of the ROW adjacent to the development's water meters, either within the building, a recessed alcove area, or within a plaza or landscaping area. The devices shall be screened from view from the ROW. All items of improvement shall be performed in accordance with the technical specifications, standards, and practices of the City's Engineering, Public Utilities, and Building Inspection Departments and shall be subject to their review and approval. Improvements shall meet the requirements of Title 24.

17. Storm Water Compliance

- a. Prior to issuance of any construction permit, the Owner and/or Permittee shall enter into a Maintenance Agreement for the on-going permanent Best Management Practices (BMP) maintenance, satisfactory to the City Engineer.
- b. Prior to the issuance of any Construction Permit, the Owner and/or Permittee shall incorporate any construction BMP necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications.

- c. Prior to issuance of any construction permits, the Owner and/or Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.
- d. Prior to the issuance of any construction permit, the Water Quality Technical Report will be subject to final review and approval by the City Engineer.

18. Removal and/or Remedy of Soil and/or Water Contamination

- a. The Owner and/or Permittee shall (at its own cost and expense) remove and/or otherwise remedy as provided by law and implementing rules and regulations, and as required by appropriate governmental authorities, any contaminated or hazardous soil and/or water conditions on the Site. Such work may include without limitation the following:
 - i. Remove (and dispose of) and/or treat any contaminated soil and/or water on the site (and encountered during installation of improvements in the adjacent ROW which the Owner and/or Permittee is to install) as necessary to comply with applicable governmental standards and requirements.
 - ii. Design construct all improvements on the site in a manner which will assure protection of occupants and all improvements from any contamination, whether in vapor or other form, and/or from the direct and indirect effects thereof.
 - iii. Prepare a site safety plan and submit it to the appropriate governmental agency, CivicSD, and other authorities for approval in connection with obtaining a building permit for the construction of improvements on the site. Such site safety plan shall assure workers and other visitors to the site of protection from any health and safety hazards during development and construction of the improvements. Such site safety plan shall include monitoring and appropriate protective action against vapors and/or the effect thereof.
 - iv. Obtain from the County of San Diego and/or California Regional Water Quality Control Board and/or any other authorities required by law any permits or other approvals required in connection with the removal and/or remedy of soil and/or water contamination, in connection with the development and construction on the site.
 - v. If required due to the presence of contamination, an impermeable membrane or other acceptable construction alternative shall be installed beneath the foundation of the building. Drawings and specifications for such vapor barrier system shall be submitted for review and approval by the appropriate governmental authorities.

SUSTAINABILITY

19. A combination of cool/green roofs must be utilized in the development including the following:

- a. Roofing materials with a minimum three-year aged solar reflection and thermal emittance or solar reflection index equal to or greater than the values specified in the voluntary measures under the California Green Building Standards Code must be implemented.
- b. The project roof construction must have a thermal mass over the roof membrane, including areas of vegetated (green) roofs, weighing at least 25 pounds per square foot as specified in the voluntary measures under the California Green Building Standards Code.

Compliance with this measure must be demonstrated prior to the issuance of the building permit.

20. The development must include, at a minimum, the following fixtures:

- a. Residential Buildings
 - Kitchen faucets: maximum flow rate not to exceed 1.5 gallons per minute at 60 psi;
 - Standard dishwashers: 4.25 gallons per cycle;
 - Compact dishwashers: 3.5 gallons per cycle; and
 - Clothes washers: water factor of 6 gallons per cubic feet of drum capacity
- b. Non-Residential Buildings
 - Plumbing fixtures and fittings that do not exceed the maximum flow rate specified in Table A5.303.2.3.1 (voluntary measures) of the California Green Building Standards Code; and
 - Appliances and fixtures for commercial applications that meet the provisions of Section A5.303.3 (voluntary measures) of the California Green Building Standards Code.

Compliance with this measure must be demonstrated prior to the issuance of the building permit.

21. The development must be designed to have an energy budget that meets or exceeds a 10% improvement with both indoor lighting and mechanical systems when compared to the Title 24, Part 6 Energy Budget for the proposed design building as calculated by Compliance Software certified by the California Energy Commission (percent improvement over current code). The demand reduction may be provided through on-site renewable energy generation, such as solar, or by designing the project to have an energy budget that meets the above-mentioned performance standards, when compared to the Title 24, Part 6 Energy Budget for the Proposed Design Building (percent improvement over current code). Compliance with this measure must be demonstrated prior to the issuance of the building permit.

22. A minimum of 3% of the total required parking spaces must be provided with a listed cabinet, box or enclosure connected to a conduit linking the parking spaces with the electrical service, in a manner approved by the building and safety official. Of the total listed cabinets, boxes or enclosures provided, at least 50% must have the necessary electric vehicle supply equipment installed to provide active electric vehicle charging stations ready for use by residents. Compliance with this measure must be demonstrated prior to the issuance of the building permit.

23. The development must contain more short- and long-term bicycle parking spaces than required in SDMC Chapter 14, Article 2, Division 5 at all times. Compliance with this measure must be demonstrated prior to the issuance of the building permit.
24. Changing/shower facilities must be provided for the non-residential component of the development. With over 200 tenant occupants, the project must provide one shower stall plus one additional shower stall for each 200 additional tenant-occupants, as well as one two-tier locker plus one two-tier locker for each 50 additional tenant-occupants. Compliance with this measure must be demonstrated prior to the issuance of the building permit.
25. The development must provide a minimum of 10% of the total number of designated parking spaces for any combination of low-emitting, fuel-efficient, and carpool/vanpool vehicles. Compliance with this measure must be demonstrated prior to the issuance of the building permit.
26. The development must provide a transportation demand management program that would be applicable to existing tenants and future tenants that includes:
 - a. At least one of the following components:
 - Parking cash out program
 - Parking management plan that includes charging employees market-rate for single-occupancy vehicle parking and providing reserved, discounted, or free spaces for registered carpools or vanpools
 - Unbundled parking whereby parking spaces would be leased or sold separately from the rental.
 - b. At least three of the following components
 - Commitment to maintaining an employer network in the SANDAG iCommute program and promoting its RideMatcher service to tenants/employees
 - On-site carsharing vehicle(s) or bikesharing
 - Flexible or alternative work hours
 - Telework program
 - Transit, carpool, and vanpool subsidies
 - Pre-tax deduction for transit or vanpool fares and bicycle commute costs
 - Access to services that reduce the need to drive, such as cafes, commercial stores, banks, post offices, restaurants, gyms, or childcare, either onsite or within 1,320 feet (1/4 mile) of the structure/use

All required transportation demand management components must be identified and submitted to CivicSD prior to issuance of a Certificate of Temporary Occupancy for each commercial tenant space in the development.

STANDARD REQUIREMENTS

27. Environmental Impact Mitigation Monitoring and Reporting Program

As required by CCPDO Section 156.0304(h), the development shall comply with all applicable Mitigation Monitoring and Reporting Program (MMRP) measures from the 2006 Final Environmental Impact Report (FEIR) for the DCP.

28. Development Impact Fees

The development will be subject to Centre City Development Impact Fees. The fee shall be determined in accordance with the fee schedule in effect at the time of building permit issuance. The Owner and/or Permittee shall provide to the City's Facilities Financing Department the following information at the time of application for building permit plan check: 1) total square footage for commercial lease spaces and all areas within the building dedicated to support those commercial spaces including, but not limited to: loading areas, service areas and corridors, utility rooms, and commercial parking areas; 2) applicable floor plans showing those areas outlined for verification; and, 3) the total number of residential units. In addition, it shall be responsibility of the Owner and/or Permittee to provide all necessary documentation for receiving any "credit" for existing buildings to be removed. Development Impact Fees shall be calculated in accordance with fee schedule in effect at the time of building permit issuance, and in accordance with the SDMC.

29. Inclusionary Affordable Housing Ordinance

As required by SDMC Chapter 14, Article 2, Division 13, the development shall comply with all applicable regulations of the City's Inclusionary Housing Ordinance. The Owner and/or Permittee shall provide documentation of such compliance to CivicSD prior to issuance of any Building Permits.

30. Construction Fence

Owner and/or Permittee shall install a construction fence pursuant to specifications of, and a permit from, the City Engineer. The fence shall be solid plywood with wood framing, painted a consistent color with the development's design, and shall contain a pedestrian passageway, signs, and lighting as required by the City Engineer. The fencing shall be maintained in good condition and free of graffiti at all times.

31. Development Identification Signs

Prior to commencement of construction on the site, the Owner and/or Permittee shall prepare and install, at its cost and expense, one sign on the barricade around the site which identifies the development. The sign shall be at least four feet by six feet and be visible to passing pedestrian and vehicular traffic. The signs shall at a minimum include:

- Color rendering of the development
- Development name
- Developer
- Completion Date

- For information call _____

Additional development signs may be provided around the perimeter of the site. All signs shall be limited to a maximum of 160 SF per street frontage. Graphics may also be painted on any barricades surrounding the site. All signs and graphics shall be submitted to the CivicSD for approval prior to installation.

32. Tentative Map

The Owner and/or Permittee shall be responsible for obtaining all map approvals required by the City prior to any future conversion of the residential units and/or commercial spaces to condominium units for individual sale.

33. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
34. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
35. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
36. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
37. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner and/or Permittee and any successor(s) in interest.
38. This development shall comply with the standards, policies, and requirements in effect at the time of approval of this development, including any successor(s) or new policies, financing mechanisms, phasing schedules, plans and ordinances adopted by the City.
39. No permit for construction, operation, or occupancy of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until this Permit is recorded in the Office of the San Diego County Recorder.
40. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site

improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

41. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
42. The Owner/Permittee shall defend, indemnify, and hold harmless CivicSD and the City (collectively referred to as "City"), its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.
43. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained there.

This CCDP/CCPDP/NUP is granted by the Planning Commission on October 27, 2016.

CIVIC SAN DIEGO:

OWNER:

Aaron Hollister
Senior Planner

Date

David Graham
City of San Diego

Date

**Note: Notary acknowledgment
must be attached per Civil Code
Section 1189 et seq**

PERMITTEE:

Jason Wood
Cisterra 7th & Market, LLC

Date



Attachment 3

Attachment 3 contains a hard copy of the Appeal Application, the Grounds for Appeal, and the correspondence dated September 2016 that was referenced in the Grounds for Appeal.

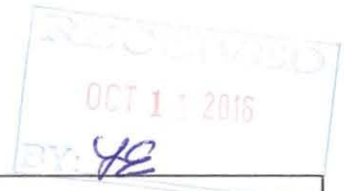
A CD has been attached that contains all referenced materials dated July 2016 in the Grounds for Appeal materials. Due to the volume of the July 2016 materials, these materials have been provided electronically.

Hard copies of the attachments are available at the Civic San Diego Offices located at 401 B Street, Suite 400, San Diego, CA 92101.

Copies of the attachments can be provided electronically by contacting Aaron Hollister of Civic San Diego at hollister@civicsd.com or via phone at 619-533-7170.



APPEAL APPLICATION



1. Type of Appeal: <input type="checkbox"/> Process Two Decision – Appeal to the Civic SD Board <input type="checkbox"/> Process Three Decision – Appeal to the Civic SD Board <input checked="" type="checkbox"/> Process Three Decision – Appeal to the City of San Diego Planning Commission <input type="checkbox"/> Appeal of a Hearing Officer Decision to revoke a permit				
2. Appellant Sergio Gonzalez				
Name	2436 Market Street	San Diego	CA	92102 (619) 516-3737
Address		City	State	Zip Code Telephone
3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant. Cisterra 7th + Market, LLC				
4. Project Information				
CCDP/PDP/NOP No. 2015-73		Sep. 28, 2016		A. Hollister
Permit & Permit/Document/No.:		Date of Decision:		Project Manager:
Decision (describe the permit/approval decision): CivicSD Board Approval of Permits for the Project				
5. Grounds for Appeal (Please check all that apply) <input checked="" type="checkbox"/> Factual Error <input checked="" type="checkbox"/> Conflict With Other Matters <input checked="" type="checkbox"/> Findings Not Supported <input checked="" type="checkbox"/> New Information Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.) See attached "Grounds for Appeal," including Gideon Kracov (Appellant's lawyer) letter dated July 25, 2016; Matt Hagemann, P.G. letter dated July 25, 2016; Terrell Watt, AICP letter dated July 25, 2016; Neal Liddicoat, P.E. letter dated July 25, 2016; Mr. Liddicoat's letter dated September 9, 2016; Mr. Hagemann's letter dated September 12, 2016; resumes for Mr. Liddicoat, Mr. Hagemann, and Ms. Jessie Jaeger; and Mr. Kracov's email dated September 23, 2016 – all incorporated by this reference in their entirety. Appellant filled out a speaker card and testified at the CivicSD Board during the hearing for the Project, works in Downtown San Diego, has a beneficial interest in the Project and its impacts and therefore is an "interested party" under Municipal Code Section 113.0103. Appellant also incorporates into his Appeal the entire administrative record for the Project at Civic San Diego in connection with the Approval. Appellant reserves the right to supplement this Appeal as permitted by the San Diego Municipal Code and OTHER GOVERNING LAW.				
6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct. Signature: Date: 10/05/16				
Note: Faxed appeals are not accepted.				



City of San Diego
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101

THE CITY OF SAN DIEGO

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
AUGUST 2015

In order to assure your appeal application is successfully accepted and processed, you must read and understand [Information Bulletin 505](#), "Development Permits/Environmental Determination Appeal Procedure".

1. Type of Appeal:

- ☒ Appeal of the Project
☒ Appeal of the Environmental Determination

2. Appellant: Please check one ☐ Applicant ☐ Officially recognized Planning Committee ☒ "Interested Person"
(Per M.C. Sec. 113.0103)

Name: Sergio Gonzalez E-mail Address:
Address: 2436 Market Street City: San Diego State: CA Zip Code: 92102 Telephone: (619) 516-3737

3. Project Name:

7th & Market - Cisterra 7th and Market, LLC

4. Project Information

Permit/Environmental Determination & Permit/Document No.: CCDP/PDP/NUP No. 2015-73	Date of Decision/Determination: 09/28/16	City Project Manager: A. Hollister @ CivicSD
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Decision: (Describe the permit/approval decision)

Civic SD Board approved the Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit Process 3 appealable to City Planning Commission per Municipal Code Section 112.0506
Environmental Determination appealable per Municipal Code Section 112.0520

5. Grounds for Appeal: (Please check all that apply)

- | | |
|---|---|
| <input checked="" type="checkbox"/> Factual Error | <input checked="" type="checkbox"/> New Information |
| <input checked="" type="checkbox"/> Conflict with other matters | <input type="checkbox"/> City-wide Significance (Process Four decisions only) |
| <input checked="" type="checkbox"/> Findings Not Supported | |

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in [Chapter 11, Article 2, Division 5 of the San Diego Municipal Code](#). Attach additional sheets if necessary.)

See attached "Grounds for Appeal," including Gideon Kracov (Appellant's lawyer) letter dated July 25, 2016; Matt Hagemann, P.G. letter dated July 25, 2016; Terrell Watt, AICP letter dated July 25, 2016; Neal Liddicoat, P.E. letter dated July 25, 2016; Mr. Liddicoat's letter dated September 9, 2016; Mr. Hagemann's letter dated September 12, 2016; resumes for Mr. Liddicoat, Mr. Hagemann, and Ms. Jessie Jaeger; and Mr. Kracov's email dated September 23, 2016 -- all incorporated by this reference in their entirety.

Appellant filled out a speaker card and testified at the CivicSD Board during the hearing for the Project, works in Downtown San Diego, has a beneficial interest in the Project and its impacts and therefore is an "interested party" under Municipal Code Section 113.0103.

Appellant also incorporates into his Appeal the entire administrative record for the Project at Civic San Diego in connection with the Approval.

Appellant reserves the right to supplement this Appeal as permitted by the San Diego Municipal Code and governing law.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: 

Date: 10/08/16

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

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Upon request, this information is available in alternative formats for persons with disabilities.

DS-3031 (08-15)

ATTACHMENT **GROUND'S FOR APPEAL**

Sergio Gonzalez ("Appellant") appeals Civic San Diego's ("CivicSD" or "Agency") and the CivicSD Board's ("Board") September 28, 2016 approvals for the 7th and Market Project – Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit No. 2015-73 – East Village Neighborhood of the Downtown Community Plan Area [consolidated as CCDP/CCPDP/NUP/NDP No. 2015-73] ("Project" or "Approvals").

Appellant filled out a speaker card and testified before the Board at the Project hearing, works in Downtown San Diego, has a beneficial interest in the Project and its impacts therefore is an "interested party" under City of San Diego Municipal Code § 113.0103. Appellant is concerned that incomes for workers in service industries – hotels, restaurants and retail – at projects like 7th and Market are insufficient for them to be able to afford to live in San Diego and that they are therefore forced into long commutes or overcrowded living quarters to afford housing near their jobs. He wants to ensure that all findings for the Project are supported by substantial evidence, and that there is a sustainable future for residents and workers in the City.

To begin, Appellant's appeal includes the entire administrative record of the Approvals and all previously provided materials in connection with the Project such as Appellant's lawyer's letter dated July 25, 2016 and attachments 1 to 11 thereto; Matt Hagemann, P.G. comment letter dated July 25, 2016; Terrell Watt, AICP comment letter dated July 25, 2016 with attachments; and Neal Liddicoat, P.E. comment letter dated July 25, 2016; and a recording of Appellant's lawyer's oral testimony on this Project provided to the Board for Item 10 on July 27, 2016. These materials have already been provided to CivicSD; if not in its possession, let Appellant's lawyer know at once. Please ensure that all of this is included in the record for the Project and the Board's actions on September 28, 2016.

Additionally, included in this appeal and specifically attached (1) Appellant's lawyer's email dated September 23, 2016; (2) Mr. Liddicoat's expert comment letter dated September 9, 2016 with his CV; (3) SWAPE's expert comment letter dated September 12, 2016 along with CVs; (4) the Third Amended Petition in *Baxamusa v. CivicSD* – Case No. 37-2015-00012092; and (5) Community Budget Alliance letter to Marti Emerald – all incorporated by this references in their entirety.

GROUND'S FOR APPEAL

1. Factual Error

The Board's made factual errors in its July 12, 2016 and August 27, 2016 Downtown FEIR Consistency Evaluation ("Evaluation") prepared for the Project used for the Approvals:

- because the Board did not have before it as part of the Approvals in its Board Packet the underlying: 1) Final Environmental Impact Report ("2006 FEIR") for the San Diego Downtown Community Plan ("DCP"), Centre City Planned District Ordinance ("CCPDO"), and 10th Amendment to the Centre City Redevelopment Plan (March 14, 2006); 2) Addendum to the 2006 FEIR for the 11th Amendment to the DCP, CCPDO, Marina Planned District Ordinance, and Mitigation, Monitoring and Reporting Program ("MMRP") for the 2006 FEIR (July 31, 2007); 3) Second Addendum to the 2006 FEIR for the proposed amendments to the DCP, CCPDO, Marina Planned District Ordinance, and MMRP (April 21, 2010); 4) Third Addendum to the 2006 FEIR for the RE District Amendments to the CCPDO (April 21, 2010); 5) Fourth Addendum to the 2006 FEIR for the San Diego Civic Center Complex Project (August 3, 2010); 6) Fifth Addendum to the 2006 FEIR for the Industrial Buffer Overlay Zone Amendments to the CCPDO (February 12, 2014); 7) Sixth Addendum to the 2006 FEIR for the India and Date Project (July 14, 2014); 8) Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan ("Mobility Plan") (June 21, 2016); and 9) City of San Diego FEIR for the Climate Action Plan ("CAP FEIR") (July 12, 2016). As a result, the Board decisionmakers could not rely on those documents, and facts and details in them, because they did not have them before them in the Board Packet. Therefore, the Board made factual errors and blindly relied on the abbreviated Consistency Evaluation without any ability to actually verify such consistency:

- in relying on an outdated and too general 10-year old+ Program CEQA review from the 2006 FEIR, which it did not have before it;

- in relying on a faulty, stale 2006 baseline from which to compare the traffic and other impacts from Developer's huge, over 1 million sq. ft. Project;

- in relying, without having before it in the Board Packet, on an inadequate and sloppy study of greenhouse gas ("GHG") emissions and whether the Project is consistent with the City's CAP;

- in discarding additional, feasible air quality mitigation measures for mobile sources for all the Project's car trips;

- in ignoring the significant presence of hazardous materials on site (the Smith Family Trust and 745 Market parcels) not analyzed in the 2006 FEIR, or Addenda;

- in relying, without having before it, on a traffic study for the Project that omitted key intersections and all freeway impacts, was based on outdated traffic volume, and ignored the need for long-term analysis; and

- in relying, without having before it, on a noise study for the Project that failed to study noise on neighbors during construction.

2. **Conflict With Other Matters**

The Board acted in conflict with the California Environmental Quality Act ("CEQA") in the Evaluation:

- because, as discussed above, the Board did not have before it as part of the Approvals in its Board Packet the underlying 2006 FEIR, Addenda, Mobility Plan FEIR or CAP EIR. The Board blindly relied on the abbreviated Consistency Evaluation without an ability to verify such consistency;
- by relying on an outdated and too general 10-year old+ Program CEQA review in the 2006 FEIR;
- in relying on a faulty, stale 2006 baseline from which to compare the traffic and other impacts from Developer's huge, over 1 million sq. ft. Project;
- in relying, without having before it in the Board Packet, on an inadequate and sloppy study of GHG emissions and whether the Project is consistent with the City's CAP and feasible mitigation requirements;
- in discarding additional, feasible air quality mitigation measures for mobile sources for all the Project's car trips.
- in ignoring the significant presence of hazardous materials on site not analyzed in the 2006 FEIR, or Addenda and deferring mitigation with no performance standards;
- in relying, without having before it, on a traffic study for the Project that omitted key intersections and all freeway impacts, was based on outdated traffic volume, and ignored the need for long-term analysis;
- in relying, without having before it, on a noise study for the Project that failed to study noise on neighbors during construction;
- in deferring review of historic resource impacts on the Clermont Hotel and cultural resources; and
- in relying on faulty, old CEQA statement of overriding considerations from the 2006 FEIR that it did not review and that does not consider job quality which is so important to Appellants.

Also, the Board's actions conflicted with CEQA's purpose of disclosing to the public significant environmental effects of a proposed discretionary project. By incorporating a hodgepodge of past EIRs, Addenda and Plans not provided in the Staff Report packet for Project approval, the Board completely failed to "enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." *Laurel Heights Improvement Ass'n. v. Regents of the University of California* (1988) 47 Cal.3d 376, 405. That applies to the CivicSD Board decisionmakers too.

Additionally, the Board action in granting the Approvals also was in conflict with various governing City and CivicSD land use Plans and Ordinances as follows:

Goal, Plan or Policy	Inconsistency
San Diego Downtown Community Plan: 5.3-G-5: Maximize sky exposure for streets and public spaces. 5.3-P-6: Require tower separation to increase key sky exposure for developments with multiple towers.	The Staff Report generally notes the inconsistency but the Consistency Evaluation fails to address this or state why a variance is justified or to provide alternatives that would meet both this policy as well as protect views.
San Diego Downtown Community Plan: 9.1-G-3: Allow development adjacent to historical resources respectful of context and heritage, while permitting contemporary design solutions that do not adversely affect historical resources.	The Consistency Evaluation and prior environmental documents lack evidence to support consistency with this policy. To the contrary the scale and massing of the Project is likely to result in adverse effects to the Clermont Hotel's historical context.
San Diego Downtown Community Plan: 13.2-P-1: During review of all development projects, require documentation of hazardous materials investigation addressing the building and conditions.	The 2006 FEIR and the Evaluation fail to adequately disclose and identify performance measures to address soil and groundwater contaminants at the Project site and fail to evaluate the potential for significant impacts to result from exposure of construction workers and future residents to contamination.
San Diego Downtown Community Plan: 13.4-G-1: Maintain a pleasant, livable sound environment alongside rising levels of activity and increasing mix of uses.	Evaluation fails to actually demonstrate what the noise impacts from construction would be, and whether the limitations imposed by the City's Noise Abatement and Control Ordinance will be enough to mitigate the impact to a less than significant level. Neither the Consistency Evaluation, nor the Noise Study prepared for the proposed Project by Veneklasen Associates, dated October 29, 2015, discuss the impact that noise from construction will have on nearby sensitive receptors.
City of San Diego General Plan Land Use and Community Planning Element: Policy LU-F.2: Review . . . private projects to ensure that they do not adversely affect the General Plan and community plans. LU-F.3 b. Ensure that the granting of development incentives does not result in an adverse impact upon health, welfare, and safety of the surrounding community or upon any designated	Inadequate evaluation has occurred since the building boom. Both Project-specific and cumulative impacts appear to be creating adverse impacts including to traffic and transit, affordable housing and related impacts of declining air quality and increasing GHG all constituting impacts on health and welfare. The Staff Report generally notes the

<p>cultural and/or historic resource. LU-F.3.c: The provision of development incentives should be re-evaluated on a regular basis to be certain that the granting of incentives remains in proportion to the benefits derived. UD-A.5; Design buildings that contribute to a positive neighborhood character and relate to neighborhood and community context.</p>	<p>inconsistency with height in comparison to neighborhood, the lack of required setbacks, excess tower dimensions for 39-story tower, insufficient tower separation, and excess signage, but the Consistency Evaluation fails to address this or state why a variance is justified or to provide alternatives that would meet both this policy as well as protect views.</p> <p>A re-evaluation should be part of the new environmental analysis required by the Project.</p>
<p>City of San Diego General Plan Noise Element: Goal: Consider existing and future noise levels when making land use planning decisions to minimize people's exposure to excessive noise. Policy NE-A.2: Assure the appropriateness of proposed developments relative to existing and future noise levels by consulting the guidelines for noise-compatible land use (shown on Table NE-3) to minimize the effects on noise sensitive land uses. NE-A.4: Require an acoustical study consistent with Acoustical Study Guidelines (Table NE-4) for proposed developments in areas where the existing or future noise level exceeds or would exceed the "compatible" noise level thresholds as indicated on the Land Use - Noise Compatibility Guidelines (Table NE-3), so that noise mitigation measures can be included in the project design to meet the noise guidelines.</p>	<p>Evaluation fails to actually demonstrate what the noise impacts from construction would be, and whether the limitations imposed by the City's Noise Abatement and Control Ordinance will be enough to mitigate the impact to a less than significant level. Neither the Consistency Evaluation, nor the Noise Study prepared for the proposed Project by Veneklasen Associates, dated October 29, 2015, discuss the impact that noise from construction will have on nearby sensitive receptors.</p>
<p>San Diego Centre City Planned Development Ordinance: TABLE 156-0310-A: Towers shall be set back from any property line adjoining a public street by a minimum of 15 feet; TABLE 156-0310-A: Tower Floor Plate Dimensions-East-West 130ft; §156.0310.d.3(c): Tower Separation. Within a single development, towers shall be separated by a minimum of 60 feet for sites of 50,000 square feet or more; §156.0314 Sign Regulations: logo height 4' on non-residential tower,</p>	<p>The Staff Report generally notes the inconsistency with height in comparison to neighborhood, the lack of required setbacks, excess tower dimensions for 39-story tower, insufficient tower separation, and excess signage, but the Consistency Evaluation fails to address this or state why a variance is justified or to provide alternatives that would meet both this policy as well as protect views.</p> <p>A re-evaluation should be part of the new</p>

not permitted on residential tower, letter height 4' on non-residential tower, max sign size 75 sq. ft. on one tower and 100 sq. ft. on taller tower; max allowed total area 200 sq. ft.	environmental analysis required by the Project.
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Furthermore, CivicSD's improper exercise of authority in connection with the Project approval was in conflict with state law, the Charter and Municipal Code. The City of San Diego unlawfully delegated its land use decisionmaking authority to CivicSD and thereby allowed improper conflicts of interest to exist in violation of the California Government Code, San Diego City Charter Sections 11.2, 28 and 117(a) and City Municipal Code § 156.0304, for all the reasons set forth in the Third Amended Petition in *Baxamusa v. CivicSD* (Case No. 37-2015-00012092) – attached and incorporated in its entirety.

3. **Findings Not Supported**

The CEQA, land use and other concerns addressed in this appeal must be adequately addressed in order to make the required City of San Diego Zoning Code findings. *The entitlements are discretionary, are not by right.*

Absent compliance with the issues addresses herein, Applicant's requested discretionary entitlements should be rejected by CivicSD decisionmakers, and the required discretionary findings not be made. See, eg, City Municipal Code § 126.0205 (Neighborhood Use Permit requires findings that "proposed development will not adversely affect the applicable land use plan," and "will not be detrimental to the public health, safety and welfare") and § 156.0304(f) (Planned Development Permit requires findings that "proposed development will not adversely affect the applicable land use plan," and "will not be detrimental to the public health, safety and welfare"). For example, the Applicant's requested for a larger one-way main entrance than otherwise permitted which, according to city traffic expert, posed a safety concern that two vehicles may enter or exit side by side. Therefore, parking and valet exceptions/deviations are not supported by findings required under City Municipal Code § 156.0304 (f).

Again, this review must not be perfunctory or mechanically superficial. *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 923. The inquiry is whether the administrative decision is "supported by the findings, or the findings are not supported by substantial evidence." *Topanga Assn. v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515; *Stolman*, 114 Cal.App.4th at 923 (variance reversed for lack of substantial evidence).

4. **New Information**

D A new Disposition and Development Agreement ("DDA") and Community Benefits Agreement ("CBA") is being considered for the Project. These agreements are integral components of the Project. Only drafts agreements were provided to the public and just days before the Board's actions – providing the public minimal time to learn the details of the agreements and consider the efficacy of them in context of the

Project as a whole. Given final agreements have yet to be approved by the City of San Diego, the DDA and CBA are still subject to change. Neither CivicSD, nor the City of San Diego, has explained why these agreements are being considered on a different track. Failure to consider these agreements together with the Approvals not only violates CEQA as improper piecemealing (see e.g. *Save Tara v City of West Hollywood* (2008) 45 Cal.4th 116), but amounts to new information warranting reversal of the Board's Project Approvals.

Appellant respectfully reserves the right to supplement this appeal submission at hearings and proceedings for this Project.

----- Original Message -----
Subject: UNITE HERE LOCAL 30 comments on 7th/Market - Civic SD Board
9/28/16 Item 10
From: gk@gideonlaw.net
Date: Fri, September 23, 2016 5:06 pm
To: omalialia@civicsd.com
hollister@civicsd.com
sanchez@civicsd.com
Cc: rbates@unitehere.org

Dear Clerk O'Malia, and Planners Hollister and Sanchez:

On behalf of UNITE HERE Local 30 and Sergio Gonzalez (collectively "Commenters"), this Office respectfully provides additional comments to Civic San Diego Board ("Board") regarding the proposed September 28, 2016 re-approvals for the 7th and Market Project – Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit No. 2015-73 – East Village Neighborhood of the Downtown Community Plan Area [consolidated as CCDP/CCDPD/NUP/NDP No. 2015-73] ("Project").

To begin, please ensure that all of this Office's and Commenters' prior correspondence and testimony, including but not limited to my letter of July 25, 2016 and attachments 1 to 11 thereto and a recording of my oral testimony on this Project provided to the Board for Item 10 on July 27, 2016, are included in the record for the Project and any action proposed for September 28, 2016. You have all that already. If you don't, let me know at once.

In addition, please include in the Project record the following additional documents attached to this email: 1) the comments of experts SWAPE dated September 12, 2016 along with CVs; 2) the comments of expert Neal Liddicoat dated September 9, 2016 along with his CV; 3) the Third Amended Petition in *Baxamusa v. CivicSD* – Case No. 37-2015-00012092; and 4) Community Budget Alliance letter to Marti Emerald.

Commenters hereby reiterate and express their position, based on the prior submitted documents and those attached hereto, that:

1. The August 27, 2016 Downtown FEIR Consistency Evaluation ("Evaluation") prepared for the Project, along with previously completed environmental documents on which the Board is asked to rely in assessing the Project's impacts, fail to comply with CEQA, Pub. Res. Code § 21000 et seq, and the State CEQA Guidelines, Cal. Code Regs. § 15000 et seq. The Evaluation is particularly flawed in areas including traffic, air quality and greenhouse gas, hazardous substances and land use consistency impacts.

The Project's impacts were not specifically analyzed in the program-level 2006 Downtown Final EIR, and all feasible mitigation has not been imposed. A great deal has significantly changed or is now known about this specific Project at this specific parcel that would necessitate, at the very least, a focused EIR for new impacts, including land use, population growth, GHG, hazardous substances, air quality and traffic impacts, as set forth in the expert letters. This invalidates the Evaluation and the use of the 2006 FEIR Overriding Considerations that it relies on.

Furthermore, the Evaluation and CEQA review for the Project incorporate a hodgepodge of past EIRs, Addenda and Plans that are not in the Staff Report packet for Project approval and therefore completely fail to "enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project."

Laurel Heights Improvement Ass'n. v. Regents of the University of California (1988) 47 Cal.3d 376, 405. That applies to the CivicSD Board decisionmakers too.

2. The CEQA, land use and other concerns addressed in this comment and attachments must be adequately addressed in order to make the required City of San Diego Zoning Code findings. The entitlements are discretionary, and not by right. Absent compliance with the issues addressed herein, Applicant's requested discretionary entitlements should be rejected by CivicSD decisionmakers, and the required discretionary findings not be made. See, eg, City Municipal Code § 126.0205 (Neighborhood Use Permit requires findings that "proposed development will not adversely affect the applicable land use plan," and "will not be detrimental to the public health, safety and welfare") and § 156.0304(f) (Planned Development Permit requires findings that "proposed development will not adversely affect the applicable land use plan," and "will not be detrimental to the public health, safety and welfare").

3. The City of San Diego has unlawfully delegated land use decisionmaking authority to CivicSD and thereby also allowed improper conflicts of interest to exist in violation of the California Government Code, San Diego City Charter Sections 11.2, 28 and 117(a) and City Municipal Code § 156.0304, for all the reasons set forth in the Third Amended Petition in Baxamusa v. CivicSD – Case No. 37-2015-00012092 incorporated in its entirety to this comment letter. CivicSD's exercise of this improper authority in connection with the Project approval violates state law, the Charter and Municipal Code.

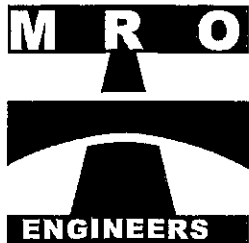
Thank you for this consideration. Please put this e-mail, all attachments, and all previously submitted Project documents from this Office and Commenters in the administrative record.

Hard copies of this email and attachments will be hand delivered also.

Thank you.

Gideon Kracov
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September 9, 2016

Mr. Gideon Kracov
Attorney at Law
801 S. Grand Ave., 11th Floor
Los Angeles, CA 90017

Subject: ***Downtown 15168 Consistency Evaluation for 7th & Market
San Diego, California – Response to Chen Ryan 7/26/16 Letter
City Council Meeting 9/13/16 – Agenda Item No. 330***

Dear Mr. Kracov:

In a letter dated July 25, 2016, MRO Engineers, Inc., (MRO) documented a detailed reviewed of the "Transportation/Traffic" section of the *Downtown 15168 Consistency Evaluation for 7th & Market* (Civic San Diego, July 12, 2016), including the traffic impact analysis prepared by Chen Ryan Associates, Inc. (Reference: Chen Ryan Associates, Inc., *Traffic Impact Study – Cisterra 7th & Market*, March 3, 2016.)

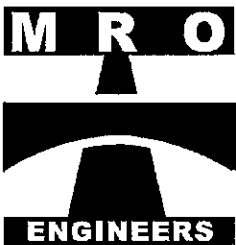
On July 26, 2016, Chen Ryan provided a partial response to our comments. Several of our concerns remain unresolved, however, as described below. (For consistency, we have retained the original numbering of our comments for these unresolved issues.)

1. ***Inadequate Study Area*** – In our July 2016 letter, we identified 22 additional candidate study intersections at which the 7th & Market project will add 50 or more peak-hour trips, but which were ignored in the Chen Ryan traffic impact analysis. Presumably, those intersections were excluded because they were not projected to operate at LOS D, E, or F in the 2006 Downtown Community Plan FEIR.

However, as we noted, there is very little correlation between the study intersections addressed in the 2006 Community Plan FEIR and the Chen Ryan analysis for the 7th & Market project. More importantly, we question the validity of using a 10-year-old traffic analysis as the basis for determining the study area for this analysis. Obviously, conditions have changed markedly in that timeframe, and no evidence is provided to justify the use of the outdated study for this purpose.

In addition to meeting the traffic study's criterion regarding the addition of 50 project-related trips, the additional study intersections that we identified are generally sandwiched between two intersections that were addressed in the Chen Ryan analysis. Many of these additional intersections are located along the 10th Avenue, 11th Avenue, and Island Avenue corridors, which will have the following project traffic assignments:

- 10th Avenue (35 percent of inbound project traffic)
 - 1,278 daily trips,
 - 156 AM peak-hour trips, and
 - 111 PM peak-hour trips;



- 11th Avenue (40 percent of outbound project traffic south of A Street and 35 percent north of there)
 - 1,278 – 1,461 daily trips,
 - 54 – 62 AM peak-hour trips, and
 - 171 – 195 PM peak-hour trips); and
- Island Avenue (15 - 20 percent of all project traffic, both inbound and outbound)
 - 1,096 – 1,461 daily trips,
 - 90 - 120 AM peak-hour trips, and
 - 121 - 161 PM peak-hour trips.

In summary, while the Chen Ryan study area might conform to the arbitrary criteria employed in the 7th & Market study, it ignores a number of locations on the project's most heavily-traveled routes in downtown. The only way to prove that the project will not have a significant impact on these locations is to analyze them. Nothing in the July 26 letter alters our belief that, in order to provide a comprehensive analysis of potential project traffic impacts, the list of study intersections must be expanded and a revised analysis must be completed.

3. **Obsolete Traffic Volume Data** – Our July 25, 2016 letter noted that the traffic study for the proposed project was performed according to the methodologies set forth in the *SANTEC/ITE Guidelines for Traffic Impact Studies [TIS] in the San Diego Region* (Final Draft, March 2, 2000), and that those guidelines state that the traffic data should generally not be more than two years old. However, we identified four study intersections at which traffic counts were performed four years or more prior to traffic study initiation and a fifth location that was counted more than two years prior to the start of the study. The age of the data at three other locations is unknown, as traffic count sheets were not included in the traffic study appendix.

The Chen Ryan response indicates that the excessively old counts were validated by comparing them to, “. . . more recent counts (2014) in the vicinity.” In other words, the overly old counts were validated by comparing them to other counts that also apparently violate the two year standard.

Consequently, we remain unconvinced that the traffic volumes at these 5 – 8 locations accurately reflect current conditions in the vicinity of the proposed project.

4. **Failure to Analyze Freeway System Impacts** – We commented that, in violation of specific guidance in the *SANTEC/ITE Guidelines for Traffic Impact Studies [TIS] in the San Diego Region*, the Chen Ryan traffic analysis failed to provide even a cursory assessment of freeway system operations. Specifically, the guidelines call for analysis of mainline freeway segments to which the project will add 50 or more peak-hour trips and all freeway ramps where the proposed project will add a “significant number of trips” to cause ramp storage capacities to be exceeded.

As described in our July 25 letter, the following mainline freeway segments would meet the pertinent criterion:

- Interstate 5 to/from the north (20 percent of inbound and outbound traffic)
 - Daily: 1,461 trips

- AM peak hour: 120 trips
- PM peak hour: 161 trips
- State Route 163 to/from the north (15 percent of inbound and outbound traffic)
 - Daily: 1,096 trips
 - AM peak hour: 90 trips
 - PM peak hour: 121 trips
- Interstate 5 to/from the south (15 percent of inbound and outbound traffic)
 - Daily: 1,096 trips
 - AM peak hour: 90 trips
 - PM peak hour: 121 trips

We also noted that the *Final Environmental Impact Report for the Proposed San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project* (Centre City Development Corporation, March 2006) specifically identified the “impact on freeways” (Impact TRF-A.2.1) as Significant and Unmitigable (FEIR, p. 5.2-61) with significant impacts on nine freeway segments and fourteen freeway ramps, and no feasible mitigation.

Finally, we commented that the 7th & Market Consistency Evaluation concluded, completely without substantiation given the lack of any analysis, “The Project would not have a direct impact on freeway segments and ramps.”

The July 26 Chen Ryan letter provided absolutely no response to our comment.

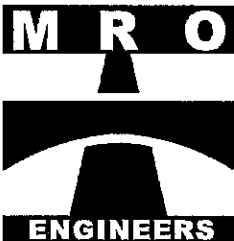
Without question, the failure to analyze the impacts of the proposed project on the San Diego freeway system is a significant deficiency that must be remedied through the conduct of a revised traffic analysis.

5. **Near-Term Base Traffic Volumes** – The Chen Ryan traffic impact analysis report states that, with the exception of four study intersections, the Near-Term Base traffic volumes were taken from the *Downtown San Diego Near-Term Traffic Assessment* report (Chen Ryan Associates, Inc., August 26, 2015). Further, those volumes reflect potential development projects “anticipated as of May 2015.”

We questioned whether additional development proposals might have surfaced between May 2015 and the time that the 7th & Market traffic impact analysis was initiated. We also noted that neither the 7th & Market analysis nor the excerpt from the earlier Near-Term Traffic Assessment report (Appendix D to the Chen Ryan report) provides a specific list of the “approved and potential downtown development projects.” Consequently, it is impossible to judge whether the list is current.

This lack of documentation violates the public information role of any document prepared under the California Environmental Quality Act (CEQA).

6. **Long-Term Traffic Analysis is Required** – The Consistency Evaluation concluded that the project’s direct impacts on downtown roadway segments or intersections would not be



cumulatively significant. Our July 2016 letter pointed out, however, that there was no basis for this conclusion, as the Chen Ryan traffic impact analysis included no assessment of the long-term impacts of the proposed project.

We further noted the following:

- Contrary to an assertion in the Chen Ryan traffic study, no evidence is provided to support the statement that, because the proposed Cisterra 7th & Market project land uses are consistent with those assumed in the 2006 Downtown Community Plan, no analysis of Year 2030 cumulative project impacts is required. In fact, it is impossible to state, with any reasonable degree of certainty, that the project is consistent with the Community Plan land use projections.
- The process used to develop the future year traffic volumes employed in the Downtown Community Plan FEIR is no longer valid, as it involved application of growth factors (based on an obsolete version of the SANDAG travel demand forecasting model) to 14-year-old (i.e., year 2002) data. It is inappropriate to use that outdated information as the basis for a consistency determination for the proposed project. In support of this, we documented traffic growth of almost 32 percent on State Route 163 south of Interstate 5 between the years 2002 and 2014.

Based on the factors stated above, we commented that the long-term impacts of the proposed project must be addressed in detail and reported in a project-specific environmental impact report.

The July 26, 2016 letter from Chen Ryan failed to respond to this comment.

CONCLUSION

Several of the issues presented in our July 25, 2016 comment letter regarding the "Transportation/Traffic" section of the *Downtown 15168 Consistency Evaluation for 7th & Market* project in San Diego, California remain unresolved. Although the preparer of the traffic impact analysis provided responses to most of those issues, we continue to find that the analysis is deficient. Further, no response at all was provided to two of the key issues we identified. We continue to believe that a revised traffic impact analysis must be prepared, and the updated analysis should be incorporated into a project-specific environmental impact report.

We hope this information is useful. If you have questions concerning anything presented here, please feel free to contact me at (916) 783-3838.

Sincerely,

MRO ENGINEERS, INC.

A handwritten signature in black ink, appearing to read 'Neal K. Liddicoat'.

Neal K. Liddicoat, P.E.
Traffic Engineering Manager

M R O**ENGINEERS****Education:****BSCE/1977****Michigan State University****Graduate Studies/1977-80****University of Tennessee****Registrations:****California****Civil Engineer - C35005****Michigan****Professional Engineer -
6201037605****Technical Specialties****Traffic Impact Analysis****Traffic Engineering/****Operations****Transportation Planning****Parking Analysis****Pedestrian/Bicycle****Analysis****Affiliations:****Institute of
Transportation
Engineers - Fellow****American Society of
Civil Engineers -
Member****NEAL K. LIDDICOAT, P.E.****Traffic Engineering Manager**

Mr. Liddicoat has 38 years of experience in the analysis of a broad range of traffic engineering, parking, and transportation planning issues, for both public and private sector clients. He has conducted traffic and parking analyses for a wide variety of development proposals, including office buildings, retail/commercial centers, multiplex cinemas, and residential projects. He has a particular expertise in the analysis of unique development proposals, including stadiums, arenas, convention centers, theme parks, and other facilities where large numbers of vehicles and pedestrians converge in a short period of time.

Mr. Liddicoat has developed and presented seminars on technical procedures and quality control in the conduct of traffic impact analyses, both in-house and as a co-instructor for the UCLA Extension Public Policy Program. For several years, he served as instructor for the traffic engineering portion of the Civil Engineering licensing exam review course conducted by the Sacramento chapter of the American Society of Civil Engineers.

Mr. Liddicoat manages the firm's traffic engineering services practice. He is frequently called upon to serve as an expert "peer reviewer" for traffic impact analyses prepared by others. In that role, he has commented on the technical adequacy of traffic studies for a variety of projects, including retail centers, office complexes, and mixed-use master plans. His recent experience as a peer reviewer includes the following projects:

- Village at Squaw Valley, Placer County, CA
- Canyon Springs Residential, Truckee, CA
- Oil Exploration Zoning Ordinance Amendment, Kern County, CA
- Saddle Crest Homes, Orange County, CA
- State Route 85 Express Lanes, Santa Clara Co., CA
- Highway 43/198 Retail Ctr., Hanford, CA
- Vacaville General Plan, Vacaville, CA
- Irwindale Materials Recovery Facility & Transfer Station, Irwindale, CA

Other recent traffic impact analysis experience:

STAPLES Center Traffic Impact Analysis - Los Angeles, CA - Responsible for the completion of detailed traffic and parking analyses for the STAPLES Center arena in downtown Los Angeles. In addition to the 20,000 seats and 250 luxury suites contained in the arena, the analysis evaluated up to 100,000 square feet of retail, restaurant, and entertainment facilities. The analyses focused on the impacts of a sold-out event during the key hours before and after the event. In addition, the analyses were performed both with and without a major concurrent event at the adjacent Los Angeles Convention Center.

Sacramento City College Transportation Master Plan Analysis, Sacramento, CA - Project Manager for the traffic and parking analysis evaluating a proposed master plan aimed at adding 1,260 parking spaces to the Sacramento City College campus, as well as various other improvements to the campus transportation system.

Raley Field Traffic and Parking Analysis, West Sacramento, CA - Project Manager for traffic and parking analyses for Raley Field, a 14,000-seat baseball stadium in West Sacramento. The analysis addressed pre-event and post-event conditions for baseball games as well as other events (such as concerts) that might have attendance as high as 17,000. An extensive set of mitigation measures was developed, including a variety of operational strategies to minimize impacts and optimize event-related traffic flows.

Additional Projects Include:

- Convention Center Traffic & Parking Studies, Sacramento, Los Angeles, and Anaheim
- Elk Grove Boulevard Master Plan, Elk Grove
- Disney "California Adventure" Preliminary Traffic Analysis, Anaheim
- CSUS Bicycle/Pedestrian Study, Sacramento
- SR 99/Twin Cities Road Traffic Operations, Galt
- Thunder Valley Casino, Placer County, CA



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September 12, 2016

Gideon Kracov
Attorney at Law
801 S. Grand Ave., 11th Fl.
Los Angeles, CA 90017

**Subject: Response to Comments on the 7th & Market Development Project
Centre City Development Permit/Centre City Planned Development
Permit/Neighborhood Use Permit No. 2015-73
City Council Meeting 9/13/16 – Agenda Item No. 330**

Dear Mr. Kracov:

We have reviewed the Addendum prepared for the referenced City Council meeting, which addresses comments we made on the proposed 7th and Market Development Project ("Project") located in the City of San Diego. We previously prepared a July 25, 2016 comment letter addressing the inadequacies of the Greenhouse Gas, Air Quality, Hazards and Hazardous Waste, and Noise analyses conducted by the July 12, 2016 Consistency Evaluation for 7th & Market (Consistency Evaluation). We now supplement that comment letter to respond to the Addendum. In particular, upon review of the Addendum, we maintain that the CEQA analysis falls well short in describing and mitigating the Project's Greenhouse Gas and Air Quality impacts. A Project-specific Environmental Impact Report (EIR) should be prepared to adequately assess the potential impacts that the Project may have on regional and local air quality, and global climate change.

Greenhouse Gas

Failure to Adequately Evaluate the Project's Greenhouse Gas Impacts

In our July 25 letter, we concluded that the Project's Consistency Evaluation failed to adequately evaluate the Project's greenhouse gas (GHG) impacts. Specifically, we found that the Consistency Evaluation: (1) failed to adequately demonstrate that the Project will comply with the reduction strategies set forth by the CAP Consistency Checklist; (2) relied solely on the CAP Consistency Checklist to determine whether or not the Project would have a less than significant GHG impact, even though a 2015 GHG Study was previously prepared for the proposed Project; and (3) failed to demonstrate consistency with the 2030 reduction goals set forth by Executive Order B-30-15. Furthermore, assuming that both the GHG Study and the Consistency Evaluation should be used when evaluating the Project's

GHG impact, we also found that the GHG Study relied upon incorrect significance thresholds and outdated methodologies to determine Project significance.

The Addendum fails to adequately address concerns regarding the Consistency Evaluation and compliance with Executive Order B-30-15. As a result, we find the responses disclosed in the Addendum to be inadequate, and require that a Project-specific EIR be prepared to adequately evaluate the Project's GHG impacts.

Failure to Demonstrate Consistency with CAP Reduction Strategies

Our July 25 letter found that the Consistency Evaluation failed to adequately demonstrate that the Project will comply with the reduction strategies set forth by the CAP Consistency Checklist. Specifically, we found that review of the CAP Consistency Checklist Submittal Application, supplemental explanation of how the Project will implement the requirements described in the CAP Checklist (Supplemental Explanation), and the Mitigation, Monitoring, and Reporting Plan (MMRP) (Attachment A) indicate that no real commitment has been made to actually implement these required measures once the Project is approved. As a result, the significance determinations made within the Consistency Evaluation are incorrect, as they rely upon an incomplete GHG analysis and unenforceable GHG reduction measures. The Addendum attempts to address our concerns on this matter, stating:

“GHG emissions are best analyzed on a cumulative, regional level which was done with the CAP and the CAP FEIR. Individual projects are then analyzed on their consistency with the CAP through the use of the CAP Checklist approved by the City Council. The Applicant has demonstrated compliance with the CAP Checklist, and all appropriate measures from this compliance have been included in the conditions of approval for the project. Therefore, the Downtown 15168 Consistency Evaluation concluded that the project is consistent with the CAP FEIR and no further project specific analysis is required” (p. 3).

However, this justification is inadequate and fails to adequately address our initial concerns. As previously mentioned, all the information that must be included in the CAP Consistency Checklist to verify that the proposed Project is actually compliant with the checklist is not included in the Project's analysis. In order to be compliant with the CAP Consistency Checklist, the CAP requires that the applicant provide an explanation of how the proposed Project will implement the requirements (CAP Consistency Checklist Submittal Application, p. 1). This required additional information should be included in the Supplemental Explanation dated July 6, 2016 for the proposed Project. Review of this document, however, demonstrates that the Project applicant failed to adequately explain how the Project will implement the requirements described in the CAP Checklist. As a result, as stated in our July 25 letter, it is unclear how the Project will actually adhere to the design requirements set forth by the CAP Checklist.

The Supplementary Explanation fails to provide a breakdown of what percent improvement each of the proposed land uses will achieve, fails to demonstrate how these improvements will be achieved, and fails to actually calculate the percent improvement the proposed design features will achieve. All of this information should have been included within this document, as it is needed to verify that the Project is

actually compliant with the CAP Consistency Checklist. By failing to provide this information for each of the checklist items included in the CAP Checklist, the Consistency Evaluation cannot claim that the Project is consistent with the CAP, nor can it claim that the Project will have a less than significant GHG impact. The Addendum fails to include any of this additional information required to demonstrate compliance with the CAP Checklist and fails to address, whatsoever, why this information was not included in the Consistency Evaluation or in any of the supporting documents. As a result, we maintain that the Addendum's responses to our July 25 letter are inadequate and in no way address the lack of information provided by the Consistency Evaluation. It is not enough to simply state that "The Applicant has demonstrated compliance with the CAP Checklist" (Addendum, p. 3). Until a more thorough evaluation is conducted to adequately demonstrate the Project's consistency with the CAP Checklist, the conclusions made within the Consistency Evaluation are incorrect and should not be relied upon to determine Project significance.

Failure to Demonstrate Compliance with Executive Order B-30-15

In our July 25 letter, we stated that the Consistency Evaluation failed to demonstrate consistency with the reduction targets set forth by Executive Order B-30-15 for 2030, as the CAP Consistency Checklist only accounts for the reductions required to meet 2020 emission reductions set forth by AB32. Review of the responses provided in the Addendum demonstrates that the Addendum completely fails to address these concerns. Rather, the Addendum simply concludes that since "the Downtown 15168 Consistency Evaluation concluded that the project is consistent with the CAP FEIR...no further project specific analysis is required" (p. 3). This response, however, is inadequate, as it still does not address the concerns brought up in our July 25 letter regarding compliance with Executive Order B-30-15. Because the proposed Project is unlikely to be redeveloped again prior to 2030, the 2030 reduction goals set forth by Executive Order B-30-15, which requires California to reduce its statewide GHG emissions 40 percent below 1990 levels by 2030, are applicable to any evaluation of the Project's greenhouse gas impacts. This reduction target is consistent with goals set forth by other recently passed legislature, such as SB 32,¹ indicating that compliance with these more aggressive reduction goals, beyond what is mandated by AB 32, will be necessary.

Therefore, we maintain that the proposed Project should not be approved until the Project applicant can clearly demonstrate that the proposed Project will also be consistent with the reduction goals set forth by Executive Order B-30-15 for 2030. An EIR should be prepared to quantify any reductions expected to be achieved by mitigation measures, shown by substantial evidence that such measures will be effective and should demonstrate how these measures will reduce the emissions below the new 2030 significance threshold.

¹ <http://www.latimes.com/politics/la-pol-ca-jerry-brown-signs-climate-laws-20160908-snap-story.html> and https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB32

Air Quality

Failure to Implement All Feasible Mobile-Source Mitigation Measures

In our July 25 letter, we found that the Consistency Evaluation failed to implement all feasible mobile-source mitigation measures, and as a result, the Project's air quality impact was inadequately mitigated. In response to this concern, the Addendum states,

"Air quality impacts were fully evaluated in the Downtown FEIR. It should be noted that there was a typo in one of the mitigation measures (MM) listed in the Downtown 15168 Consistency Evaluation, as follows: MM AQ-A.1 should have been cited as MM AQ-B.1; there is not a MM AQ-A.1 in the Downtown FEIR, as cited in the letter" (pp. 3).

This response, however, is inadequate, as it does not address any of our initial concerns. While the Addendum clarifies that there was a typo in the Consistency Evaluation, where MM AQ-A.1 should have been cited as MM AQ-B.1, this still does not address our initial concerns, as MM AQ-B.1 relates primarily to reducing construction emissions, not operational, mobile-source emissions. As such, we maintain that the Addendum and the Consistency Evaluation still fall well short in properly mitigating the Project's operational emissions to a less than significant level. Because mobile source emissions have been found to cause a significant and unavoidable impact, mitigation measures must be identified and incorporated in an EIR to reduce these emissions to a less than significant level.

Our July 25 letter identified additional mitigation measures that would effectively reduce the Project's operational, mobile-source emissions. These additional mitigation measures as set forth below can be found in CAPCOA's *Quantifying Greenhouse Gas Mitigation Measures*, which attempt to reduce GHG levels, as well as reduce Criteria Air Pollutants such as NO_x.² NO_x is a byproduct of fuel combustion, and is emitted by on-road vehicles and by off-road construction equipment. It should be noted that some of the measures suggested below may overlap with requirements set forth by the CAP Consistency Checklist and GHG Study. However, because it is unclear as to what design features are actually going to be applied in order to remain consistent with this checklist, and the relevancy of the GHG Study is unknown, we included all of the mitigation measures that can be feasibly incorporated into the Project design. Mitigation for criteria pollutant emissions should include consideration of the following measures in an effort to reduce mobile source operational emissions to below South Coast Air Quality Management District (SCAQMD) thresholds.

Locate Project near Bike Path/Bike Lane

A project that is designed around an existing or planned bicycle facility encourages alternative mode use and reduces VMTs. The project should be located within 1/2 mile of an existing Class I path or Class II bike lane. The project design should include a comparable network that connects the project uses to the existing offsite facilities.

² <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>

Neighborhood/Site Enhancements

Providing a pedestrian access network to link areas of the Project site encourages people to walk instead of drive. This mode shift results in people driving less and thus a reduction in VMT. The project should provide a pedestrian access network that internally links all uses and connects to all existing or planned external streets and pedestrian facilities contiguous with the project site. The project should minimize barriers to pedestrian access and interconnectivity. Physical barriers such as walls, landscaping, and slopes that impede pedestrian circulation should be eliminated.

Incorporate Bike Lane Street Design (On-Site)

Incorporating bicycle lanes, routes, and shared-use paths into street systems, new subdivisions, and large developments can reduce VMTs. These improvements can help reduce peak-hour vehicle trips by making commuting by bike easier and more convenient for more people. In addition, improved bicycle facilities can increase access to and from transit hubs, thereby expanding the “catchment area” of the transit stop or station and increasing ridership. Bicycle access can also reduce parking pressure on heavily-used and/or heavily-subsidized feeder bus lines and auto-oriented park-and-ride facilities.

Provide Bike Parking in Non-Residential Projects

A non-residential project should provide short-term and long-term bicycle parking facilities to meet peak season maximum demand to reduce VMTs.

Provide Bike Parking with Multi-Unit Residential Projects

Long-term bicycle parking should be provided at apartment complexes or condominiums without garages to reduce VMTs and promote alternative forms of transportation.

Provide Electric Vehicle Parking

Providing accessible electric vehicle parking will reduce tailpipe emissions and thus reduce operational emissions. Design features include conductive/inductive electric vehicle charging stations and signage prohibiting parking for non-electric vehicles.

Limit Parking Supply

This mitigation measure will change parking requirements and types of supply within the Project site to encourage “smart growth” development and alternative transportation choices by project residents and employees. This can be accomplished in a multi-faceted strategy:

- Elimination (or reduction) of minimum parking requirements
- Creation of maximum parking requirements
- Provision of shared parking

Unbundle Parking Costs from Property Cost

Unbundling separates parking from property costs, requiring those who wish to purchase parking spaces to do so at an additional cost from the property cost. This removes the burden from those who do not wish to utilize a parking space. Parking should be priced separately from home rents/purchase prices or office leases.

Implement Commute Trip Reduction Program- Voluntary or Required

Implementation of a Commute Trip Reduction (CTR) program with employers will discourage single-occupancy vehicle trips and encourage alternative modes of transportation such as carpooling, taking transit, walking, and biking. The main difference between a voluntary and a required program is:

- Monitoring and reporting is not required
- No established performance standards (i.e. no trip reduction requirements)

The CTR program should provide employees with assistance in using alternative modes of travel, and provide both “carrots” and “sticks” to encourage employees. The CTR program should include all of the following to apply the effectiveness reported by the literature:

- Carpooling encouragement
- Ride-matching assistance
- Preferential carpool parking
- Flexible work schedules for carpools
- Half time transportation coordinator
- Vanpool assistance
- Bicycle end-trip facilities (parking, showers and lockers)

Provide Ride-Sharing Programs

Increasing the vehicle occupancy by ride sharing will result in fewer cars driving the same trip, and thus a decrease in VMT. The project should include a ride-sharing program as well as a permanent transportation management association membership and funding requirement. The project can promote ride-sharing programs through a multi-faceted approach such as:

- Designating a certain percentage of parking spaces for ride sharing vehicles
- Designating adequate passenger loading and unloading and waiting areas for ride-sharing vehicles
- Providing a web site or message board for coordinating rides

Implement Subsidized or Discounted Transit Program

This project can provide subsidized/discounted daily or monthly public transit passes to incentivize the use of public transport. The project may also provide free transfers between all shuttles and transit to participants. These passes can be partially or wholly subsidized by the employer, school, or development. Many entities use revenue from parking to offset the cost of such a project.

Provide End of Trip Facilities

Non-residential projects can provide "end-of-trip" facilities for bicycle riders including showers, secure bicycle lockers, and changing spaces. End-of-trip facilities encourage the use of bicycling as a viable form of travel to destinations, especially to work. End-of-trip facilities provide the added convenience and security needed to encourage bicycle commuting.

Encourage Telecommuting and Alternative Work Schedules

Encouraging telecommuting and alternative work schedules reduces the number of commute trips and therefore VMT traveled by employees. Alternative work schedules could take the form of staggered starting times, flexible schedules, or compressed work weeks.

Implement Commute Trip Reduction Marketing

The project can implement marketing strategies to reduce commute trips. Information sharing and marketing are important components to successful commute trip reduction strategies. Implementing commute trip reduction strategies without a complementary marketing strategy will result in lower VMT reductions. Marketing strategies may include:

- New employee orientation of trip reduction and alternative mode options
- Event promotions
- Publications

Implement Preferential Parking Permit Program

The project can provide preferential parking in convenient locations (such as near public transportation or building front doors) in terms of free or reduced parking fees, priority parking, or reserved parking for commuters who carpool, vanpool, ride-share or use alternatively fueled vehicles. The project should provide wide parking spaces to accommodate vanpool vehicles.

Implement Car-Sharing Program

This project should implement a car-sharing project to allow people to have on-demand access to a shared fleet of vehicles on an as-needed basis. User costs are typically determined through mileage or hourly rates, with deposits and/or annual membership fees. The car-sharing program could be created through a local partnership or through one of many existing car-share companies. Car-sharing programs may be grouped into three general categories: residential- or citywide-based, employer-based, and transit station-based. Transit station-based programs focus on providing the “last-mile” solution and link transit with commuters’ final destinations. Residential-based programs work to substitute entire household based trips. Employer-based programs provide a means for business/day trips for alternative mode commuters and provide a guaranteed ride home option.

Provide Employer-Sponsored Vanpool/Shuttle

This project can implement an employer-sponsored vanpool or shuttle. A vanpool will usually service employees’ commute to work while a shuttle will service nearby transit stations and surrounding commercial centers. Employer-sponsored vanpool programs entail an employer purchasing or leasing vans for employee use, and often subsidizing the cost of at least program administration, if not more. The driver usually receives personal use of the van, often for a mileage fee. Scheduling is within the employer’s purview, and rider charges are normally set on the basis of vehicle and operating cost.

Implement Bike-Sharing Program

This project can establish a bike-sharing program to reduce VMTs. Stations should be at regular intervals throughout the project site. The number of bike-share kiosks throughout the project area should vary

depending on the density of the project and surrounding area. Paris' bikeshare program places a station every few blocks throughout the city (approximately 28 bike stations/square mile). Bike-station density should increase around commercial and transit hubs.

Price Workplace Parking

The project should implement workplace parking pricing at its employment centers. This may include: explicitly charging for parking for its employees, implementing above market rate pricing, validating parking only for invited guests, not providing employee parking and transportation allowances, and educating employees about available alternatives.

Though similar to the Employee Parking "Cash-Out" strategy, this strategy focuses on implementing market rate and above market rate pricing to provide a price signal for employees to consider alternative modes for their work commute.

Implement Employee Parking "Cash-Out"

The project can require employers to offer employee parking "cash-out." The term "cash-out" is used to describe the employer providing employees with a choice of forgoing their current subsidized/free parking for a cash payment equivalent to the cost of the parking space to the employer.

When combined together, these measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduces emissions released by mobile sources during Project operation. A Project-specific EIR must be prepared to include additional mitigation measures, as well as include an updated air quality analysis to ensure that the necessary mitigation measures are implemented to reduce mobile-source operational emissions to below thresholds. Furthermore, the Project Applicant needs to demonstrate commitment to the implementation of these measures prior to Project approval, to ensure that the Project's mobile-source operational emissions are reduced to the maximum extent possible.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Jessie Jaeger



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**Geologic and Hydrogeologic Characterization
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Litigation Support and Testifying Expert
CEQA Review**

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certification:

California Professional Geologist

California Certified Hydrogeologist

Qualified SSWPP Developer and Practitioner

Professional Experience:

Matt has 25 years of experience in environmental policy, assessment and remediation. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) while also working with permit holders to improve hydrogeologic characterization and water quality monitoring.

Matt has worked closely with U.S. EPA legal counsel and the technical staff of several states in the application and enforcement of RCRA, Safe Drinking Water Act and Clean Water Act regulations. Matt has trained the technical staff in the States of California, Hawaii, Nevada, Arizona and the Territory of Guam in the conduct of investigations, groundwater fundamentals, and sampling techniques.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – present;
- Senior Environmental Analyst, Komex H₂O Science, Inc (2000 -- 2003);

JESSIE MARIE JAEGER



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EDUCATION

UNIVERSITY OF CALIFORNIA, LOS ANGELES B.S. CONSERVATION BIOLOGY & ENVIRONMENTAL SCIENCES

JUNE 2014

PROJECT EXPERIENCE

SOIL WATER AIR PROTECTION ENTERPRISE

SANTA MONICA, CA

AIR QUALITY SPECIALIST

SENIOR ANALYST: CEQA ANALYSIS & MODELING

- Calculated roadway, stationary source, and cumulative impacts for risk and hazard analyses at proposed land use projects.
- Quantified criteria air pollutant and greenhouse gas emissions released during construction and operational activities of proposed land use projects using CalEEMod and EMFAC2011 emission factors.
- Utilized AERSCREEN, a screening dispersion model, to determine the ambient air concentrations at sensitive receptor locations.
- Organized presentations containing figures and tables comparing results of particulate matter analyses to CEQA thresholds.
- Prepared reports that discuss results of the health risk analyses conducted for several land use redevelopment projects.

SENIOR ANALYST: GREENHOUSE GAS MODELING AND DETERMINATION OF SIGNIFICANCE

- Quantified greenhouse gas (GHG) emissions of a "business as usual" scenario for proposed land use projects using CalEEMod.
- Determined compliance of proposed projects with AB 32 GHG reduction targets, with measures described in CARB's Scoping Plan for each land use sector, and with GHG significance thresholds recommended by various Air Quality Management Districts in California.
- Produced tables and figures that compare the results of the GHG analyses to applicable CEQA thresholds and reduction targets.

PROJECT MANAGER: OFF-GASSING OF FORMALDEHYDE FROM FLOORING PRODUCTS

- Determined the appropriate standard test methods to effectively measure formaldehyde emissions from flooring products.
- Compiled and analyzed laboratory testing data. Produced tables, charts, and graphs to exhibit emission levels.
- Compared finalized testing data to Proposition 65 No Significant Risk Level (NSRL) and to CARB's Phase 2 Standard.
- Prepared a final analytical report and organized supporting data for use as Expert testimony in environmental litigation.
- Participated in meetings with clients to discuss project strategy and identify solutions to achieve short and long term goals.

PROJECT ANALYST: EXPOSURE ASSESSMENT OF CONTAMINANTS EMITTED BY INCINERATOR

- Reviewed and organized sampling data, and determined the maximum levels of arsenic, dioxin, and lead in soil samples.
- Determined cumulative and hourly particulate deposition of incinerator and modeled particle dispersion locations using GIS and AERMOD.
- Conducted risk assessment using guidance set forth by the Office of Environmental Health Hazard Assessment (OEHHA).
- Utilized LeadSpread8 to evaluate exposure, and the potential adverse health effects from exposure, to lead in the environment.
- Compared final results of assessment to the Environmental Protection Agency's (EPA) Regional Screening Levels (RSLs).

ACCOMPLISHMENTS

- | | |
|---|-----------------------|
| • Recipient, Bruins Advantage Scholarship, University of California, Los Angeles | SEPT 2010 – JUNE 2014 |
| • Academic Honoree, Dean's List, University of California, Los Angeles | SEPT 2013 – JUNE 2014 |
| • Academic Wellness Director, UCLA Undergraduate Students Associated Council | SEPT 2013 – JUNE 2014 |
| • Student Groups Support Committee Member, UCLA Undergraduate Students Associated Council | SEPT 2012 – JUNE 2013 |

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10 San Diego County Building & Construction
11 Trades Council, AFL-CIO

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County of San Diego

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

14 MURTAZA BAXAMUSA, an individual,
15 SAN DIEGO COUNTY BUILDING &
16 CONSTRUCTION TRADES COUNCIL,
17 AFL-CIO,

18 Petitioners,

19 v.

20 CIVIC SAN DIEGO, a California
21 Corporation, CITY OF SAN DIEGO, a
22 municipal corporation, and DOES 1
23 through 50, Inclusive,

24 Respondents.

CASE NO.: 37-2015-00012092-CU-PT-CTL

**THIRD AMENDED PETITION FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Code of Civil Procedure §§1060; 526a

**Judge: Hon. Richard E. L. Strauss
Dept: C-64**

**Petition Filed: April 10, 2015
First Amended Petition Filed: May 8, 2015
Second Amended Petition Filed: December 22,
2015**

25 Petitioners MURTAZA BAXAMUSA and SAN DIEGO COUNTY BUILDING &
26 CONSTRUCTION TRADES COUNCIL, AFL-CIO, allege for their Petition against Respondents
27 CIVIC SAN DIEGO, a California Corporation, CITY OF SAN DIEGO, a municipal corporation
28 (collectively "Respondents"), and DOES 1 through 50 as follows:

INTRODUCTION AND BACKGROUND

1. In 2011, the California legislature ended a roughly 60-year tax-funded
redevelopment program in California designed to combat public blight in urban cities. Until the

1 time of the program's demise, redevelopment in the City of San Diego (the "City") was
2 administered by the City's former Redevelopment Agency and through an agency relationship
3 with the City's non-profit entity, the former Centre City Development Corporation ("CCDC").

4 2. As a result of the end of redevelopment in California, it was unclear what role
5 CCDC could or should continue to serve for the City. Nonetheless, in June 2012, Mayor Jerry
6 Sanders made the determination to repurpose CCDC to Civic San Diego ("CivicSD"), and to
7 continue the City's delegation of permitting and planning authority to CivicSD that was
8 previously made to CCDC for purposes of assisting with tax-funded redevelopment.

9 3. The City now engages CivicSD's services through two June 2012 consulting
10 agreements between the City and CivicSD. Unfortunately however, and in light of the changed
11 landscape caused by the end of redevelopment, the City has utterly failed to provide adequate
12 oversight over and safeguards regarding the services CivicSD now performs for the City since
13 that time.

14 4. CivicSD is a private, non-profit corporation whose only member is the City itself.
15 CivicSD's website describes the corporation as "a one-stop shop with a Neighborhood
16 Development Toolbox that lets us move quickly with public-private development projects and
17 programs." Indeed, CivicSD's "streamlined" process for project approvals is one of its
18 supporters' biggest selling points. Unfortunately, this "streamlined" efficiency comes at a high
19 cost for downtown San Diego. The price is public discourse and due process.

20 5. CivicSD is *solely* responsible for Centre City Development Permits within
21 downtown San Diego. The City Council and the Mayor appoint every member of CivicSD's
22 Board of Directors ("Board") to a three year term. **Not one member of CivicSD's Board was**
23 **elected.** In essence, CivicSD's Board operates without any accountability to the City Council,
24 and thus without accountability to San Diego taxpayers.

25 6. Yet, CivicSD's operations demand close scrutiny for a multitude of reasons. In
26 addition to serving as the City's agent for downtown planning and permitting, Board members are
27 also permitted to serve on the board of "for profit" subsidiaries known as Community
28 Development Entities ("CDE's"), which administer New Market Tax Credits granted by the

1 Federal Government. Significant conflicts of interest exist or could arise as a result of this dual
2 role served by CivicSD Board Members. Further, CivicSD is compensated based on a percentage
3 of the projects and services rendered, which necessarily creates an inherent bias towards projects
4 and services that will result in greater revenue.

5 7. To the extent the City Council believes it can continue lawfully delegating powers
6 of permitting and planning to CivicSD in light of the demise of redevelopment, the delegation is
7 limited by the San Diego City Charter ("Charter") Sections 11.1, 28, and/or 117(c).¹ **Further,**
8 **even if the continued delegation to CivicSD is lawful, the City cannot completely absolve**
9 **itself of all responsibility and oversight for CivicSD's actions.** In California, a legislative body
10 can lawfully delegate administrative planning and permitting functions to another entity only if it
11 **"retains ultimate control over administration so that it may safeguard the public interest."**
12 See County of Los Angeles v. Nesvig, 231 Cal. App.2d 603, 616 (1965). **City Council has, in**
13 **practice, utterly failed to exert its ultimate control with respect to the activities of CivicSD**
14 **since the end of redevelopment in California.**

15 8. In addition, the City Council does not provide a meaningful avenue for an
16 aggrieved person to appeal Process Two and Three permitting and planning decisions to a
17 legislative body directly accountable to elected officials. In every other part of San Diego
18 County, taxpayer citizens can appeal Process Two and Three permits directly with the City's
19 Planning Commission. Instead, taxpayer citizens in downtown San Diego have only one avenue
20 for appeal of Process Two and Three decisions – the CivicSD Board itself.

21 9. As a result, taxpayers, business owners, developers, and union representatives
22 alike are deprived of meaningful recourse, or an opportunity to engage in significant discourse,
23 regarding most decisions made by CivicSD on a project-specific level with any City employee,
24

25 ¹ The City is apparently of two minds on this issue. On the one hand, it calls CivicSD a
26 "consultant," which would purportedly permit the City to engage CivicSD pursuant to Section 28
27 of the Charter, and would not require the City to engage in a competitive bidding process. But on
28 the other hand, the City's Resolution No. 307849, which expanded CivicSD's duties in November
2012, specifically references City Charter section 117(c) with respect to the engagement of
CivicSD, which does in fact require the City to engage in a competitive bidding process. This is
but one of the many contradictions inherent in the manner in which the City Council is allowing
CivicSD to operate.

1 City department or City elected official.

2 10. In fact, the public has been silenced through the operation of CivicSD. Taxpayers
3 unhappy with the actions of CivicSD cannot be heard by a legislative body on appeal, and they
4 cannot be heard at the ballot box. Thus, neither CivicSD nor the City Council has to account for
5 the planning and permitting decisions made by CivicSD. CivicSD does not have to answer to the
6 City Council, and the City Council does not have to answer to its constituents.

7 11. Given this municipal mess, it is no surprise that San Diego is the only municipality
8 in the State of California that delegates its planning functions to a private, non-government
9 corporation. The continuation and expansion of CivicSD's agency role after the end of
10 redevelopment is unprecedented in this State.

11 12. Indeed, on March 6, 2015, California Assemblywoman Lorena Gonzalez proposed
12 Assembly Bill 504 ("AB 504"), designed to "create more oversight at local governments that rely
13 on the planning, zoning or permitting expertise of non-profit organizations or private
14 individuals." According to Assemblywoman Gonzalez in a press release accompanying the
15 introduction of AB 504, "the goal of the bill was to clarify the ability of non-profit groups like
16 Civic San Diego to perform permitting work for local governments, as it's **uncertain what legal**
17 **authority in California law the organization has to approve building projects on behalf of**
18 **the City of San Diego after redevelopment's demise.**"

19 13. California's Legislature agreed with AB 504's mission and approved the bill on
20 September 4, 2015. However, Governor Brown vetoed the enrolled bill on October 8, 2015 with
21 the following veto message:

22 This legislation imposes statewide rules on local land use planning
23 that are intended to address a dispute in one jurisdiction. **These are**
24 **issues that should be determined at the local level.**

25 (Emphasis added.)

26 14. **Petitioners have heard the Governor's message loud and clear: this is an issue**
27 **that must be resolved by this Court.** Thus, by this lawsuit, Petitioners seek a declaration that,
28 since the end of tax-funded redevelopment in California, the City has failed to properly

1 administer its delegation of permitting and planning authority to CivicSD because it has: (1)
2 effectively surrendered or abnegated control over certain discretionary land use planning and
3 permitting decisions to CivicSD; (2) failed to clearly define CivicSD's scope and authority; and
4 (3) failed to implement and exercise adequate safeguards against CivicSD's misuse of power,
5 including proper oversight. **Petitioners specifically seek the City and CivicSD to adopt**
6 **provisions similar to those set forth in AB 504, namely:**

- 7 • A right of appeal to the City Council for projects that include (i) no less than 50
8 residential units, (ii) no less than 50 hotel rooms, (iii) no less than 25,000 square feet
9 of commercial space, and;
- 10 • An annual report from CivicSD to the City Council on the planning functions
11 undertaken during the previous calendar year that includes, but is not limited to, a
12 detailed description of each planning function and an explanation of how it is
13 consistent with the City's charter, municipal code, ordinances, and any applicable
14 parts of the City's General Plan. Each report must be reviewed and approved by the
15 City Council at a noticed public hearing.

16 15. Further, Petitioners seek injunctive relief as taxpayers pursuant to California
17 Code of Civil Procedure ("CCP") Section 526(a) to prevent the City from continuing to make
18 illegal expenditures in the form of payments to CivicSD for services rendered with respect to land
19 use planning and permitting decisions without this type of sufficient City oversight.

20 16. Although Petitioners inherently claim that the City and CivicSD have acted
21 illegally in the execution and administration of the City's delegation to CivicSD, Petitioners are
22 not seeking to invalidate or unwind decisions made by CivicSD since 2012. Although certainly
23 decisions made since 2012 by CivicSD are *relevant* to this lawsuit, Petitioners are seeking
24 something more fundamental – to obtain the Court's determination that the City is not complying
25 with its legal and constitutional duties and to prevent further expenditures to its delegee until and
26 unless the City so complies.

27 17. Moreover, as made clear by this amendment, Petitioners do *not* mount a facial
28 challenge to the underlying act of delegation of authority made to CCDC in 1992 – the statute of

1 limitations set forth in Government Code Section 65009 is therefore inapplicable. Rather, the
2 purpose of Petitioners' request for declaratory and injunctive relief is to challenge the City's
3 *current* lack of oversight and safeguards with respect to its delegation of authority to CivicSD
4 since the time that redevelopment ended in California. Accordingly, there are no statute of
5 limitations issues with the relief sought by Petitioners in this action.

6 18. In addition, Petitioners assert standing to bring this action as citizens and taxpayers
7 pursuant to the provisions of CCP §526(a).

8 **VENUE, PARTIES, AND JURISDICTION**

9 19. Venue is proper because the facts and circumstances of this case, and the
10 declarations sought from this Court, arise from matters directly at issue in the City of San Diego,
11 within San Diego County.

12 20. Petitioner Murtaza Baxamusa, PhD ("Dr. Baxamusa") is a Director on the CivicSD
13 Board of Directors and has served in that role since the Mayor appointed him in May 2013. In
14 addition to his role with CivicSD, Dr. Baxamusa serves as the Director of Planning and
15 Development for the San Diego County Building and Construction Trades Council Family
16 Housing Corporation and teaches a community planning course at the University of Southern
17 California ("USC"). Dr. Baxamusa received his Bachelor's degree in Architecture from the
18 Indian Institute of Technology and both his Master's and PhD degrees in Planning at USC. Dr.
19 Baxamusa is currently a certified planner by the American Planning association and holds over 12
20 years of experience in economic development and sustainable urban planning. Dr. Baxamusa
21 lives and works in San Diego, California. Dr. Baxamusa is directly affected by City Council's
22 failure to properly oversee CivicSD as a Board member and Director of CivicSD and thus has
23 standing to seek a judicial declaration of his rights and duties concerning these Respondents.

24 21. Petitioner San Diego County Building and Construction Trades Council, AFL-CIO
25 (the "Trades Council") is an affiliation of twenty-two (22) construction and trade unions (the
26 "Building Trades") representing over 30,000 workers throughout San Diego County. The Trades
27 Council performs a variety of responsibilities including, but not limited to: (1) serving as a
28 clearinghouse of information for its affiliated unions on legislative issues at all levels of

1 government; (2) serving as the body that approves strike sanctions for affiliates; (3) acting as the
2 lead in negotiations for Project Stabilization Agreements and Project Maintenance Agreements;
3 and (4) serving as the entity which speaks for the Building Trades on issues of concern. Business
4 Manager Tom Lemmon acts as the Trades Council's spokesperson and handles its day to day
5 operations. Trades Council is directly affected by City Council's failure to properly oversee
6 CivicSD – and in particular, its failure to provide a right of appeal for decisions made by Civic
7 SD – and thus has standing to seek a judicial declaration of its rights against these Respondents.

8 22. Defendant Civic San Diego is a private, non-profit subsidiary corporation of the
9 City. Civic San Diego describes itself as a "one-stop shop" that facilitates quick approval,
10 permitting, and funding of "public-private development projects and programs." Civic San
11 Diego's specific purposes are: (1) to engage in economic development, land use permitting and
12 project management services; (2) to enter into agreements, contracts or memoranda of
13 understanding with any public or corporate entity, including the City, in furtherance of the
14 Corporation's purposes; (3) to engage in any other activities in furtherance of the purposes for
15 which the Corporation was formed; and (4) to receive, invest, and utilize for the purposes for
16 which the Corporation is formed, gross receipts from activities related to the Corporation's
17 exempt functions, and funds and property acquired through solicitation of contributions,
18 donations, grants, gifts, bequests, and the like.

19 23. Defendant City of San Diego is, and at all times herein mentioned was, a
20 California municipal corporation chartered pursuant to the Constitution and laws of the State of
21 California and located in the County of San Diego, California.

22 SUMMARY OF RELEVANT LAW

23 24. The City Charter section 11.1 provides:

24 The same prohibition against delegation of the legislative power
25 which is imposed on the State Legislature by Article XI, Section 11a
26 of the Constitution of the State of California shall apply to the City
27 Council of San Diego, so that its members shall not delegate
28 legislative power or responsibility which they were elected to
exercise in the adoption of any ordinance or resolution which raises
or spends public monies...

1 25. Thus, the City Charter *expressly provides* that the City Council is prohibited from
2 delegating its duties to third parties by California's strong doctrine against the delegation of
3 legislative activity. On the other hand, legislative bodies such as City Council may delegate
4 certain *administrative* duties – but those grants must attach procedures which safeguard against
5 possible misuses of that power. See City of Burbank v. Burbank-Glendale-Pasadena Airport
6 Authority, 72 Cal. App. 4th 366, 376 (1999).

7 26. In addition, delegations of administrative or regulatory powers must include
8 *sufficiently definite directions* for the administrative body in the manner of exercising its
9 delegated powers. See id. (citing Katz v. Dept. of Motor Vehicles, 32 Cal. App. 3d 679, 684
10 (1973)). **The legislature cannot abdicate responsibility to resolve fundamental issues by**
11 **delegating that function to others or by failing to provide adequate direction for the**
12 **implementation of its declared policies.** See CEEED v. Cal. Coastal Zone Conservation
13 Comm., 43 Cal. App. 3d 306, 325 (1974). Hence, when the legislature makes the fundamental
14 policy decision to delegate imposition of its declared policies to some other body, the legislature
15 must impose adequate safeguards. See id.

16 27. A government entity contracts away its police power when a contract amounts to a
17 “surrender” or “abnegation” of a proper governmental function. See Santa Margarita Area
18 Residents Together v. San Luis Obispo County, 84 Cal. App. 4th 221, 233 (2000). **The general**
19 **rule is that while a public body may not delegate its power of control over public affairs to a**
20 **private group, it may delegate the performance of administrative functions to such groups if**
21 **it retains ultimate control over administration so that it may safeguard the public interest.**
22 See Nesvig, 231 Cal.App.2d at 616. In each case of delegation there are two issues, whether the
23 function is a proper one for delegation, and whether the manner of delegation retains the
24 necessary, ultimate control over administration in the hands of the public entity. See id. at 617.

25 28. Powers which require the exercise of judgment and discretion must remain with
26 the public agency and cannot be delegated. Thus the issue in each case of delegation is whether
27 ultimate control over matters involving the exercise of judgment and discretion has been retained
28 by the public entity. See id.

29. By statute, California has given the taxpayer broad standing to enjoin illegal government action pursuant to CCP 526a, which provides in relevant part:

An action to obtain a judgment, restraining an preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a... city... may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein.

30. The primary purpose of the statute is to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in courts because of the standing requirement. Blair v. Pitchess, 5 Cal. 3d 258, 267-268 (1971); Waste Management of Alameda County, Inc. v. County of Alameda, 79 Cal. App. 4th 1223, 1240 (2000). To this end, the statute has been construed liberally. Id. No showing of special damage to a particular taxpayer is required as a requisite for bringing a taxpayer suit – rather, taxpayer suits provide a general citizen remedy for controlling illegal governmental activity even without a showing of direct injury. Connerly v. State Personnel Bd., 92 Cal. App. 4th 16, 29 (2001).

FACTS

A. The Ambiguous Authority and Scope of CivicSD and the City's Failure to Adequately Oversee CivicSD's Operations since the End of Redevelopment in California

31. Currently, the City of San Diego is the only city in the entire state of California which outsources its planning and redevelopment functions to a private, non-governmental entity.

32. After the demise of tax-funded redevelopment in California, it was unclear what role CCDC could or should continue to serve for the City. Nonetheless, Mayor Jerry Sanders made the determination to repurpose CCDC to CivicSD, and to continue to engage CivicSD's services through the use of two June 2012 consulting agreements between the City and CivicSD. CivicSD holds only one member – the City – which possesses voting rights used to appoint members of the Board, to dispose of the corporation's assets, to merge the corporation, dissolve the corporation, and amend the Articles of Incorporation or Bylaws.

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1 33. Though the City is a member of CivicSD, CivicSD is not a city department or
2 other governmental entity. Rather, CivicSD is a "consultant" to the City pursuant to two 2012
3 Consulting Agreements. Under its Articles of Incorporation, CivicSD may perform certain
4 otherwise governmental functions including, but not limited to economic development, land use
5 permitting, and project management services. Despite its status as a private non-profit subsidiary
6 corporation of the City, CivicSD receives substantial support from government and public funds.
7 An excellent example of the paradox inherent in CivicSD's structure is in its own application for
8 the federal New Market Tax Credit Program. Is it a private, non-profit corporation? Is it
9 Government-controlled? Even CivicSD does not fully understand if it is a private corporation
10 with proprietary interests separate from the City:

11 a. *Applicant Name:*

12 Civic San Diego Economic Growth and Neighborhood Investment Fund

13 b. *Applicant Employer Identification Number:*

14 46-0660465

15 c. *Corporate Status of the Applicant:*

16 Non-profit

17 d. *Structure of the Applicant:*

18 Government-Controlled entity

19 34. Municipal Code § 156.0304 designates the City as the responsible party for the
20 "administration of planning and zoning for the City of San Diego within the Centre City Planned
21 District." Nonetheless, Charter Section 28 provides that the Mayor "shall have the power to
22 employ experts, or consultants to perform work or give advice connected with the Departments of
23 the City when such work or advice is necessary in connection therewith."

24 35. Further, Charter Section 117(c) states that "the City may employ an independent
25 contractor to provide City services as an alternative to classified employees when the Mayor
26 determines, subject to council approval, that the services can be provided more economically and
27 efficiently by an independent contractor...while maintaining service quality and protecting the
28 public interest." Importantly, Section 117(c) requires the City to engage in a competitive bidding

1 process to engage such independent contractors, something it did not do with respect to its
2 engagement of CivicSD.² Regardless of which Charter Section the City delegates its powers
3 under, the delegation *cannot* equate to a total absolution of legislative responsibility.

4 36. An April 2014 memorandum issued from the Office of the City Attorney
5 (“Memorandum”), which surfaced in a March 25, 2015 article published in the *San Diego City*
6 *Beat*, addresses some of the issues related to the City’s delegation to CivicSD. The Memorandum
7 specifically notes that “[i]f the Council decides to delegate duties to CivicSD, it is critical that the
8 Council provide specific parameters limiting CivicSD’s exercise of authority; doing so will
9 reduce the risk of successful challenge to the act of delegation.” The Memorandum further
10 provides:

11 If CivicSD provides any services on behalf of the City, it is this
12 Office’s opinion that the City must enter into a contract with CivicSD
13 that provides express conditions related to the work that CivicSD will
14 perform. The conditions should include oversight; indemnification,
hold harmless, and other provisions to protect the City from liability
caused by CivicSD’s conduct; termination for non-performance and
convenience; and other provisions.

15 37. Thus, and as recognized by the City Attorney, City Council is required to
16 sufficiently limit CivicSD’s authority and provide adequate oversight over CivicSD to ensure its
17 activities and decisions conform to the City’s General Plan, the Downtown Community Plan, the
18 Planned District Ordinances, and the City’s Planned Development Ordinance (the “PDO”).

19 38. CivicSD divides the tasks of reviewing and approving permit applications between
20 its Board and its President. The Board reviews and approves certain Conditional Use Permits,
21 Variances, and all Planned Development Permits which are required for any new structure over
22 1,000 feet in size.

23 39. If a development is less than 100,000 square feet and possesses fewer than 50
24 dwelling units, the project must receive a development permit directly from the President of
25 CivicSD through an “administrative review” process. This “administrative review” is not subject
26 to a public hearing, nor is the President’s decision appealable to City Council.

27
28 ² It is unclear whether the City Council’s delegation of powers to CivicSD is made pursuant to
Charter Section 28 or Charter Section 117(c).

1 40. If a development seeks a Centre City Development Permit for a project exceeding
2 100,000 square feet, possesses more than 50 dwelling units or is more than 85 feet high, the
3 Board must grant "Design Review" approval. In theory, Design Review is limited only to the
4 aesthetics of a project, i.e. exterior paint color and visible architecture. If the Board grants Design
5 Review approval, the approval will generally then go to the CivicSD President, who determines if
6 a project is consistent with all plans and then almost immediately issues a Development Permit.

7 41. Unfortunately, although the PDO requires CivicSD to adhere to certain general
8 parameters set by the City, in practice CivicSD is often ambiguous and inconsistent with its
9 permitting process decisions. For example, according to the PDO the CivicSD Board must
10 approve larger developments that require a Development Permit. However, in practice, a final
11 approval of a Development Permit is made by CivicSD staff and is rendered privately, behind
12 closed doors.

13 42. Further, the PDO directs the decision-maker – in this case, the CivicSD Board – to
14 ensure that larger projects requiring a Development Permit are consistent with City plans.
15 However, CivicSD staff has instructed the Board not to make those types of findings, leaving the
16 findings the sole responsibility of the President. Thus, a discrepancy exists between what the
17 PDO seems to require of the Board, and what in practice staff at CivicSD allow and ask of the
18 Board. This type of discrepancy between what CivicSD is required to do on paper, and what it
19 actually does in practice, is but one example of how the City has failed to properly monitor the
20 activities of CivicSD. As the elected body, the City Council owes a duty to the public to properly
21 oversee the activities of CivicSD.

22 43. Currently, the City is the exclusive client and also the sole member of CivicSD.
23 However, one of the 2012 consulting agreements between the City and CivicSD delegates
24 economic development authority in low-income areas to CivicSD, allowing for CivicSD to enter
25 into other agreements with *different* public or private entities. Yet there is no process or protocol
26 in place for whether this would change CivicSD's relationship with the City, or what kind of
27 oversight or supervision would occur, if any, over these potential new agreements.

28 ///

1 44. The non-partisan State of California Office of Legislative Counsel (the
2 “Legislative Counsel”) has weighed in on the proper role and authority of CivicSD as well. In a
3 memorandum addressed to Assemblywoman Gonzalez dated April 17, 2015, the Legislative
4 Counsel wrote to answer her questions: (1) as to whether a city may contract away its land use
5 authority to a non-profit benefit corporation; and (2) whether the Legislature may authorize a city
6 to contract away its land use authority to a non-profit public benefit corporation. The Legislative
7 Counsel’s memorandum is attached hereto as Exhibit “A,” and specifically incorporated herein by
8 reference.

9 45. The Legislative Counsel answered these questions with a resounding “no”:

10 **We have determined that a city may not, and the Legislature**
11 **may not authorize a city to, contract away to a nonprofit entity**
 its police power, which includes land use authority.

12 46. The question of whether a delegation is proper, according to the Legislative
13 Counsel memorandum, is if “the city retains ultimate control of matters involving the exercise of
14 judgment and discretion. . . .” This is a key issue for the Court’s determination in this case.
15 Although the City Council appoints the Board, in reality and practice, CivicSD operates
16 independently, uses its own judgment, and makes its own determinations on land use issues, with
17 no direct right of appeal of its determinations to the City Council, and, in reality and practice,
18 with no meaningful oversight or direction. The City has thus, in reality and practice, abandoned
19 its police power to CivicSD.

20 47. For example, CivicSD’s Consulting Agreement requires it to perform its
21 functions “as directed by the City.” Yet, the City in reality provides no direction at all. In
22 fact, CivicSD exercises total judgment and discretion when it determines if a particular
23 project comports with the downtown General Plan and issues a resulting permit. CivicSD
24 necessarily exercises discretion because a General Plan provides only general outlines for land
25 use in a particular locality. See Leshar Comm., Inc. v. City of Walnut Creek, 52 Cal. 3d 531, 540
26 (1990). The City bears the responsibility to write the details of the General Plan as well as to
27 ensure CivicSD adheres to them. In practice, it has failed to do so, and has allowed CivicSD to be
28 the master of its destiny.

1 48. Further, though the Consulting Agreements provide the City the ability to
2 audit CivicSD's books and records at any time, in fact, on information and belief, the City
3 fails to exercise this important oversight activity. In addition, the City's claim that it retains
4 ultimate control over CivicSD's activities merely because it has the ability to terminate its
5 Consulting Agreement with CivicSD at any time is illusory. How can the City determine if
6 termination is proper if it provides no oversight of what CivicSD is doing on a day to day basis?
7 The termination provision in the Consulting Agreement means nothing if, in reality the City fails
8 to exercise any control over CivicSD in the first place. In addition, the mere *ability* to terminate
9 the relationship is not the type of oversight and sufficient safeguards contemplated by California
10 courts when opining on the propriety legislative delegation.

11 49. The City Attorney's own April 2015 recent memo, released on the heels of the
12 Legislative Counsel opinion, advises that the City "revisit the existing agreements to clarify
13 CivicSD's activities, build in transparency and financial oversight, provide for delegation of
14 permitting authority by separate agency agreement, and include appropriate termination
15 provisions." Accordingly, it appears everyone is in agreement that – with the exception of the
16 City Council and CivicSD – ultimate control and the exercise of judgment and discretion are
17 currently in the hands of CivicSD.

18 50. Legislators built City oversight into AB 504 by requiring a detailed annual report
19 from the nonprofit public benefit corporation to the legislative body. This report would include
20 details on the planning functions undertaken by CivicSD during the previous calendar year which
21 would include, but not be limited to, a detailed description of each planning function and an
22 explanation of how it is consistent with the city's charter, municipal code, ordinances, and any
23 applicable parts of a general plan. Each report must be reviewed and approved by the legislative
24 body of the city at a noticed public hearing.

25 51. Accordingly, this lawsuit is just one of many voices speaking on the need for
26 oversight and accountability for CivicSD in the wake of redevelopment's demise. If the City
27 Council chooses to continue delegating its permitting and planning duties in the manner it has
28 done since June 2012, then it likewise has an obligation to San Diego taxpayers to properly define

1 and oversee the activities of CivicSD in order to hold the nonprofit accountable to the members of
2 the community it purports to benefit. There is no reason that permitting and planning in
3 downtown San Diego should be free of oversight from City Council and accountability to
4 taxpayers just because it is "serviced" by a nonprofit corporation. In fact, its status as a corporate
5 entity, rather than governmental entity, is a primary reason why City Council must actively
6 monitor CivicSD.

7 **B. CivicSD Board Member Conflicts of Interest**

8 52. CivicSD Board members lack clarity as to what interests they represent in carrying
9 out their planning and permitting duties. Do the Board members represent the City's interests
10 (CivicSD's sole member), or do they represent CivicSD's interests? It is also unclear to whom,
11 exactly, the Board members owe fiduciary duties. This ambiguity is especially concerning
12 because, in addition to its planning and permitting activities on behalf of the City, CivicSD's
13 subsidiary CDEs administer public-private developments through the administration of New
14 Market Tax Credits, and takes a percentage of funds for completed projects as compensation for
15 these services. The issue of fiduciary duties is critical, given the conflicts of interest which could
16 exist or could easily arise as a result of Board members' dual roles and conflicting loyalties to
17 private and public interests.

18 53. Pursuant to the new roles served by CivicSD and its Board since the end of
19 redevelopment, various Board members also serve on the Boards of CivicSD's subsidiary CDE's.
20 To understand why this could create a conflict of interest, it is important to understand the nature
21 of CDEs:

22 A CDE is a domestic corporation or partnership that is an
23 intermediary vehicle for the provision of loans, investments, or
24 financial counseling in Low-Income Communities (LICs). Benefits
25 of being certified as a CDE include being able to apply to the CDFI
26 Fund to receive a New Markets Tax Credit (NMTC) allocation to
offer its investors in exchange for equity investments in the CDE
and/or its subsidiaries; or to receive loans or investments from other
CDEs that have received NMTC allocations.

27 See www.cdfifund.gov/what_we_do/programs_id.asp?programID=10

28 54. Given these CDEs' hold both private and public funds, CivicSD Board members

1 could have private organizational interests to protect that conflict with the City's interests. Yet
2 the Board receives no direction from City Council as to what entity it owes fiduciary duties to in
3 those instances. In the event of a conflict, does the Board owe a fiduciary duty to protect
4 taxpayer interests or CivicSD subsidiaries' interests? Due to the City Council's failure to
5 properly and clearly delegate its power to CivicSD with sufficient oversight, this question
6 remains unanswered.

7 55. Another inherent conflict plagues CivicSD regarding its role in the approval of
8 land-use permits on the one hand, and its proprietary interests in funding projects with New
9 Market Tax Credits or similar sources on the other. These functions currently overlap
10 jurisdictionally downtown, but this conflict could spread to other areas since CivicSD is actively
11 seeking permitting authority in areas outside downtown. CivicSD could fund property
12 acquisition, approve its land-use permits, fund its development, and accrue revenue from the
13 same project, without any approval or oversight from the City. This is in clear contrast to a well-
14 established procedure for public hearings, public disclosures, and agency approvals for
15 disposition and development agreements followed by redevelopment agencies under the former
16 state redevelopment law.

17 **C. Appeal of CivicSD Decisions and Mandatory Reporting**

18 56. **The City Council cannot provide adequate safeguards over the activities of**
19 **CivicSD unless it provides (1) an opportunity for the public to directly appeal Process Two**
20 **and Three CivicSD permitting decisions through a formal appeals process to a legislative**
21 **body, and (2) requires CivicSD to report annually on the permitting functions it takes on**
22 **behalf of the City.**

23 57. As it stands, Process Two and Three permitting decisions in downtown San Diego
24 are treated differently than everywhere else within San Diego County. In areas outside CivicSD's
25 control, Process Two and Three permits are appealable to the Planning Commission – a division of
26 the City. However, citizens of downtown San Diego are denied access to a legislative body for
27 purposes of appeal.

28 ///

1 58. Currently, if a member of the public disagrees with a Process Two or Three decision
2 of CivicSD, his or her only recourse is to testify directly to the Board of CivicSD, which steps into
3 the shoes of the Planning Commission in downtown San Diego. Thus, the individual has no ability
4 to appeal decisions of CivicSD to a *legislative body*. This process does not provide *meaningful*
5 recourse because the Board does not rely on the public for its job security, thus the Board can take
6 or leave the publics' concerns without fear of consequences at the ballot box. Importantly, this
7 process also provides insufficient safeguards regarding City Council's delegation to CivicSD as
8 required by California law.

9 59. For example, in 2013 the Trades Council urged CivicSD to deny the Design Review
10 approval of a hotel on West Ash Street in downtown San Diego for a multitude of reasons, including
11 the Board's failure to consider environmental impacts consistent with the City's General Plan, that
12 California law required CivicSD to prepare a subsequent EIR for the proposed project, and that the
13 project conflicted with the San Diego General Plan and the Downtown Community Plan goals and
14 policies. Nonetheless, the Design Review and project were ultimately approved by CivicSD. The
15 Trade Council had no avenue for further appeal of CivicSD's decision, despite the fact that the
16 Trade Council raised serious compliance issues which went unaddressed.

17 60. AB 504 directly addressed these issues by requiring a right of appeal to a legislative
18 body for projects that include (i) no less than 50 residential units, (ii) no less than 50 hotel rooms,
19 (iii) no less than 25,000 square feet of commercial space. AB 504 further addressed the City's lack
20 of sufficient oversight by requiring annual report from CivicSD to the City Council on the planning
21 functions undertaken during the previous calendar year that includes, but is not limited to, a detailed
22 description of each planning function and an explanation of how it is consistent with the city's
23 charter, municipal code, ordinances, and any applicable parts of a general plan.

24 61. **Petitioners stand with the California legislature – which passed AB 504 – and**
25 **believe this structured right of appeal and mandatory annual reporting by CivicSD to be both**
26 **necessary and sufficient to adequately protect the public.**

27 62. The City Council cannot entirely abdicate itself of responsibility for permitting and
28 planning – a function traditionally exercised by a legislative body and required to be protected by

1 elected bodies. The City's delegation of this power since the end of redevelopment without
2 sufficient oversight and without an avenue for direct appeal to a legislative body fails to satisfy
3 safeguard requirements under California law. Petitioners thus seek a judicial declaration from this
4 Court and an injunction, as described below.

5 **FIRST CAUSE OF ACTION**

6 **Request for Declaratory Relief Regarding the City's Improper Delegation**
7 **of Legislative Authority to CivicSD pursuant to California Code of Civil Procedure §1060**
8 **(Against All Respondents)**

9 63. Petitioners incorporate by reference Paragraphs 1 through 62 of this Complaint as
10 though fully set forth herein.

11 64. An actual and justiciable controversy exists between the Petitioners and
12 Respondents regarding the manner in which the City Council has impermissibly surrendered
13 and/or abnegated its permitting and planning functions by delegating these functions to CivicSD
14 since the end of redevelopment in California, and specifically, since June 2012.

15 65. Petitioners assert that the City Council has improperly delegated its authority to
16 CivicSD by failing to properly define the scope of CivicSD's activities, failing to address inherent
17 Board member conflicts of interest, and failing to retain proper control over and oversight of
18 CivicSD's activities, as required by California law. The City, on the other hand, maintains that its
19 delegation to CivicSD is lawful despite the lack of sufficient oversight and lack of a meaningful
20 appeals process for the members of the downtown San Diego community.

21 66. A judicial declaration resolving this dispute is therefore necessary and appropriate
22 in order that Petitioners may ascertain their rights and duties pursuant to the City Charter and
23 California law. Specifically, Petitioners request a declaration from this Court that, since the end
24 of redevelopment in California and specifically since June 2012, the City has failed to properly
25 delegate its permitting and planning authority to CivicSD because it has: (1) effectively
26 surrendered or abnegated control over land use planning and permitting decisions to CivicSD; (2)
27 failed to clearly limit CivicSD's scope and authority; and (3) failed to implement and exercise
28 adequate safeguards against CivicSD's misuse of power, including proper oversight.

67. Petitioners are informed and believe, and thereon allege that unless and until

1 restrained by this Court, CivicSD and the City will continue to operate in a manner contrary to
2 California law. Petitioners, and the public at large, will be irreparably harmed in that CivicSD
3 will continue to exercise legislative authority with inadequate safeguards and oversight in place.
4 In addition, Petitioners, and the public at large, will be irreparably harmed if the City fails to
5 provide a right of appeal to aggrieved persons to challenge Process Two and Three decisions of
6 CivicSD.

7 68. Petitioners have no adequate remedy at law to prevent or redress this irreparable
8 injury. If Petitioners are successful in this action, a significant benefit will be conferred on the
9 general public, and Petitioners are therefore entitled to reasonable attorneys' fees pursuant to CCP
10 1021.5.

11 **SECOND CAUSE OF ACTION**
12 **Request for Injunctive Relief pursuant to**
13 **California Code of Civil Procedure §526(a)**
14 **(Against all Respondents)**

15 69. Petitioners incorporate by reference Paragraphs 1 through 68 of this Complaint as
16 though fully set forth herein.

17 70. A taxpayer action under CCP §526(a) is available to restrain or prevent the illegal
18 expenditure of public funds. CCP 526(a) confers standing to seek an injunction restraining illegal
19 acts being perpetrated by government officials upon a taxpayer, corporation, or association of
20 taxpayers that has paid any tax within a city, county, or other taxing California jurisdiction. Santa
21 Barbara County Coalition Against Auto. Subsidies v. Santa Barbara County Ass'n of
22 Governments, 167 Cal. App. 4th 1229,1236-1237 (2008); Gilbane Bldg. Co. v. Superior Court,
23 223 Cal. App. 4th 1527, 1530 (2014).

24 71. Dr. Baxamusa is a resident and taxpayer in the City of San Diego, and therefore
25 has standing to seek an injunction to prevent illegal expenditure of public funds pursuant to CCP
26 526(a). The Trades Council is an association consisting of residents and taxpayers in the City of
27 San Diego, and therefore also has standing to seek an injunction to prevent illegal expenditure of
28 public funds pursuant to CCP 526(a). The Trades Council has also independently paid sales and
other taxes within the City of San Diego sufficient to assert standing pursuant to CCP 526(a).

72. As stated herein, the City has failed to properly administer its delegation of permitting and planning authority to CivicSD in direct violation of the City Charter and the California Constitution. Thus, the City has made, and continues to make, illegal expenditures of public funds in the form of payments made to CivicSD for services rendered.

73. Petitioners therefore seek an injunction from this Court restraining and preventing this illegal expenditure of public funds by the City unless and until City Council implements adequate safeguards regarding and oversight over the activities of CivicSD, as required by California law, and specifically, implements procedures substantially similar to those required by the recently passed but vetoed AB504, including:

- A right of appeal to the City Council for projects that include (i) no less than 50 residential units, (ii) no less than 50 hotel rooms, (iii) no less than 25,000 square feet of commercial space, and;
- A required annual report from CivicSD to the City Council on the planning functions undertaken during the previous calendar year that includes, but is not limited to, a detailed description of each planning function and an explanation of how it is consistent with the city's charter, municipal code, ordinances, and any applicable parts of a general plan. Each report must be reviewed and approved by the City Council at a noticed public hearing;

74. If Petitioners are successful in this action, a significant benefit will be conferred on the general public, and Petitioners are therefore entitled to reasonable attorneys' fees pursuant to CCP 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for the following relief:

1. For a judicial declaration as stated in the First Cause of Action regarding the City's unlawful delegation of legislative authority to CivicSD since the end of tax-funded redevelopment in California, and specifically, since June 2012;
2. For injunctive relief pursuant to the Second Cause of Action;

- 1 3. For Petitioners' reasonable attorneys' fees and costs pursuant to California Civil
2 Procedure Code § 1021.5, and to the extent provided by law; and
3 4. For such other and further relief as the Court deems proper.
4

5 DATED: August 16, 2016

THE COOPERSMITH LAW FIRM

6
7 By: 

8 STEVEN T. COOPERSMITH
9 Attorneys for Petitioners Murtaza
10 Baxamusa and San Diego County
11 Building & Construction Trades
12 Council, AFL-CIO
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1 **PROOF OF SERVICE**

2 SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 COUNTY OF SAN DIEGO – CENTRAL DIVISION

4 Murtaza Baxamusa, et al. v. Civic San Diego, et al.
5 San Diego Superior Court Case No: 37-2015-12092-CU-PT-CTL

6 I, Kelly Larson, declare as follows:

7 I am employed by a member of the bar of the State of California at whose direction was
8 made in the County of San Diego, State of California. I am over the age of 18 and not a party to
9 the within action; my business address is 555 West Beech Street, Suite 230, San Diego,
10 California 92101.

11 On August 16, 2016, I served true and correct copies of the foregoing document(s)
12 described as:

13 **1. THIRD AMENDED PETITION FOR DECLARATORY AND INJUNCTIVE
14 RELIEF**

15 on interested parties in this action by placing ☐ the original ☒ true copy(ies) thereof enclosed
16 in sealed envelopes as follows:

17 Jan I. Goldsmith, City Attorney
18 Walter Chung, Deputy City Attorney
19 Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101-4100

Attorneys for Defendant City of San Diego

20 BEST BEST & KRIEGER LLP
21 Shawn Hagerty, Esq.
22 Matthew L. Green, Esq.
23 655 West Broadway, 15th floor
24 San Diego, CA 92101

Attorneys for Defendant Civic San Diego

25 ☒ **BY FIRST CLASS MAIL** (C.C.P. § 1013(a)) I am readily familiar with the firm's practice of
26 collection and processing correspondence for mailing with the United States Postal Service.
27 Under that practice, it would be deposited with United States postal service on that same day with
28 postage thereon fully prepaid at San Diego, California in the ordinary course of business. The
envelope was sealed and placed for collection and mailing on that date following ordinary
business practices. I am aware that on motion of the party served, service is presumed invalid if
postal cancellation date or posted meter date is more than one day after date of deposit for
mailing in affidavit.

☐ **BY ELECTRONIC TRANSMISSION** (C.C.P. § 1010.6(6)) Based on a court order or an agreement
of the parties to accept service by email or electronic transmission, I caused the documents to be
sent to the persons at the e-mail address(es) listed. I did not receive, within a reasonable time
after the transmission, any electronic message or other indication that the transmission was
unsuccessful.

☐ **BY OVERNIGHT DELIVERY** (C.C.P. § 1013(c)) I am readily familiar with the firm's practice of

1 collection and processing correspondence for mailing with Overnite Express and Federal
2 Express. Under that practice, it would be deposited with Overnite Express and/or Federal
3 Express on that same day thereon fully prepaid at San Diego California in the ordinary course of
4 business. The envelope was sealed and placed for collection and mailing on that date following
5 ordinary business practices.

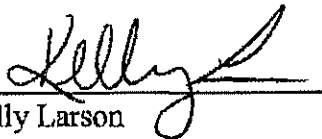
6 ☐ **BY FACSIMILE** (C.C.P. § 1013(e)) Based on agreement of the parties to accept service by fax
7 transmission, I faxed the documents on this date to the person(s) at the fax numbers listed. No
8 error was reported by the fax machine that I used. A copy of the record of the fax transmission,
9 which I printed out, is attached.

10 ☐ **BY PERSONAL SERVICE** (C.C.P. § 1011(a)) I served the documents by placing them in an
11 envelope or package addressed to the person(s) at the addresses listed and providing them to a
12 professional messenger service for service on this date.

13 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the
14 above is true and correct.

15 ☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court
16 at whose direction the service was made.

17 Executed on August 16, 2016, in San Diego, California.

18 
19 Kelly Larson

The Honorable Marti Emerald
Chair, Public Safety and Livable Neighborhoods
Committee
San Diego City Council
202 C Street, San Diego, CA 92101

cc: The Honorable Myrtle Cole, Chris Cate, Todd Gloria,
David Alvarez, Mark Kersey, Sherri Lightner, Scott
Sherman, & Lorie Zapf



Dear Chair Emerald and Councilmembers,

In light of the dissolution of the redevelopment agencies, it is necessary that the City of San Diego establish clear policies and standards for publicly subsidized, community economic development. In October 2014, the Public Safety and Livable Neighborhoods committee directed Civic San Diego to conduct a community outreach process. The goal of that process was to gather public feedback about what should go into a Community Benefits Policy for Community Economic Development and to bring back recommendations for a policy in March 2015.

The CBA has already expressed our concern with the fact that the Consensus Project process has not facilitated a broad, robust and inclusive public discussion framed around a proposed policy. No draft policy has been circulated. We expect then that any timely and robust discussion must take place through the PS&LN Committee and City of San Diego City Council hearings process.

The purpose of a community benefits policy is to ensure that whenever public resources (i.e., funds, real estate, etc.) are expended to support development, the collective needs, concerns and financial interests of the residents of San Diego are addressed and protected. Concurrently, opportunities for good development projects with public returns on investments are maximized, especially in communities where development needs have been identified. It is key that this policy be consistent for all neighborhoods, rather than being created on a case by case basis, to ensure that basic community benefits are delivered to every San Diegan.

1. Increase the Availability of Affordable Housing. Consistent with redevelopment law's focus on affordable housing, a community benefits policy should dedicate no less than thirty percent of any funds aggregated for community economic development to building affordable housing. And no less than thirty percent of all housing units built as part of a project using any funds aggregated for community economic development shall be affordable to low, very-low, and extremely-low income households.

2. Conform to City Policies for Responsible Economic Activity. To be consistent with the City's economic development strategy the community benefits policy should expand City policies to apply to development projects, including, but not limited to, the Living Wage Ordinance, Equal Employment Opportunity, Conflict of Interest, Service Worker Retention Ordinance, Non-Discrimination in Employment, Prevailing Wage Ordinance, Public Art, Debt Policy, the City's General Plan, and the applicable community plan to developers, contractors, and tenants of projects, receiving a public

subsidy as part of community economic development. Also, residents displaced by a Community Economic Development project should be provided relocation assistance pursuant to the California Relocation Assistance Law.

3. Create Quality Local Jobs and Provide Career Training. The policy should ensure that developers and contractors who receive the benefit of public support shall provide job and career development opportunities by making jobs and construction careers available to local residents, by setting the following goals and requirements:

- a. no less than 70% of a project's work hours will be performed by San Diego County residents;
- b. no less than 30% of a project's work hours will be performed by residents in low-income areas of the City of San Diego; and
- c. through use of joint labor/management apprenticeship programs.

4. Protect Public Investments by Creating Development Certainty. Because the City's financial and proprietary interests are in protecting public investments, the policy should provide certainty to the timely completion and harmonious operation of publicly supported projects by requiring developers, contractors, and tenants to safeguard labor peace. A pre-qualification process to ensure the use of reputable contractors and subcontractors on its projects should be required as part of the community benefits policy.

5. Include and Respect the Community Voice. The policy should establish a community review process for each of the areas targeted for community economic development. Each geographic area should have its own standing community review board of either elected or City Council appointed community members structured similarly to the project area committees that have existed as part of redevelopment. The community review boards should be directly involved in the planning, approving, and implementing of new development projects that receive a public subsidy or benefit from other public support. As a way of building sustainable structures for ongoing economic development, CivicSD, or any other agent acting in the interest of the City of San Diego should partner with community-based nonprofit organizations in carrying out projects, unless there is no such organization active in the geographic area.

6. Inform the Community about the Benefits and Impact of Proposed Projects. The policy should require a Community Benefits and Impact Report for every project that will be reviewed by the community review board and the City Council. At minimum, the Report should explain how the project supports or adversely impacts the affected geographic area's: 1) capital improvement needs, as identified as priorities in the City's capital improvement program budget or listed as underfunded; 2) needs for retail, health, or social services; 3) small businesses; 4) minority-owned enterprises; 5) access to healthy food choices; 6) educational opportunities, day care services, or other community needs; 7) affordable housing stock; 8) access to new jobs; 9) access to jobs paying a sustainable wage and 10) tax base. The Report shall be made available to the public in advance of the community review board's final review of the project.

7. Protect the Public Interest by Insuring that Accountability and Authority Ultimately Rests with the Elected Representatives of the Public. As under redevelopment, every project agreement should be approved by the City Council. The policy should ensure that all projects: 1.) include compliance provisions in the project agreement; 2.) are monitored for compliance; and 3.) have deed restrictions filed, as appropriate. There should be quarterly reporting to the City Council regarding community economic development activity. And every five years, the community economic development program activities shall be evaluated and reported to the City Council.

8. Have Minimal Variances or Exceptions to the Policy. When a conflict between the community benefits policy and the requirements of a specific funding source arises, local requirements should be modified as narrowly as possible to conform to funding source requirements. And in that case a community benefits agreement that provides standards and community benefits to offset the modification must be created.

The Community Budget Alliance looks forward to working with members of the Public Safety and Livable Neighborhoods Committee and the San Diego City Council to develop a comprehensive Community Benefits Policy. If there are any questions, please contact coalition organizer Samer Naji at snaji@onliecpi.org, or at (619) 584-5744 x60.

Sincerely,

Samer Naji
Coalition Organizer
Community Budget Alliance
3727 Camino del Rio South, Suite 100, San Diego, CA 92108
O: (619) 584-5744x60 C: (818) 648-8001



Item #10

DATE ISSUED: September 21, 2016

ATTENTION: Civic San Diego
Meeting of September 28, 2016

SUBJECT: 7th and Market (full block bounded by Market Street and Island, Seventh and Eighth avenues) – Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit No. 2015-73 – Design Review and Associated Permits – East Village Neighborhood of the Downtown Community Plan Area – **PUBLIC HEARING**

STAFF CONTACT: Aaron Hollister, Senior Planner

STAFF RECOMMENDATION: That Civic San Diego (“CivicSD”) receives a presentation on the design proposal and associated permits for the 7th & Market project (“Project”) and:

1. Grants Design Review approval;
2. Approves Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit (CCDP/CCPDP/NUP) No. 2015-73 for the Project.

This is a Process 3 application which requires a public hearing before the CivicSD Board of Directors whose decision is final unless appealed to the Planning Commission, which would be the final decision maker on any appeal.

SUMMARY: Cisterra 7th & Market, LLC (“Applicant”) is requesting Design Review approval for CCDP/PDP/NUP No. 2015-73 for the construction of a mixed-use development comprised of 39-story and 19-story towers (approximately 475 feet and 227 feet tall, respectively) located on an approximately 60,000 square-foot (SF) full-block site bounded by Market Street and Island, Seventh and Eighth avenues in the East Village neighborhood of the Downtown Community Plan (DCP) area (“Downtown”). The Project is comprised of 218 dwelling units (DU), approximately 156,000 SF of office space, a proposed 153-room hotel, an estimated 40,000 SF retail space for a grocer and 887 automobile parking spaces including a minimum of 200 public parking spaces.

CivicSD unanimously approved the Project at a public hearing on July 27, 2016; however, after the July approval of the Project, CivicSD staff discovered an error in the administrative record that will require CivicSD to reconsider the Project at a de novo public hearing. Related to the administrative record, CivicSD staff discovered that the required Water Supply Assessment (“WSA”) prepared by the Public Utilities Department and dated April 6, 2016, had not been formally adopted by the City Council as required by San Diego Municipal Code prior to the

consideration of the Project at a public hearing by CivicSD. The City Council adopted the Project's WSA on September 20, 2016. As such, the Project may now be reconsidered at a public hearing by CivicSD with the perfected administrative record reflecting formal adoption of the WSA by City Council.

DISCUSSION

The circumstances and analysis of the Project have not changed since the consideration of the Project by CivicSD on July 27, 2016. The previously prepared staff report and addendum to the staff report for the Project have been included as attachments to this cover staff report. A revised Downtown 15168 Consistency Evaluation dated August 26, 2016, has been prepared and attached reflecting City Council adoption of the WSA, as well as a revised draft resolution.

ENVIRONMENTAL REVIEW

Development within the Downtown Community Planning area is covered under the following documents, all referred to as the "Downtown FEIR": Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Centre City Redevelopment Plan, certified by the former Redevelopment Agency ("Former Agency") and the City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively); subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115); and, the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561). Development within the Downtown Community Planning area is also covered under the following documents, all referred to as the "CAP FEIR": FEIR for the City of San Diego Climate Action Plan (CAP), certified by the City Council on December 15, 2015 (City Council Resolution R-310176), and the Addendum to the CAP, certified by the City Council on July 12, 2016 (City Council Resolution R-310596). The Downtown FEIR and CAP FEIR are both "Program EIRs" prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. Consistent with best practices suggested by Section 15168, a Downtown 15168 Consistency Evaluation ("Evaluation") has been completed for the project. The Evaluation concluded that the environmental impacts of the project were adequately addressed in the Downtown FEIR and CAP FEIR, the project is within the scope of the development program described in the Downtown FEIR and CAP FEIR, and that none of the conditions listed in Section 15162 exist; therefore, no further environmental documentation is required under CEQA.

CONCLUSION

Staff recommends that CivicSD grants Design Review approval and approves CCDP/PDP/NUP No. 2015-73 for the Project.

Respectfully submitted,



Aaron Hollister
Senior Planner

Concurred by:



Reese A. Jarrett
President



Brad Richter
Assistant Vice President, Planning

Attachments: A – CivicSD Board Staff Report dated July 20, 2016
B – Addendum to Staff Report dated July 20, 2016
C – Cisterra 7th and Market Response Letter dated July 26, 2016
D – Draft Resolution No. 2016-22
E – Revised DCP/CAP FEIR Consistency Evaluation dated August 26, 2016



Item #10

DATE ISSUED: July 22, 2016

ATTENTION: Civic San Diego
Meeting of July 27, 2016

SUBJECT: 7th and Market (full block bounded by Market Street and Island, Seventh and Eighth avenues) – Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit No. 2015-73 – Design Review and Associated Permits – East Village Neighborhood of the Downtown Community Plan Area – **PUBLIC HEARING**

STAFF CONTACT: Aaron Hollister, Senior Planner

STAFF RECOMMENDATION: That Civic San Diego (“CivicSD”) receives a presentation on the design proposal and associated permits for the 7th & Market project (“Project”) and:

1. Grants Design Review approval;
2. Approves Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit (CCDP/CCPDP/NUP) No. 2015-73 for the Project.

This is a Process 3 application which requires a public hearing before the CivicSD Board of Directors whose decision is final unless appealed to the Planning Commission, which would be the final decision maker on any appeal.

SUMMARY: Cisterra 7th & Market, LLC (“Applicant”) is requesting Design Review approval for CCDP/PDP/NUP No. 2015-73 for the construction of a mixed-use development comprised of 39-story and 19-story towers (approximately 475 feet and 227 feet tall, respectively) located on an approximately 60,000 square-foot (SF) full-block site bounded by Market Street and Island, Seventh and Eighth avenues in the East Village neighborhood of the Downtown Community Plan (DCP) area (“Downtown”). The Project is comprised of 218 dwelling units (DU), approximately 156,000 SF of office space, a proposed 153-room hotel, an estimated 40,000 SF retail space for a grocer and 887 automobile parking spaces including a minimum of 200 public parking spaces.

FISCAL CONSIDERATIONS: Under the Downtown Public Facilities Financing Plan, the Project will pay Development Impact Fees (DIF) to fund its fair share of new park, fire station, and traffic circulation improvements in the DCP area. The DIF for this Project is estimated to be \$4,418,712.

ECONOMIC IMPACTS: Per the Developer's estimate, the Project will generate approximately 800 construction jobs and 700 permanent jobs. As of December 31, 2015, approximately 79,930 construction jobs and 28,000 permanent jobs have been generated as a result of redevelopment activities.

COMMITTEE RECOMMENDATION: On July 13, 2016, the CivicSD Design Review Committee ("Committee") voted 4-0 (Killkinney, Geisler, Robinson, Shaw) to recommend that CivicSD grants Design Review approval and approves CCDP/CDP/PDP No. 2015-73 for the Project with all requested deviations pursuant to providing design enhancements to blank wall areas utilized for parking screening on the Seventh Avenue elevation and on the south elevation above the Clermont Hotel. Some Committee comments also encouraged greater vertical integration of the affordable dwelling units so that the units are spread across more floors, while other Committee comments encouraged greater integration of the Clermont Hotel into the overall Project. The Committee also requested additional perspectives that clearly demonstrate how the bottoms of architectural elements will be viewed from the street, as well as demonstrating how the Project will be illuminated at night.

DOWNTOWN COMMUNITY PLANNING COUNCIL: On July 20, 2016, the Downtown Community Planning Council (DCPC) voted 20-0 to support staff's recommendation.

CHANGES SINCE BOARD COMMITTEE MEETING: Changes that have occurred since Board Committee and/or DCPC are noted in bold font.

OTHER RECOMMENDATIONS: None.

DEVELOPMENT TEAM

ROLE	FIRM / CONTACT	OWNERSHIP
Applicant	Cisterra 7 th & Market, LLC Jason Wood	See Attachment A (Privately Owned)
Property Owner	City of San Diego David Graham	City of San Diego
Architect	Carrier Johnson + CULTURE Architecture Kevin Krumdieck	Michael Johnson, Gordon Carrier, Carrier Johnson Employees (Minor Interest)

BACKGROUND

On December 5, 2013, CivicSD issued a Request for Qualifications and Proposals (RFP/Q) for the Project site. The RFQ/P sought well-qualified development teams for the opportunity to enter into a public/private partnership with the City for the development of the Seventh & Market site, an asset of the Successor Housing Entity. The RFP included the following requirements of a proposal for the Project site:

- Minimum of 200 DU;
- Minimum 15% of the total residential units restricted as affordable and available for low- and moderate-income households provided on-site;
- Minimum of 50,000 SF of office area;
- Minimum of 10% Urban Open Space based on site area;
- Minimum of 300-foot high tower; and,
- Minimum of 200 public parking spaces.

A selection committee consisting of CivicSD staff, City of San Diego (“City”) staff, and a CivicSD Board member selected the Applicant/Project as a result of the RFP/Q process in May 2015. Subsequently, the City Council approved the Exclusive Negotiation Agreement in December 2015 between the City as Housing Successor Agency and the Applicant that allows negotiations towards a Development and Disposition Agreement (DDA). The proposed permit requests are a separate decision process from the DDA process. The DDA containing the Project’s final details will be reviewed by the CivicSD Board and will ultimately require City Council approval.

DISCUSSION

Neighborhood Context

The East Village neighborhood is anticipated to be a residential and mixed-use community upon build-out. However, large parts currently consist of a mix of commercial, warehouse, light industrial, educational, and residential uses, mostly at low intensities and densities. Ultimately, East Village is projected to contain up to 46,000 residents. Various portions of East Village will have substantially different characters, contributing to the eclecticism and interest of this neighborhood.

The Ballpark District of East Village, as envisioned in the DCP, has a downtown-wide entertainment and cultural attraction as well as a residential and commercial district with supporting amenities. At present, a majority of sites in this area have been developed with residential, office, and hotel projects, as well as parking structures. Important corridors are Market Street and Park Boulevard, providing links within downtown, to Balboa Park, and to the Bay; as well as Island and Imperial avenues and Commercial Street, which will afford pedestrian and vehicular access to neighborhoods east of downtown.

Applicable DCP Goals

The overall character of East Village will be transformed under the DCP. Almost half of the parcels represent development opportunities, and pressure for growth is strong. The area is envisioned as a thriving residential and mixed use community. The highest residential intensities downtown will be attained in East Village, served by the necessary retail, commercial and open space amenities.

- 3.1-G-2 Provide for an overall balance of uses – employment, residential, cultural, government, and destination – as well as a full compendium of amenities and services.
- 3.5-G-2 Foster a rich mix of uses in all neighborhoods, while allowing differences in emphasis on uses to distinguish between them.
- 3.3-G-1 Provide a range of housing opportunities suitable for urban environments and accommodating a diverse population.
- 3.4-G-1 Continue to promote the production of affordable housing in all of downtown's neighborhoods and districts.
- 3.4-G-3 Increase the supply of rental housing affordable to low income persons.
- 6.5-G-2 Reinforce the evolving high-intensity Market Street corridor.

SITE DESCRIPTION

The Project site is an approximately 60,000 SF premises located on the full block bounded by Market Street and Island, Seventh and Eighth avenues in the East Village neighborhood of Downtown. The site generally slopes down in elevation from the northeast to the southwest by approximately seven feet of elevation change. The site is currently occupied by a surface parking lot and a three-story structure commonly known as the Clermont Hotel located at the southwest corner of the site. The Clermont Hotel currently contains 53 single-room occupancy (SRO) units and is designated as a local historic resource listed as Historic Resources Board Designation Number HRB SR 509. Surrounding land uses include:

North – Low-Rise Residential; Surface Parking Lot
South – High-Rise Office (Sempra Energy Building)
West – High-Rise Residential (Alta); Existing Low-Rise Commercial, Future 22-Story Hotel
East – High-Rise and Low-Rise Residential (The Mark)

The land use district for the site is Employment/Residential Mixed-Use (ER). This district provides synergies between educational institutions and residential neighborhoods, or transition between the Core district and residential neighborhoods. A variety of uses are permitted in this district, including office, residential, hotel, research and development, educational, and medical facilities.

Two overlay zones apply to this Project site. The Commercial Street (CS) Overlay and the Limited Vehicle Access Overlays apply to the Market Street frontage only. The CS Overlay requires a minimum 60% active commercial uses along Market Street, while the Limited Vehicle Access Overlay prohibits curb cuts on Market Street unless driveway access is not feasible on adjacent streets due to lot size, lot configuration, or other significant factors.

PROJECT DESCRIPTION

This Project proposes the construction of 39-story and 19-story towers (approximately 475 feet and 227 feet tall, respectively) and is comprised of 218 DUs (34 affordable units, 125 market-rate apartments, 59 hotel-branded condominiums); approximately 156,000 SF of office space; a proposed 153-room hotel with a ballroom and 20th-level restaurant/bar; an estimated 40,000 SF retail space for a grocer; and, 887 automobile parking spaces including a minimum of 200 public

parking spaces. Five levels of subterranean parking and three levels of above-grade parking are proposed with all public parking spaces being located in the above-ground levels.

The following is a summary of the Project (based on drawings dated April 4, 2016):

Site Area	60,136 SF		
Base Minimum FAR	3.5		
Base Maximum FAR	6.0		
Maximum FAR with Amenity Bonuses	10.0		
Maximum FAR with Affordable Housing Bonus	12.1		
Proposed FAR	11.43		
Above Grade Gross Floor Area	687,128 SF		
FAR Bonuses Proposed	2.25 – Public Parking 1.42 – 15% Affordable Units 1.0 – LEED Silver 0.5 – Urban Open Space 0.5 – 10% 3-Bedroom Units		
Density	158 DU per acre		
Stories / Height	19 stories / 227 feet and 39 stories / 475 feet		
Amount of Commercial Space	39,597 SF		
Amount of Office Space	155,940 SF		
Housing Unit and Bedroom Count /Average Size	#	Range	Average
Total Number of Housing Units	218		
Studio	24	472 SF to 563 SF	501 SF
1 Bedroom	64	577 SF to 1,414 SF	732 SF
2 Bedroom	97	841 SF to 2,083 SF	1,327 SF
3 Bedroom	33	1,200 SF to 2,350 SF	1,517 SF
Number of Units to be Demolished	N/A		
Number of Buildings over 45 Years Old	1 (Clermont Hotel to be retained)		
Inclusionary Affordable Housing Compliance	Inclusionary Affordable Housing will be provided on-site with 34 affordable units.		
Automobile Parking			
Market-Rate Residential (Required / Proposed)	191 (1 per DU + 1 per 30 DU for guests) / 298 ¹		
Affordable Residential (Required/Proposed)	23 (per formula of SDMC Table 142-05D) / 23		
Retail (Required / Proposed)	40 (1 per 1,000 SF of retail) / 41		
Office (Required / Proposed)	234 (1.5 per 1,000 SF of office) / 243		
Hotel (Required / Proposed)	46 (0.3 per guest room) / 46 ²		
Public Parking (Required/Proposed)	200 ³ /229		
Motorcycle Parking (Required / Proposed)	38 (1 per 20 DU; 1 per 20 parking spaces for retail, office, hotel, and public parking) / 55		
Bicycle Parking (Required / Proposed)	71 (1 per 5 DU; 1 per 20 parking spaces for retail, office, hotel, and public parking) / 124		
Common Indoor Space (Residential)			
Required	500 SF		
Proposed	3,120 SF		

Common Outdoor Open Space (Residential)	
Required	12,027 SF
Proposed	15,014 SF
Private Open Space (Balconies and Decks)	
Required	50% of DU (with 40 SF minimum)
Proposed	68% of DU
Pet Open Space	
Required	100 SF
Proposed	200 SF
Residential Storage	240 cubic feet per DU
Assessor's Parcel Nos.	535-112-01 to -03; 535-112-05 to -11
Sustainability	LEED Silver

1. Plus additional tandem spaces for a total market-rate residential total of 412 spaces. The tandem spaces provide 221 extra spaces above the required 191 market-rate residential spaces.
2. Valet-parked tandem spaces
3. A minimum of 200 public parking spaces was required under the RFP

PERMITS REQUIRED

- CCDP with Design Review approval by the CivicSD Board of Directors for construction of more than 50 DU, 100,000 SF of gross floor area, and 85 feet in height.
- CCPDP is required for deviations from the CCPDO to provide flexibility in the application of development regulations for projects where strict application of these regulations would restrict design options and result in a less desirable project. The deviations being requested for this Project are from the following development regulations:
 1. On-site Tower Separation;
 2. Minimum Streetwall Height; and,
 3. Allowing valet parking for hotel tandem parking spaces.
- NUP is required for the proposed Comprehensive Sign Plan.

Per San Diego Municipal Code (SDMC) Section 112.0103, when an Applicant applies for more than one permit for a single development, the applications shall be consolidated for processing and shall be reviewed by a single decision maker. The decision maker shall act on the consolidated application at the highest level of authority for that development, and the findings required for approval of each permit shall be considered individually. The decision-maker for this Project will be the CivicSD Board of Directors in accordance with a Process Three review. The decision of the CivicSD Board may be appealed to the Planning Commission.

DESIGN REVIEW

This Project is a full-block mixed-use development comprised of a 19-story office tower located at the southeast corner of the site and a 39-story residential/hotel high-rise tower located at the northwest corner of the site. A six-story, mid-rise podium element and the existing Clermont Hotel constitute the remainder of the Project site. The entire site would be developed with exception of the historic Clermont Hotel. The existing Clermont Hotel structure and all existing

53 SRO units would be retained and its exterior rehabilitated. Habitation of the SRO units will continue during construction of the Project. City Historic Resources Board staff are currently reviewing the proposed exterior alterations to the Clermont Hotel.

The Project proposes a “vertical city” concept that includes a variety of uses spread across a number of floor levels within the Project. The building’s massing allows for a series of roof decks that allow for recreational and open spaces for the different uses.

Five levels of subterranean parking and three levels of above-grade parking will be provided by the Project. Above grade parking (including all of the proposed public parking) will be completely encapsulated and enclosed by a combination of DUs on levels three through five, an escalator atrium, and an exterior metal panel system. Vehicular ingress/egress to the Project’s above and below-grade parking is provided via driveways on both Seventh and Eighth avenues. An Urban Open Space measuring approximately 6,000 SF will be provided at southeast corner of the Project site at the intersection of Eighth and Island avenues. Open space for multiple uses and other Project amenities can be found on the sixth level, while a hotel terrace can be found on the 20th level and residential open space on the 28th level.

The following analysis will examine each building component:

Overall Massing/Neighborhood Context

The Project is located in an area of the East Village that has already experienced growth including the construction of a number of high-rise structures, with the potential for more high rises that could be developed on underutilized sites in the immediate Project vicinity. The Project’s 39-story, 475-foot-tall residential-hotel tower will be located at the northwest corner of the site roughly aligning with existing residential high-rise structures to the east (The Mark at 375 feet in height) and to the west (Alta at 285 feet in height). A 280-foot hotel is also proposed on the block directly to the west of the Project site at the northwest corner of Seventh and Island avenues. The proposed 19-story, 227-foot-tall office tower located at the southeast corner of the Project site will align with the existing 230-foot-tall Sempra Office Tower to the south.

The proposed height of the northwest tower at approximately 475 feet in height and the Project’s overall FAR, achieved through a number of FAR Bonus provisions and FAR exemptions, will be more typical of development located in the Core district, such as along the B Street corridor, where maximum FARs are greater. Given that the Project will be taller, and developed to a greater intensity than existing development, staff requested the preparation of a massing model of which pictures are included on the last page of the attached plans. The massing model demonstrates the Project’s contextual relationship with the surround neighborhood. Staff feels that the Project is consistent with neighborhood.

Towers

Two of the primary focal points of the Project are two towers that anchor both the Seventh Avenue and Market Street corner (northwest) and the Eighth Avenue and Island Avenue corner (southeast). The tower proposed at the northwest corner of the project site will contain a number of uses including the market-rate apartments on levels 7-19, the hotel rooms on levels 20-27, and

the condo units on levels 28-39. The north, east, and west elevations of the northwestern tower are largely defined by a regular pattern of architectural concrete with the introduction of glass curtain wall that provides further articulation and forms on these facades. The south elevation of the tower is primarily expressed by a glass curtain wall system. Elements such as balconies and pre-cast concrete surrounds at select levels have been introduced to break-up the massing and provide further interest. The tower is capped with a mechanical level that is differentiated from the remainder of the tower through both materials and form. The top level at the north elevation is proposed to contain tenant signage for the hotel (subject to the proposed Comprehensive Sign Plan), while the south elevation features a unique design where the facade has been cut-away to provide an opening where vertical wind turbines will be installed, as well as tower signage. The cut away areas would be clad in a rain screen panel system that simulates a wood grain finish.

The tower is proposed to rise from the ground to the top of the tower without setbacks from both adjacent street frontages. The CCPDO requires towers to be setback a minimum of 15 feet from any property line adjoining a public street. One elevation can be exempt by right, with a second elevation permitted as an exemption through the Design Review process if the resulting tower design is improved and does not result in massing inconsistent with the neighborhood. While the existing residential towers to the west and east (Alta and the Mark, respectively) exhibit stepbacks required under previous regulations, staff recommends that the proposed setbacks are appropriate as they result in a vertical tower with two different facade articulations compatible in scale and massing with the surrounding neighborhood. The stepback regulations were changed in 2006 to allow towers to be “grounded” as this design proposes.

The overall tower dimensions and form of the 39-story tower largely remains the same as the tower rises from ground; however, starting at level 30, and extending to the top of the tower, the east-west tower dimension increases from 130 feet to 141 feet with the extra 11 feet being added to the eastern side of the tower. The CCPDO allows a maximum east-west tower dimension of 130 feet. The Project requires a deviation from this standard to allow the additional east-west tower dimension; **however, the Applicant has elected to utilize the provisions of the California State Density Bonus Law to seek relief from the tower dimension development standard via a development incentive. By providing 10% of the total number of units at low-income [income less than 65% area median income (AMI)], this project qualifies for the California State Density Bonus Law provisions which at this level of affordability includes a 35% density bonus and one incentive.**

Per SDMC Section 143.0740, an incentive may be requested by the Applicant that meets the applicable requirements of Sections 143.0720 and 143.0725. The Applicant shall be entitled to incentives pursuant to Section 143.0740 unless the City makes a written finding of denial based on substantial evidence. In its analysis of the incentive request, Civic staff has concluded that the findings for denial of the incentive request cannot be made, and therefore, the incentive request for the east-west tower dimension is a valid request.

While the tower design does not require a PDP Deviation, it is subject to Design Review approval. The Downtown Design Guidelines (DDGs) stipulate that the upper 20 percent of any tower should achieve an articulated form and composition by means of architectural techniques such as layering, material changes, fenestration pattern variation and/or physical step-backs. The DDGs also note that actual reductions of floor areas and/or recessed balconies can assist this

composition goal, but are not required. It should be noted that both The Mark and the Alta towers exhibit 150-foot wide towers, but also exhibit reduced floor plates at the upper floors (see Attachment D for a photo exhibit of existing tower tops on Market Street).

The 19-story tower located at the southeast corner of the site will contain the office component of the Project on levels 7 to 15 of the tower and will contain the hotel terrace on its rooftop. Three of the tower's elevations (north, east, and south) feature a glass curtain wall system with vertical bands of spandrel glass that provides verticality to the facades and helps break-down the mass of the facades. Metal panel surrounds have been introduced as framing elements on the edges of these elevations, while office terraces have been included on the east elevation to provide interest and differentiate the east elevation so as to announce that it is the primary elevation of the tower. The west elevation facing the open space on roof of the podium has been differentiated from the other three elevations. This elevation will incorporate the architectural concrete surrounds commonly found on the taller tower on the majority of the west facade, while the curtain wall system found on the other three facades will make up a portion of the elevation.

The 19-story tower will rest on top of the 40-foot-tall arcade found at the southeast corner of the site, which will also contain the proposed 6,000 SF Urban Open Space. A 15-foot setback will be maintained from the Island Avenue frontage for the entire vertical expanse of the tower, while the tower will be located at the Eighth Avenue property line as it rises from the arcade. The exterior expression of the top floor mechanical level has been differentiated from the rest of the tower through changes in materials in the curtain wall system on the north, east and west elevations. Like the taller tower, the south elevation of the top floor has been shaped and recessed. Signage for the office has been proposed in this recessed area as part of the Comprehensive Sign Plan.

The Project's two towers are connected starting at level 19 of the northwest tower forming a "window" between the bottom of the connecting floor level and the top of the podium level. The resulting design of this connection would be unique to the San Diego skyline. Structural trusses are located at the first level of the connection at level 19 providing support for the above levels. The trusses are enclosed and screened from view. Levels 20/21 (double-height level) of the connecting volume provides direct access to the hotel roof deck on the southeast building from the hotel restaurant/bar/lounge located in the 20th level of the northwest tower. Levels 22 through 27 contain hotel rooms, while the rooftop on the connecting level, located at the 28th level of the northwest tower, contains residential outdoor open space that is directly accessible from interior condo amenity space. The CCPDO requires a minimum 60-foot tower separation both horizontally and vertically on sites greater than 50,000 SF or more. This connecting volume requires a deviation from the tower separation standard.

Podium/Mid-Rise

A six-story, mid-rise, podium element serves as a connecting element to the two proposed towers. The podium will contain a variety of ground-floor uses that will be further detailed in this report, a retail space for a grocer on the second level, affordable housing on levels 3-5, and 229 above-grade public parking spaces. The podium roof level contains outdoor amenity decks for both the apartments and the hotel. Under the CCPDO, above-grade parking levels must be encapsulated on at least 50% of the facades facing public streets. The affordable housing units

are proposed to wrap the above-grade parking on the west podium elevation and a majority of the north podium elevation in order to meet this requirement. An open, five-story escalator atrium that provides access to both the grocery area and the public parking area will also encapsulate the parking on levels 3 to 5. The five-story escalator atrium will be a prominent visual feature of the podium's northeast corner. The remainder of the podium elevations would be clad in an articulated metal panel system that would provide interest and shadow on the podium facades.

Through a combination of the aforementioned podium building areas and the metal panel enclosing elements, the above-grade parking will be completely encapsulated and enclosed. The enclosure of the above-grade parking areas will minimize light and noise affects as the above-grade parking relates to surrounding residential uses. **The applicant will be presenting further design enhancements to the metal panel system located on the southerly elevation above the Clermont Hotel and along the Seventh Avenue frontage per the previous design direction of the Committee. The design enhancements will be presented at the Civic Board Hearing of July 27, 2016.**

Additionally, the CCPDO requires a minimum 45-foot-tall street wall for the Project. As proposed, a notch measuring 18 feet wide by 18 feet deep on the Eighth Avenue podium near the center of the block contains a street wall height of 31.5 feet due to the location of a garage intake vent. The proposed street wall height of 31.5 feet requires a deviation. Staff believes that this deviation request can be supported given that it solves a practical ventilation issue, and furthermore, the street wall experience will not be affected by the deviation.

Street Level

Market Street is a Commercial Street requiring 60-percent active commercial uses along its frontage. The ground floor will be activated by gracious ground floor heights over 20 feet in height and by the proposed uses including the grocery lobby/retail area, an 850 SF commercial retail space, the residential apartment lobby and the condo lobby. A garage intake vent has been proposed at a prominent ground floor location at the intersection of Seventh and Market. Staff will not be supportive of the proposed garage intake vent location given its prominence adjacent to the public sidewalk and requests that it be relocated at a higher elevation. Similarly, garage intake and exhaust vents should generally be located at least 8-10 feet above any adjoining sidewalk. The Applicant has indicated that this garage intake vent will be moved to a more appropriate location that staff will be able to support.

The Eighth Avenue frontage contains the hotel lobby, the office lobby, a combined driveway entrance to the sub-grade and above-grade parking, and the 40-foot-tall recessed arcade that will be located at the southeast corner of the building housing the proposed Urban Open Space. The Urban Open Space will wrap the southeast corner and occupy approximately half of the Island Avenue frontage with the existing Clermont Hotel occupying the remainder of the frontage. The Seventh Avenue frontage is largely occupied by hotel uses including a hotel entrance and the hotel ballroom, as well as two loading bays and the above and below-grade parking exits.

The loading bay curb cuts (measuring 26 feet wide and 24 feet wide, respectively) and the parking exit curb cut (measuring 23 feet wide) are grouped together with 10-foot separations between each curb cut forming a larger vehicle access area that measures approximately 94 feet

in length. The CCPDO stipulates that curb cuts on the same parcel must be separated by at least 80 feet, with the exception of a curb cut to provide access to an off-street loading bay, which may be closer than 80 feet if the widths of both curb cuts are minimized to the extent possible. At its previous meeting, the Committee generally concluded that the proposed grouping of the loading curb cuts and the vehicular egress curb cut was acceptable given the site constraints.

Urban Open Space

The Applicant is proposing to incorporate an approximately 6,000 SF at-grade Urban Open Space at the southeast corner of the site at Eighth and Island avenues within a recessed 40-foot-tall arcade area (the office building floors cover approximately 78% of the Urban Open Space). Although 78% of the Urban Open Space will be covered, the largely south-facing space with a 40-foot-tall covered height is expected to receive sunlight throughout the day. The CCPDO requires a minimum 45-foot street wall containing habitable space along 100% of the street frontage, but allows exceptions to this requirement for Urban Open Spaces designed consistent with the Urban Open Space guidelines in the DDGs. Improvements and paving utilized in the on-site Urban Open Space will also be carried-out into the adjacent ROW. The paving would consist of irregular bands of alternating light and dark paving that would run roughly parallel to each other. Distinctive landscaping/seating installations, as well as seating areas for the public and adjacent cafe space have been provided in the proposed Urban Space Area.

The improvements within the urban open space are intended to be evocative of the natural San Diego landscape. The key feature and focal point of the plaza will be a significant feature named "The Big Green Wave". This feature will be a large-scale vine and planting topiary feature that will also include seating along its perimeter. Seating within the plaza will be both fixed and moveable seating. The café tables and chairs will be moveable seating pieces, while fixed seating will be located along the landscaping installations and on benches scattered throughout the space that would also be wave-like in design. Columns within the urban space would be clad with abstract, but realistic artificial tree trunks that are intended to be reminiscent of trees found in local montane areas. Please reference Pages L1.1, L1.6, L1.7, and L1.8 of the attached plan set and the attached Architectural Narrative (Attachment B) for further details.

Comprehensive Sign Plan

The purpose and intent of the Comprehensive Sign Plan is to allow some flexibility to the signage regulations, provided the modifications are complementary to, and in scale with, the buildings on which they are placed. Related to the proposed signs in the Project, the CCPDO limits signage on residential buildings to 65 feet above the sidewalk. Logos may not be used on the upper tower of a building where more than 50 percent of the building is for residential use. The upper towers of non-residential buildings measuring between 126 feet and 240 feet in height may contain a logo with a maximum area of 75 SF and lettering limited to four feet in height on opposing sides of the building. Towers taller than 240 feet may contain signs up to 100 SF with lettering limited to five feet. High-rise signage may not occupy adjacent tower facades. For purposes of applying the sign regulations to the Project, the northwest tower is considered a residential building, while the southeast tower is considered a non-residential building.

The proposed signs on both towers will not comply with the aforementioned tower signage regulations of the CCPDO and will require relief from the typical standards via a Comprehensive Sign Plan. The following table contains sign areas, dimensions, and numbers of high-rise signs on nearby projects that required approval of Comprehensive Sign Plans in addition to information on the proposed high-rise signs of the Project.

Project	CCPDO Sign Allowances for Towers	Sempre	Diamond View Tower	7 th & Market (Proposed 39-Story Tower)	7 th & Market (Proposed 19-Story Tower)
Logo Height	1) 4' on non-residential tower 126'-240' tall 2) Not permitted on residential tower	7'-5"	N/A	10' north elevation only	10' both elevations
Letter Height	1) 4' on non-residential tower 126'-240' tall 2) 5' on tower 240' or more in height	4'-5"	5'	5' both elevations	5' both elevations
Max Overall Size Per Sign	1) 75 SF on 126'-240' tall tower 2) 100 SF on tower 240' or more in height	200 SF	150 SF	450 SF north elevation/285 SF South elevations	300 SF max south elevation/remainder on east elevation
Max Number of High-Rise Signs	Allows signs on opposite sides of tower	2 (Opposite Sides of Tower)	3	2 (Opposite Sides of Tower)	2 (adjacent tower facades – south and east)
Max Allowed Total Area	1) 150 SF on non-residential tower 126'-240' tall 2) 200 SF on tower 240' or more in height	400 SF	400 SF	735 SF (Requested)	400 SF (Requested)

The remaining proposed signage located at the podium level is subject to the SDMC regulations for signs and will need to comply with the SDMC regulations. The Comprehensive Sign Plan proposal may be found on pages A8.2-A8.5 of the attached plan set.

As previously mentioned, the Committee was generally in support of the tower signage on the northwest tower and was not in support of the proposed signage on the southeast tower that featured 550 total SF of tower sign area without a prospective tenant. The 7th & Market office tower and the Sempra tower are approximately the same height, while the Sempra building contains larger roof dimensions (approximately 117 feet by 175 feet) than the 7th & Market office tower (100 feet by 135 feet). The Applicant has revised the office tower tenant signage so that a maximum of 400 SF of tower sign area may be proposed on the office tower. The Applicant has also proposed that the south elevation could contain up to 300 SF of sign area with the remainder of the sign area would be located on the east elevation.

The Downtown sign regulations are intended to encourage attractive tower architecture while minimizing large signs. Staff believes that the number and size of the proposed signs appears consistent with this goal and with similar signage approved for commercial buildings in the neighborhood.

Sustainable Design

The Applicant has proposed a LEED Silver Certification in order to earn an FAR bonus of 1.0. The LEED Silver level will optimize energy performance, provide enhanced building commissioning prior to occupancy verifying building performance, providing green power to the residents, and use low emitting and recycled content materials in the construction.

CCDP

Findings

1. *The proposed development is consistent with the DCP, CCPDO, SDMC, and all other adopted plans and policies of the City of San Diego pertaining to the CCPD.*

The proposed development is consistent with the DCP, CCPDO, SDMC, and all other adopted plans and policies of the City of San Diego pertaining to the CCPD as the development advances the goals and objectives of the DCP and CCPD by:

- Providing for an overall balance of uses;
- Adding to the range of Downtown housing opportunities;
- Contributing to the vision of Downtown as a major residential neighborhood;
- Increasing the Downtown residential population;
- Providing the production of affordable housing;
- Reinforcing the evolving high-intensity Market Street corridor; and,
- Continuing East Village's evolution as a thriving high-intensity residential and mixed use neighborhood.

In addition, with approval of CCDP/CDP No. 2015-73, this Project will be consistent with the requirements of the SDMC and CCPDO.

CCPDP

The purpose and intent of a CCPDP is to allow applicants to request greater flexibility from the strict application of the development regulations of the CCPDO, provided such deviations result in the implementation of a unique and superior design. The findings for approval of a CCPDP listed below are evaluated to determine if the proposed deviations facilitate development that is beneficial to the community and results in a more desirable project than could otherwise be achieved if the project were required to rigorously adhere to the development regulations.

Deviations

This Project is proposing the following deviations from applicable development regulations:

1. CCPDO 156.0310(d)(3)(C) Tower Separation: Within a single development, towers shall be separated by a minimum of 60 feet for sites of 50,000 SF or more.
2. CCPDO 156.310(d)(1)(D) Streetwall Height: A minimum street wall height of 45 feet must be provided within five feet of a property line adjoining any street.
3. CCPDO 156.0313(k)/SDMC 142.0555(b): Permitting valet tandem parking to meet the minimum required parking for commercial uses other than for employee parking, valet parking associated with restaurant use, and for bed and breakfast establishments.

Findings

In order to grant approval of a CCPDP, the following findings must be made:

1. *The proposed development will not adversely affect the applicable land use plan;*

The proposed Project is generally consistent with the objectives of the DCP, CCPDO, and the DDGs in that the Project provides a well-designed mixed-use development that is consistent with the orderly growth and scale of the neighborhood. The requested deviation for tower separation will add a unique, signature tower feature to the San Diego skyline via the connecting portion of the Project between the two towers and will move building massing towards the center of the Project site. The streetwall deviation allows for a practical garage ventilation solution, and furthermore, the deviation is not anticipated to affect the streetwall experience on Eighth Avenue. Permitting valet tandem parking for the hotel use will allow for more efficient car parking within the Project and maximizes the amount of public parking that can be provided by the Project. These requested deviations will provide relief from the strict application of the development standards and will have a negligible impact on the surrounding neighborhood.

2. *The proposed development will not be detrimental to the public health, safety, and welfare;*

The granting of the deviations and approval of the Project will not negatively impact the public health, safety, and general welfare. Overall, the proposed development is consistent with the plans for this neighborhood and will contribute to its vitality by providing an attractive streetscape and a contextual development.

3. *The proposed development will comply to the maximum extent feasible with the regulations of the CCPDO; except for any proposed deviations which are appropriate for this location and will result in a more desirable project than would be achieved if designed in conformance with the strict regulations of the CCPDO; and,*

The proposed development will meet all of the requirements of the SDMC and CCPDO with the approval of the deviations, which are allowable under a CCDP. The requested deviations will result in a more desirable project than would be achieved if designed in

conformance with the strict regulations of the CCPDO. The tower separation deviation will allow for a signature tower feature. The streetwall deviation will allow for the appropriate location of garage ventilation, while not affecting the streetwall experience on Eight Avenue. The hotel valet tandem parking deviation will allow for further parking efficiency within the Project. With approval of the CCPDP for these foregoing deviations, the Project will comply to the maximum extent feasible with all applicable regulations.

4. *The development is consistent with the Downtown Design Guidelines (DDG) and exhibits superior architectural design.*

Approval of the requested deviations will result in a mixed-used development consistent with the surrounding area and the DDGs. The mixed-use Project exhibits appropriate massing in scale with the long-term development plans for the East Village neighborhood, and furthermore, will add a unique form on the Downtown skyline. Overall, the Project will result in a distinctive development compatible with the surrounding neighborhood that exhibits superior architectural design.

NUP – Comprehensive Sign Plan

Per SDMC Section 141.1103, Comprehensive Sign Plans may be permitted with a Neighborhood Use Permit.

Findings

In order to grant approval of a Comprehensive Sign Plan, the following findings must be made:

1. *That the proposed sign, as a whole, is in conformance with the intent of the sign regulations and any exceptions result in an improved relationship among the signs and building facades on the premises;*

The proposed signs, as whole, are in conformance with the intent of the sign regulations, suitable for the location, and do not interfere with the existing design of the building. The requested sign areas and placements are proportional to the heights and widths of the towers on which they will be placed and are consistent with other high-rise signage in the surrounding neighborhood. The proposed signage is designed in a fashion that maintains a balanced relationship with the architecture of the building so as to not detract from the Project design.

2. *That the proposed use will not adversely affect the applicable land use plan;*

The proposed Comprehensive Sign Plan is located within the ER Land Use District of the DCP area. High-rise building identification signage within this land use district is permitted through a Comprehensive Sign Plan with approval of an NUP and typical of high-rise office and hotel buildings in order to identify major tenants. Therefore, the proposed Comprehensive Sign Plan does not adversely affect the applicable land use plan as the proposed use with approval of an NUP is consistent with the regulations of the CCPDO.

3. *That the proposed use will not be detrimental to the public health, safety and welfare; and,*

The proposed Comprehensive Sign Plan will not be detrimental to the public health, safety, and welfare of the community when installed in compliance with the recommended conditions of approval, which include size limitations and additional standard conditions to ensure that the use is compatible with the surrounding neighborhood.

4. *That the proposed use will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.*

The proposed use will comply to the maximum extent feasible with the regulations of the CCPDO and City of San Diego Land Development Code with approval of an NUP, including obtaining all additional applicable permits as required by the City of San Diego Development Services Department.

ENVIRONMENTAL REVIEW

Development within the Downtown Community Planning area is covered under the following documents, all referred to as the “Downtown FEIR”: Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Centre City Redevelopment Plan, certified by the former Redevelopment Agency (“Former Agency”) and the City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively); subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115); and, the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561). Development within the Downtown Community Planning area is also covered by the City of San Diego FERI for the Climate Action Plan (“CAP FEIR”) certified by the City Council on December 15, 2015 (City Council Resolution R-310176) and Addendum to the CAP FEIR certified by the City Council on July 12, 2016. The Downtown FEIR and CAP FEIR are both “Program EIRs” prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. Consistent with best practices suggested by Section 15168, a Downtown 15168 Consistency Evaluation has been completed for the project. The Evaluation concluded that the environmental impacts of the project were adequately addressed in the Downtown FEIR and CAP FEIR, the project is within the scope of the development program described in the Downtown FEIR and CAP FEIR, and that none of the conditions listed in Section 15162 exist; therefore, no further environmental documentation is required under CEQA.

CONCLUSION

Staff recommends that CivicSD grants Design Review approval and approves CCDP/PDP/NUP No. 2015-73 for the Project.

Respectfully submitted,

Concurred by:



Aaron Hollister
Senior Planner



Reese A. Jarrett
President



Brad Richter
Assistant Vice President, Planning

Attachments: A – Ownership Disclosure Statement
B – Architectural Narrative (provided by Applicant)
C – Applicant’s CCPDP Findings
D – Photo Exhibit of Existing Tower Tops on Market Street
E – Draft Permit CCDP/PDP/NUP No. 2015-73
F – Draft Resolution No. 2016-17
G – DCP/CAP FEIR Consistency Evaluation
H – Public Correspondence
Basic Concept/Schematic Drawings dated April 4, 2016

PROJECT CONCEPTUAL DESIGN NARRATIVE:

The San Diego downtown skyline will be adding a new iconic structure with the 7th & Market development in the East Village. Our 7th & Market project is a true mixed-use development combining market rate and affordable housing, retail, office and public spaces, restaurants, a 5 star hotel, and public and private parking. The 40-story, 1.16 million square foot project integrates itself into the urban fabric of downtown San Diego while enhancing the residential experience and energizing the pedestrian activity by offering functionality and luxurious options.

The vision Cisterra Development has for the project is that of a tower "...that will be a dynamic contribution to the surrounding community; a strong addition to the affordable housing network of San Diego, a creator of jobs, both short term and long term, and a magnificent jewel within the fabric of the city." Along with the exciting tower massing that downtown has not yet experienced, the 7th & Market tower will incorporate sustainable design practices, and thoughtful design elements that enhance the existing cityscape.

This unique project ties the East Village, Ballpark District, and Gaslamp Quarter as no other site can. The project offers a destination where one can live, work, and play. Construction is expected to start in early 2017 with completion in late 2019.

Urban Context & Connections

The full city block development which borders the Ballpark District, East Village, and the Gaslamp quarter is one of the many projects that are working towards Civic San Diego's goal of having 90,000 residents in Downtown San Diego within the next 15-20 years. The development will energize the community on all corners of the block. Along 7th Street are the entrances to the Ritz Carlton, hotel ballrooms, drop off areas, and multiple loading docks. The existing Clermont Hotel at the corner of 7th & Island is also included in the project and will be revitalized. Along 8th Street are entrances to the above and below grade parking, the office lobby, the 6,000 square feet public open space, and the main entrance to the Ritz Carlton Hotel. The Whole Foods Market entrance and another retail space will take up 60% of the street level frontage along Market Street which will also include entrance lobbies for the apartments and condominiums. Hotel event guests are planned to enter on 8th Street and exit on 7th Street to minimize disruptions within the main lobby.

Architecture

The importance of good design is not only intended to enhance the project and the city, but should also incorporate itself into the urban context. 7th & Market responds to this by integrating thoughtful designs of building massing and relating well to the size of surrounding buildings. For example, the office tower height matches closely with the Sempra HQ and then steps up with the residential tower relating well to the Alta and the Mark. The stepped form creates an activated 5th side (occupied roof terraces) to the project that neighbors will enjoy viewing immensely.

At various levels, the lines of the residential tower also relate to the neighboring building heights which create a chiseled look that is proportionate to the skyline. Strong architectural expressions that captivate the skyline are seen in the use of a simple palette of glass, metal panels, concrete, and simulated wood panels.

Within the project, the Street level spaces are grand with a ceremonial presence consisting of a 50' tall entry to the Ritz Carlton, a 32' tall office lobby, a phenomenal 5 story glass atrium that connects the Whole Foods Market to the public parking levels, and 18' tall residential lobbies and pre-function/ballroom spaces that captures daylight and views from the adjoining streets.

Acting as a monumental cornerstone, the podium is clad with a patterned façade of shaped metal and glass panels that unifies the form around all four sides of the site. With the connection of the upper towers, a unique urban window is created that allows great porosity and becomes the centerpiece of the entire project.

Program

The project includes 10 distinct uses (as noted above in the project description) that are woven together seamlessly. The massing concept of 7th & Market is creates an elegant composition that is also extremely efficient and functional which benefit the residents, the public, and the city. The synergies of all of the components of the tower maximize the area of a typical downtown site with an 11.42 Floor Area Ratio (FAR). The design maximizes space without compromising integrity of the design and concept. Each component of the tower has defined spaces that are exclusive to residents, hotel guests, employees, and the public. The differing levels of activity in the “Vertical City” seem as if you are in completely different places with each neighborhood. Our proposed comprehensive signage package brands the different building uses appropriately for each major tenant.

Residential

The mix of market rate apartments, affordable housing, and condominiums address the needs of Downtown San Diego while promoting quality living spaces that effectively connect with the surrounding urban environment through high-quality architectural design. Expansive roof terraces are located on levels 6 and 28 that provide exterior common space for group usage, and balconies (50% of units) provide private spaces for residents to enjoy the San Diego climate.

Office Space

The open plan with floor to ceiling glass and curtain walls allow tenants to take an open approach with office planning. Access to exterior balconies on each floor will allow residents to view captivating vistas of Petco Park/Bayfront which makes this office tower very noteworthy. The location is also very close to the newly finished Sempra Headquarters which gives office tenants the option to network easily.

Retail

Gourmet grocer Whole Foods Market has a large rectangular lease space (39,792 sf) that is very flexible in layout. Wide escalators and 3 oversized elevators will whisk patrons up from the Street level into the 2nd level store. Also planned are two boutique retail spaces (one on Market Street, one adjacent to the Office Tower lobby).

Open Space

The 6,000 square feet of open space at the Street level adds a series of experiences for residents and the public. The abstract landscape dotted with public art is intended to bring a certain artist vibe to the area. An important aspect of the project is how the Office Tower building is lifted 40’ above the urban plaza to give it partial cover while providing great daylighting and view. The adjacent sidewalk bulb-out visually enlarges the plaza as well.

Hotel

The 153 room Ritz Carlton hotel is very efficient in its layout. The 22 keys per floor, 5 corner suites, and large guest room sizes will enhances the visitor’s experience greatly. Valet parking will be provided to make the check in/out process far quicker as well. The hotel will have a large landscaped roof terrace (that is shared with apartments) on

level 6 for events and family use. The hotel's sky lobby and adjacent roof terrace on level 20 will have a signature restaurant that will quickly become a landmark destination in downtown San Diego.

Landscape Design

The landscape architecture design for this development is a mix of standard features and specialty experiences that will further enhance and compliment the building and the surrounding neighborhood. The Streetscapes along 7th Street, Market Street, 8th Street and Island Street adjacent to the development largely follow the Civic San Diego Streetscape Guidelines.

The corner plaza is conceived as an inviting social space that is distinctive and integrates plaza landscape with the new building and neighborhood. The surreal nature of the plaza design is intended to create a kind of "strange nature" in juxtaposition with the slick urbanism of downtown, while providing good social spaces and references to the landscape context of San Diego. Additionally, the corner plaza creates a new green space urban companion to the Sempra plaza/garden just to the south. These two exterior spaces create a unique pocket of open space within the East Village neighborhood that residents and workers will enjoy.

The key feature of the plaza and is called The Big Green Wave - a vine and planting topiary feature that effortlessly seems to roll down the back wall of the space and across the plaza space. The vine covered vertical screen provides an evergreen visual backdrop for the space and the undulating planting area floats through the plaza. Planting within this space will be a mixture of long grasses and California-friendly shrubs and groundcovers. The wave features have a sit-able edge around its perimeter. The sculptural form draws on surf culture and the landscape park tradition of rolling hills and vegetated backdrops like those found at Balboa Park. The plaza has been designed to integrate with the adjacent building spaces to visually extend the space and to provide "eyes" on the plaza. An organic shaped opening in the building wall opens into the adjacent café and provides secondary access, seating and visibility and activity at the lawn area.

The building columns as they come down to the plaza level will be clad with abstracted but realistic artificial tree trunks of the scale and majesty found in the local mountains. The tree trunks give a sense of wonder and humor to the space and recall the historic use of timber in early San Diego construction. Seating around the plaza is broken up into two categories. The first is loose seating and is located adjacent to the café area and drift out into the plaza. Loose furniture allows the users of the space to arrange and shift the pieces into a variety of social interactive layouts. The tables and chairs will be controlled by the café and protected at night. The second type is built-in seating. These seating areas are located long the big green wave edges and the protracted wave seating areas within the plaza.

Plaza paving is composed of alternating bands of light and dark gray paving that is linear but the bands are of variable width, not quite parallel and not uniformly regular. Like the tree trunk columns the paving extends from the outside plaza into the office lobby and café. The paving material would be a high quality architectural-grade cast-in-place concrete with a Terrazzo-like look with a honed surface inside the building and the outside plaza honed with an acid etch to give it the required "coefficient of friction" for public safety.

ENCROACHMENTS INTO PUBLIC RIGHT OF WAYS:

Below Grade Encroachments:

The project proposes several below grade encroachments into the adjacent ROWs. These encroachments vary in projection and depth which are described below:

1. Along the Market Street ROW, the outside face of the basement foundation wall will project horizontally into the ROW 12'3" (3'6" behind the curb line) which can be approved through the City Engineer's ministerial process. Vertically, the top surface of this encroachment will be approximately 10'6" below the existing sidewalk grade at the lowest point which meets SD City Council policy 700-18. This encroachment will extend down vertically to the bottom of the foundations below the B5 level (approximately 44'0").
2. Along the 8th Avenue ROW, the outside face of the basement foundation wall will project horizontally into the ROW 3'1-1/2" (10'10-1/2" behind the curb line) which can be approved through the City Engineer's ministerial process. Vertically, the top surface of this encroachment will be approximately 3'0" below the existing sidewalk grade at the lowest point which meets SD City Council policy 700-18. This encroachment will extend down vertically to the bottom of the foundations below the B5 level (approximately 52'0").
3. Along the Island Street ROW, the outside face of the basement foundation wall will project horizontally into the ROW 4'6" (12'6" behind the curb line) which can be approved through the City Engineer's ministerial process. Vertically, the top surface of this encroachment will be approximately 3'0" below the existing sidewalk grade at the lowest point which meets SD City Council policy 700-18. This encroachment will extend down vertically to the bottom of the foundations below the B5 level (approximately 52'0").
4. Along the 7th Avenue ROW, the outside face of the basement foundation wall will project horizontally into the ROW 11'0" (3'0" behind the curb line) which can be approved through the City Engineer's ministerial process. Vertically, the top surface of this encroachment will be approximately 9'6" below the existing sidewalk grade at the lowest point which meets SD City Council policy 700-18. This encroachment will extend down vertically to the bottom of the foundations below the B5 level (approximately 44'0").

Above Grade Encroachments:

The project proposes one above grade encroachment into the 8th Avenue ROW. The Hotel entrance marquee is angled out into the ROW and will meet building code (2013 CBC) requirements for architectural projections into ROWs. The top corner of the marquee projects approximately 10'6" horizontally into the ROW. The marquee starts projecting into the ROW at elevation +53'0". This 20' height above existing grade is well above both the 12'0" minimum required by the PDO, and the 15'0" height in the CBC that allows unlimited height for the projection. The smaller marquee on 7th Avenue is smaller in size and is planned to project into the ROW at 15'0" above grade so it meets the code requirements as well.

These permanent encroachments, once approved through the Development permit process, will be described and recorded in Encroachment Maintenance Agreements (EMA). Temporary encroachments for construction of these improvements (temporary shoring) will be described in Encroachment Maintenance Removal Agreements (EMRA).

DESIGNATED HISTORIC RESOURCE APPROACH:

**HRB Site #SR 509 – Clermont/ Coast Hotel,
501 7th Avenue, San Diego CA**

The Clermont/Coast Hotel (hereafter called the Clermont Hotel) For a more detailed description of this locally designated historic building, see the attached HRB designation document that describes the history of the building. It was determined to be historically significant per Criteria A (Social, Economic, and Cultural Community) and Criteria B (historical event – racial segregation). This building has been a residential hotel/ boarding house throughout it's entire history and it is proposed to continue to house that occupancy. It also has been noted by several historical experts that the exterior architecture is not particularly significant, especially since many façade elements have been removed. It is also important to note that since the interior was not considered historic, and that the residential use (affordable housing - SRO) is not planned to change; no significant new interior improvements are planned.

In developing the block's mixed-use, urban character; it was agreed by all parties to visually upgrade the existing Street facades. Through the life of the Clermont Hotel, some façade elements were removed (likely due to structural degradation) that reduced some of the historical aspects of the building. Our proposed rehabilitation approach is to add these historical elements back in a manner that respects the original Hotel's character.

Key exterior improvements are described below:

- The existing windows were replaced fairly recently to improve their thermal and acoustical performance. They are in good condition so they will remain in place. Originally, the windows were framed out with decorative wood surrounds that are no longer in place. New historically patterned wood surrounds will be added back around each window opening to more closely match the original façade's appearance.
- The plaster finish of the existing exterior walls is not the original cladding for the Hotel. As seen in an historic photo, the Hotel was clad with wood siding along 7th and Island Streets which was replaced with cement plaster at some point in the past. Our intent is to apply a new exterior layer of synthetic wood siding (more weather resistant) over the existing plaster finish that will match the original "clapboard" look. In terms of color, our intent will be to keep it as a similar value as indicated in the photo (light colored beige or gray).
- Originally there was a cantilevered sloped entry canopy along 7th Avenue that partially wrapped along Island Street as well. It was removed at some point, but no drawings that show how it was constructed are available. It is planned to recreate a similar canopy as part of the Hotel's exterior improvements based on historic photos.
- The existing metal fire escape over the main entry on 7th Avenue will remain in place. So the new exterior canopy construction will need to be built so that the fire escape can project down through it.
- A new building sign will also be put in place along the edge of the entry canopy to mimic the original hotel's sign based on historic photos.

- Originally the building had a projecting mansard roof/cornice element applied to the west and south facades. It was removed at some point, but no drawings that show how it was constructed are available. It is planned to recreate a similar cornice based on historic photos.
- To clearly identify where the Clermont Hotel building ends, the new south wall of the west podium structure will be held back 12" from the north interior property line of the Hotel. This visual gap will also provide needed seismic separation between the new and existing construction. Along the east interior property line, a similar gap will be created along the back of the proposed vertical green wall of the new urban plaza. These gaps will allow the West and South facades of the Clermont Hotel to be visually separated from new construction which historic rehabilitation standards encourage.

Also, the building is planned to remain occupied during the construction period of the adjacent development project. SRO type housing is in high demand downtown, so the intent is to keep the existing residents in place. Temporary protection will be provided to maintain safe egress and access at all times. The adjacent basement construction will require temporary shoring and underpinning along the north and east sides of the hotel structure. Existing ground elevations will be monitored closely to ensure that differential settlement of the hotel's foundation system is avoided.

As the project's design continues to develop, the façade detailing approach for the Clermont Hotel will be reviewed further with HRB staff. We also propose to have all demolition activities and the new façade construction be monitored by a third party historical architect.

**CIVIC SAN DIEGO
PLANNED DEVELOPMENT PERMIT
SUPPLEMENTAL APPLICATION**

The purpose of a Centre City Planned Development Permit (CCPDP) is to provide flexibility in the application of development regulations for projects where the strict application of the development regulations would restrict design options and results in a less desirable project. CCPDP's may be approved or denied by the Civic San Diego (CSD) Board of Directors at a publicly noticed hearing as part of the Design Review process. The CSD Board of Directors decision is appealable to the City of San Diego Planning Commission.

Project Name: 7th & Market Mixed Use Project

Address/Location: 580 8th Avenue

List ALL CCPDO development regulations (include relevant CCPDO sections) for which the project is seeking a deviation. Provide a separate sheet if necessary.

EXAMPLE: CCPDO Section 156.0310(a) - Minimum Lot Size and Minimum Lot Coverage

1. CCPDO Section 156.0310.d.3.C - Tower Separation
2. CCPDO Section 156.0310(d).(3).(B) - Maximum Tower Dimensions
3. CCPDO Section 156.0313.(l).(3) - Vehicular Access driveway separation
4. CCPDO Section 156.0314. (a).(3) - Sign area and letter size limitations are too small for proposed mixed uses
5. CCPDO Section 156.0313. (k) - Allows only regular parking spaces, propose to use 149 back tandem spaces in below grade #3
6. _____

Provide a brief description of reasons for requested deviations listed above. How will the strict application of development regulation(s) result in a less desirable project?

See attached description.

PLANNED DEVELOPMENT PERMIT FINDINGS

Under the CCPDO the following four findings must be made in order to approve a CCPDP. For each finding listed below, please explain how the application meets these findings:

1. The proposed development will not adversely affect the applicable land use plan;

See attached description.

2. The proposed development will not be detrimental to the public health, safety and welfare;

See attached description.

3. The proposed development will comply with the regulations of the CCPDO, except for any proposed deviations which are appropriate for this location and will result in a more desirable project than would be achieved if designed in conformance with the strict regulations of the CCPDO; and

See attached description.

4. The proposed deviations will result in a development exhibiting superior architectural design.

See attached description.

PRINT

S:\Planning\Current Planning\Current Application Forms\CCDP\2012 Application Forms\2012 Application Forms Word\2012. Planned Development Permit Supplemental Application.doc

Attachment 1

7th & MARKET MIXED USE PROJECT, 580-8TH AVE, SAN DIEGO Civic San Diego – Supplemental PDP Application – Detailed Responses

CCPDO – Section 156.0310, (d), 3, (C) Proposed Deviation #1:

Per the PDO, on sites of over 50,000sf, adjacent towers on the same site are required to be separated by 60'. CSD interprets the PDO's separation requirement vertically as well as horizontally. Our proposed design meets the horizontal separation at all occupied floors. At floor 20, the towers are joined where the hotel massing projects over the Office Tower roof. There is a 2 story connection below the 20th floor that structurally connects the Residential tower to the Office tower via 2 story 3D trusses which have been enclosed to visually strengthen the tower connection.

Reasons for Proposed Deviation:

The lower towers are separated so that occupants have good views and daylighting provided by the 60' separation. The upper tower (above level 20) as a result has unrestricted views and access to daylight above the lower tower. Strict application of the 60' separation would require the north tower massing to become more solid and bulky. The L-shaped hotel floors would have to be located along 7th Ave instead of mid-block and this mass would be located just above the podium.

To clarify a question about the understory mass of the hotel that is enclosed between levels 19 and 20, this enclosed space is a 3D structural steel truss (needed to support the Hotel above) that bridges the 60' span and also supports a cantilever in the E/W direction. This volume will have diagonal chord members in both directions approximately 30' o.c. It essentially is a bridge type foundation for the hotel and will not have the ability to be used now or in the future for any occupiable purpose. This volume is planned to be used as a horizontal mechanical shaft space to route chilled water from the residential tower to the office tower so it could also be considered as part of the office tower mechanical penthouse which is exempt from FAR.

See below for our findings explanation:

1. Proposed development will not adversely affect the applicable land use:

The proposed massing approach increases the project's urban porosity by creating very large "urban window" that is 60' wide by 140' tall that neighboring properties can view through. Strict application of the tower separation would require a L shaped lower residential tower that would block E/W views through the site.

By putting the L-shaped hotel mass at the middle of the block, adjacent properties are less impacted as this mass is set back 60' from 7th Ave, and is 70' back from 8th Ave. Strict application of the tower separation would place the L-shaped hotel mass along 7th Ave which would create a long

tall west façade which would reduce the environmental quality of 7th ave for pedestrians. A significant amount of morning sunlight would be lost and general daytime brightness would be reduced.

2. Proposed development will not be detrimental to public health, safety, and welfare:

The connection of the towers at the hotel sky lobby level actually increases the life safety of hotel occupants as they will now have a third stair that connects over to the Office tower to create another egress path that is independent of the Residential tower.

Structurally, interconnecting the towers provides greater seismic stability as the two structural cores can work together.

3. Proposed development will result in a more desirable project than if it strictly conformed:

As described above, the strict application of the tower separation would create a more solid lower tower massing that blocks views from the office floors and neighboring properties more substantially.

By locating the hotel up above the office tower, the size of the 6th floor roof terrace is dramatically increased. As a result, both the apartment residents and hotel guests and visitors will have a much more spacious common space that is filled with daylight and offers great downtown views.

4. Proposed deviation will result in a development exhibiting superior architectural design:

The large public roof terrace at the 20th level Hotel sky lobby will be greatly enjoyed by tourists, residents, and the public alike. The connection of the two towers allows an otherwise utilitarian office tower roof to become a people filled landscaped sky terrace that will take advantage of San Diego's benign climate.

We also believe that the unique shape and urban porosity of the connected towers will add to the architectural quality of the East Village neighborhood which will be appreciated by residents and visitors alike.

CCPDO – Section 156.0310, (d), 3, (B) Proposed Deviation #2:

Per the PDO Table 156-0310-A, the maximum tower width in the E/W direction for our site is 130'. In the N/S direction, the maximum width is 200'. Our proposal meets those dimensions for the lower Office tower and for the first 27 floors of the Residential tower. We propose to project the east face of the upper tower (levels 30-40) such that the tower width will increase to 141'2" on these upper levels.

Reasons for Proposed Deviation:

The projecting side (east façade) of the upper residential tower is combined with a large recessed balcony at the condo lobby level to create a signature element that creates a wonderful break in the façade of this very tall structure. Also, the slightly increased mass of the tower at levels 30-40 does not affect neighboring property views as their highest floors occur below the cantilevered levels.

Strict application of the 130' E/W tower dimension would require the project to put more mass somewhere else in the lower portion of the tower which would reduce the size of the 6th floor roof terrace and create a bulkier lower tower which is not desirable.

See below for our findings explanation:

1. Proposed development will not adversely affect the applicable land use:

The Employment/ Residential Mixed Use (ER) land use is not adversely affected by this projecting tower element as we do not exceed the allowable FAR for this site.

2. Proposed development will not be detrimental to public health, safety, and welfare:

The slightly wider massing at the top of the residential tower does not project until the 30th floor so this massing projection should not have any detrimental effects on the public's perception of the project. Also, the cantilevered side of the upper tower projects over the podium below so it does not encroach into the ROW airspace.

3. Proposed development will result in a more desirable project than if it strictly conformed:

The projecting floors occur very high up in the tower which minimizes the impact of the added mass to adjacent properties and the public ROWs. If the massing strictly conformed, more mass would be added much lower in the project which would impact adjacent properties and the character of the public ROWs more significantly.

4. Proposed deviation will result in a development exhibiting superior architectural design:

This massing move adds to more articulation to the tower mass and adds a signature element (large balcony soffit expression) near the top of the tower. The perspective view from the Northeast at ground level shows the positive impact of this massing move.

CCPDO – Section 156.0313, (I), 3 Proposed Deviation #3:

Per the PDO, curb cuts are to be separated by 80' except that truck dock curb cuts can be placed closer due to their intermittent use. Our proposed massing puts the garage exit ramps and truck docks adjacent to each other. We have created a 10' separation between each curb cut so a street tree can be placed in between them.

Reasons for Proposed Deviation:

This site has a number of restrictions on vehicular access that have caused the three curb cuts along 7th Ave to be spaced closely together. Curb cuts are not allowed along Market Street, and with the public Urban Plaza and Clermont Hotel being positioned along Island, no curb cuts can happen there either. We located the parking garage entries to be mid-block on 8th Ave between the hotel and office entries to provide easy access for parkers. We located the parking garage exits just north of the Clermont Hotel along 7th Ave which works well for exiting (right hand turn onto the one-way flow). We located the 4 truck berths just north of the garage exit ramps to minimize their impact on the hotel ballroom, pre-function, and condo lobby functions.

See below for our findings explanation:

1. Proposed development will not adversely affect the applicable land use:

Locating three curb cuts along 7th avenue in close proximity minimizes the impact to the applicable land use (high density mixed use) compared to other available options. Also, the historic uses along 7th Avenue in this block had a large number of curb cuts (gas station, warehouses, etc) that pedestrians had to negotiate. As a matter of fact, there are three curb cuts on the west side of the street currently that do not meet the separation requirement either. Just to the south, the public storage building has a very long raised truck dock along 7th so pedestrians in the neighborhood are used to negotiating curb cuts safely.

2. Proposed development will not be detrimental to public health, safety, and welfare:

Keeping the truck docks and garage exit ramps in close proximity should minimize the risk of pedestrian/vehicular interaction as this area will be well marked and lighted. Locating them approximately 80' north of the Island street curb line exceeds the minimum distance of 65' significantly. This layout also keeps the northern curb cut approximately 150' south of the Market street sidewalk so emerging vehicles have good stacking distance prior to the signalized intersection.

3. Proposed development will result in a more desirable project than if it strictly conformed:

Separating the curb cuts 80' per the PDO's would require the project to put a truck dock along 8th Avenue which would visually degrade the Hotel and Office tower main entrances. A drive through lane was also studied where the docks could be internalized but a variety of issues (75' long WFM

truck reqt., upper ramp clearance issues, loss of extremely valuable street level hotel space, etc) made this option infeasible. An internalized dock would increase the amount of blank street wall and reduce the amount of active street level uses.

4. Proposed deviation will result in a development exhibiting superior architectural design:

It has been realized that the close spacing of curb cuts would create too much of an industrial character for this small section of 8th Avenue. Our design approach is to enhance the façade and add a street tree next to each curb-cut. The truck dock doors (normally closed) will be upgraded to obscured glass sectional doors (much like the adjacent Sempra HQ project). As a result, these doors will look much like adjacent storefront areas to the north when closed.

We also plan to make these sections of glass a bit more visually appealing by embedding an artistic photo mural into these doorways. Our first thought in this regard is to pixilate a historic photo of black musicians that resided in the Clermont hotel, but the exact approach can be determined with CSD staff and the Black History Association. Since this glass will be translucent, it will also be backlighting so this storefront will glow so that dock activities will be obscured from view when these doors are closed.

CCPDO – Section 156.0314, (a), 3 Proposed Deviation #4:

The signage area and letter size allowed in the PDO are too limited for a large mixed use project of this scale. The applicant is proposing a comprehensive signage program to define where and what type of signage can be placed on each façade.

Reasons for Proposed Deviation:

Due to the mixed use nature of the project, there will be a need for a variety of sign types for each of the major uses (Hotel, Office, Retail, Garage, etc). The proposed comprehensive signage program will locate each type of signage sensitively where it is needed.

To reinforce the prominence of our 5 star hotel tenant, the design proposes a large entrance marquee that projects out above the 8th Avenue hotel entrance, with a slightly smaller marquee at the 7th Avenue hotel entrance. These marquees will house signs as indicated and will meet all building code requirements for encroachments into public ROWs.

See below for our findings explanation:

1. Proposed development will not adversely affect the applicable land use:

The applicable land use is not adversely affected by a comprehensive signage program.

2. Proposed development will not be detrimental to public health, safety, and welfare:

Public health, safety, and welfare will not be affected by this deviation. The comprehensive signage program will improve public way-finding and the projecting marquees will clearly identify the hotel entrances for the public as well.

3. Proposed development will result in a more desirable project than if it strictly conformed:

The comprehensive signage program will create in a more organized and consistent number of exterior signs mounted to the facades. Our proposed sizes stay within previously approved sign sizes for similar project types. The projecting marquees will create a visual “wow” along the 8th and 7th avenues that visually elevate the quality of these street-walls.

4. Proposed deviation will result in a development exhibiting superior architectural design:

The comprehensive signage program will create signs that are well integrated into the project’s massing and located only where needed. As a result, public way-finding will be enhanced and tenant signage will be organized architecturally in a compelling manner.

CCPDO – Section 156.0313,(k) Proposed Deviation #5:

Per the PDO and the SD Municipal Ordinance, the use of tandem (back space behind a space on an aisle) parking spaces is allowed only for residential parking that is beyond the required minimum. Since the project is in a transit zone, residential tandem spaces are allowed by the Municipal Code and will be provided for the larger apartment units (79). However, all of the required apartment spaces (125) are full size regular, or front of tandem spaces.

We propose to count the back tandem spaces for the hotel use (23) and branded hotel condominium uses (47) as part of their required spaces. The hotel and hotel branded condominium parking will be 100% valet parked. The other uses (retail, office, and residential guests) are provided with regular spaces.

Reasons for Proposed Deviation:

The sheer size of the project requires a very large amount of enclosed parking. Since we are maintaining the Clermont Hotel in place as an historic resource, the site area for below grade parking is reduced which required the project to create deeper underground. We are proposing 5 levels of lower level parking (2 more than PDO requires) to keep the above grade parking podium smaller. Our approach also vertically separates public parking from the private parking. Accordingly, the design maximizes the efficiency of the below grade garage by incorporating 149 back tandem parking spaces.

See below for our findings explanation:

1. Proposed development will not adversely affect the applicable land use:

Using tandem spaces reduces the volume of the underground garage which will make vehicular circulation more efficient (reducing raw material consumption), and will reduce the excavation haul off material substantially which are important sustainability measures. This approach has also been approved previously for nearby downtown projects.

2. Proposed development will not be detrimental to public health, safety, and welfare:

This deviation will not be detrimental to the public's health, safety, and welfare as our use of valet parking should reduce queuing issues at the 8th Avenue parking entry.

3. Proposed development will result in a more desirable project than if it strictly conformed:

Yes, this approach will result in a more desirable project by keeping as many parking spaces below grade as possible (662). The project is also providing 144 more spaces than required by the PDO which will reduce usage demands on adjacent on-street parking for the neighborhood.

4. Proposed deviation will result in a development exhibiting superior architectural design:

This approach reduces the size of the above grade podium parking levels by maximizing below grade parking capacity. The design approach also clearly separates the public parking from private parking for easier way-finding.

Market Street Tower Tops



The Mark
←



Strata
→



Pinnacle Marina
←

The Renaissance
→



Our names are Eric Laub and Leslie Coughlan and we each own townhome residences on 8th Ave that are also a part of The Mark Condominiums. The front door of our townhomes are across the street from the proposed 7th and Market Development.

We are highly in favor of the 7th and Market multi-use development as proposed. The following are the reasons we are in favor of this development.

1. Currently there is an unsightly parking lot that brings a lot of disruptive type noise at all hours and sometimes drunken people who use that lot for Gas Lamp events.
2. This proposed mixed-use upscale development will change the entire nature of the East Village and make it one of the most expensive and prestigious blocks in all of San Diego. It will be a landmark destination.
3. The City will benefit from the huge amount of property tax revenues that this one single block will create for the City; a city that always is in need of money. Since this type of development will not have many, if any, school age children the cost to the City to generate that revenue will be low while providing funds for the rest of San Diego. In addition, the development will generate hundreds of new jobs and create benefits for the surrounding businesses.
4. The City of San Diego does not currently have a five star hotel. The addition of a world-class Ritz Carlton will add prestige to San Diego and more specifically to the East Village and as such raise the East Village to a level that no one could have imagined 20 years ago.
5. It will bring a high end grocer (Whole Foods) that will service the needs provided by that type of grocer for the residents who live downtown and currently need to get into their cars to travel up to University Ave. or further to get that type of high end grocer. This is a really big deal for everyone I know who lives downtown.
6. There is a physical beauty to this development that will exceed all but a few projects built in San Diego. It will also significantly compliment Petco Park and the aesthetics of the surrounding area.
7. The developer should not be confronted with or threatened by delays as they bring 2 of the best possible tenants to this site: The Ritz Carleton and Whole Foods. These prospective tenants may easily

abandon this site if the delays cause them to rethink coming to this site as opposed to another site that is more user friendly for them and quicker to implement. Once these first class users move on to another site, the city and East Village and downtown residents are the real losers as the next users for this site will be a downgrade and will not be nearly as prestigious and beneficial.

8. The City should not lose sight that other hotels and grocers may ask for restrictions and delays that will impede this development for their own interests and end up punishing the East Village and other downtown residents for their negative inputs to this project. Such efforts should be resisted.
9. If the City thought fit it also might have the developer eliminate the Clermont Hotel and use that space for its required open space. On that space the City could make a memorial to the Clermont Hotel and its history thus honoring its historical relevance and removing an eyesore at the same time. Alternatively, the Clermont Hotel could be upgraded as part of the overall redevelopment.

Eric Laub

Leslie Coughlan

The Mark Condominium

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July 8, 2016

Mr. Aaron Hollister
Senior Planner, Civic San Diego
401 B Street, Suite 400
San Diego, California 92101-4298

**RE: Resident Signatures To Eric Laub's Cisterra 7th & Market Letter
of Recommendation To The City of San Diego and
Civic San Diego**

Dear Aaron:

My wife and I are residents of The Mark Condo and have known Eric Laub for several years. I was an executive in the industrial energy development business for over 30 years and was responsible for managing the construction and operation of our companies independent power production facilities in the Western United States. We have been following the site proposals for the City's parking lot on the block between 7th and 8th Streets and strongly support the Cisterra plan for lot west of The Mark Condo.

We have signed the Letter of Recommendation and I have attached the two signature pages. We own Unit 2504 and are registered voters in the City of San Diego. We have a second home in Woodinville, Washington near Seattle and we spend part of each month in Seattle and in San Diego. Unfortunately due to family reunions at our seasonal home on Coeur d'Alene Lake in North Idaho, I will not be able to testify at the public hearings on July 13th, 20th, or 27th.

Please express our position to the City Staff that the Cisterra proposal is well thought out, has commitments from excellent tenants highly respected in the industry, and Cisterra has the financial resources to start and complete

Aaron Hollister

July 8, 2016

Page 2

the project as proposed. It is essential that Cisterra receive the necessary approvals and permits from the City and other government agencies as quickly as possible so as not to delay the development and risk losing a major anchor tenant.

I would appreciate receiving notices of future meetings and public hearings on the Cisterra project so we can participate in the discussion of the development.

I trust this information is helpful and that you will contact me if you have any questions about our correspondence or support of the Cisterra proposal.

Respectfully,



Bruce and Linda Thompson

Enclosure: Signed Letter of Recommendation

800 The Mark Lane, Unit 2504

San Diego, Ca. 92101

Phone: 206-713-6790

E-Mail: brucet@thenescogroup.com

We the undersigned are residents of East Village in San Diego. We are in favor of the Cisterra 7th and Market Street development. We are very excited of instead of a noisy parking lot we can get such world class tenants as a 5 star Ritz Carlton Hotel and a Whole Foods grocer.

We understand that these tenants and the developer need efficiency and speed in order to keep these tenants on board.

If delays and other obstacles cause Cisterra to lose these tenants we will be the losers and they will be replaced with lesser quality users and both the city of San Diego and the East Village will not be served well if this comes to pass.

We have read the bullets points of the Eric Laub and Leslie Coughlan memo and we agree with them and urge the city to get this project approved in a very timely manner.

Jim Anderson

Brian Stone / [Signature]
Name/Signature

800 The Mark Lane #2305
Address

Robin Walburn
Name/Signature

800 THE MARK LN 2206 SD 92101
Address

Name/Signature

[Signature]
Name/Signature

Address

325 7th Ave unit 808 SD 92101
Address

Name/Signature

[Signature]
Name/Signature

Address

325 7th Ave, 808 SD 92101
Address

Name/Signature

Allen B. Walburn
Name/Signature

Address

800 The Mark Ln # 2206 SD 92101
Address

Name/Signature

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Address

800 The Mark Lane #2207 SD 92101
Address

Name/Signature

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800 The Mark Ln #2204 SD 92101
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Name/Signature

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#1205
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Address

Emmet Vance III

800 The Mark Ln #2102

Name/Signature

Address

JACKIE A Holmes

840 Island Ave.

Name/Signature

Address

Katherine Tyler

800 The Mark Lane #1405

Name/Signature

Address

W. H. H.

800 THE MARK LANE #2303

Name/Signature

Address

W. H. H.

800 The Mark Lane #113

Name/Signature

Address

Paula M. Long

800 The Mark Lane #2504

Name/Signature

Address

Bruce F. Thompson

800 The Mark Lane #2504

Name/Signature

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July 16, 2016

Downtown Community Planning Council
401 B Street, Suite 400
San Diego, CA

Att: Mr. Aaron Hollister
Senior Planner

RE: 7th & Market Project

To whom it may Concern:

I am an owner and resident of Apartment 3101 in The Mark Condominiums at 8th & Market Streets in East Village.

I am writing you today, asking for your consideration of my thoughts regarding the project known as the 7th & Market Development project.

As a retired developer in the Washington DC area, and being well aware of the NIMBY proponents attached to almost every project of this nature, I understand your skepticism of my comments regarding the above referenced project, but hope you will take them at face value. They are:

- The height and overall mass of the structure:

As one who walks this area daily, I have envisioned this project from many perspectives and find that the height of this building will appear enormous and out of context with adjacent properties, and at the proposed height of 39 stories will be inconsistent and overwhelm the existing properties and streetscape surrounding it. I find that this is especially true when viewing from the North.

As an aside, at the time of purchasing my property, my research indicated a desire by the City to encourage a plan incorporating an approximate 30 story Project at this location, considerably more appropriate in my opinion.

- Construction Materials:

As with the Sempra Building, I find the lack of brick, concrete and metals disturbing and "out of character" for an East Village property. Using The Mark as an example, it feels much more inline with the charm of East Village. This "Miami like" use of mirrored glass and framework has no character and in my opinion detracts from the Village feel of our community.

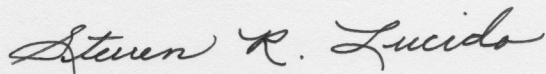
As an aside, I see no continuity whatsoever in the overall design, just a mish-mosh of peaks and valleys with no aesthetically pleasing form.

- Considerations and Concerns:

Two issues I hope you have looked at are, first, the issue of reflection from the glass on adjacent properties. Using The Mark as an example again, the morning sun reflecting off a wall of glass on the east side of the 7th & Market property is likely to create issues for those facing west in our building. It is one thing to look at a huge wall of glass directly adjacent to you, it is another to have it reflect the power of the sun directly down on you. As I know you are aware, these are not problems that can be addressed "after the fact". I ask that you be mindful of this probability and address it in advance. Lastly, I am concerned with the "straight up 40 story" configuration from Market Street. Again, as one who has taken the time to envision this proposed structure from many perspectives, my feeling is that a setback from Market Street would be prudent and preferable. To state the obvious, we do not live in Manhattan.

I thank you in advance for your consideration of my thoughts, and hope that they will convince you that the size and scope of the 7th & Market Project is inconsistent and incompatible with the direction residents here had hoped the future development of our East Village would take, and use this knowledge to take action on our behalf.

Sincerely,

A handwritten signature in cursive script that reads "Steven R. Lucido".

Steven R. Lucido
Apt. 3101
800 The Mark Lane
San Diego, CA 92101
(970) 376-5218

CivicSD Board
401 B Street, Suite 400
San Diego, CA 92101

Attn: Mr. Aaron Hollister, Senior Planner
Re: 7th & Market Project

To Whom It May Concern,

I am writing as an owning resident in East Village to express concern over the plans for the 7th & Market project. Please take this letter and its germane points into serious consideration in your July 20 review meeting.

The alluring charm of our East Village owes credit to a number of things. It is a neighborhood that houses small businesses in small establishments, lending for a great, almost rural, environment in an urban setting. Except for the Semptra Energy building, the architectural materials throughout most of East Village's buildings are common – concrete, brick, & metal – lending for a very unique and uniform feel throughout. Lastly, and very importantly, East Village is a neighborhood of buildings which do not overpower the streets. Whether you are walking your daily life, or visiting for a ball game or dinner, there is an ease and comfort in our streets with a mix of medium size buildings and small 1-2 story structures, with larger buildings set back from the sidewalks opening the feel of our streets.

The city called for a 300 ft building at 7th & Market, but the proposed plans come in at nearly 500 ft of mostly glass towering with zero setback from the sidewalk on Market Street, the main street running East/West. While the Semptra Energy building may be a green building, it just doesn't fit the neighborhood, and is viewed by a large portion of East Village inhabitants as an out of place eyesore. The 7th & Market project plans are magnitudes worse than this. We preserve historic buildings, even cleverly incorporating them into construction such as Petco did with the Western Metal Building, and most developments in East Village have followed the same spirit with their selection of materials and design. But then this developer enters our existing neighborhood wanting to change it instead of blending with it. From any direction the 7th & Market planned structure will be a behemoth glass entity overwhelming everything in the surrounding neighborhood. To make matters worse, the notion that the city would allow this to move forward with zero setback off of Market Street's sidewalk for such a monstrous structure is very concerning. There is nothing like this in the neighborhood, nor is it welcome. With the first 2 stories being double height, the building would effectively be 41 stories straight up directly from the edge of the sidewalk. This completely unnecessary aspect will impact every business and residence around, as well as the resident & visitor pedestrian feel of the neighborhood. The benefits that this project would bring to the community could equally be gained without such negative impacts by simply requiring changes to the size, materials, and setback off the street.

While we are not wishing that this block remains a grade level parking lot, we feel the city should only allow a structure which is a fit for East Village. These proposed plans are more suitable for buildings in the Civic/Core and Columbia Districts, but are not compatible with the East Village neighborhood due to materials, size, and setback. We ask that further consideration be given to these aspects.

It is not clear why this developer is bent on nonconformity and changing the charming neighborhood of East Village San Diego, but the residents of this community should have a say in it.

Thank you for your consideration on this matter,

Robert Cochran 7/18/2016

Mitch Leyton
800 The Mark Lane, 3103
San Diego, CA 92101
714-931-7520

July 16, 2016

Civic Board
401 B Street, Suite 400
San Diego, CA 92101

Re: permit # 2015-73, 7th & Market project

Dear Mr. Hollister:

As I resident of The Mark, East Village and downtown San Diego, I'm deeply concern about the project referenced above.

I find it hard to believe it's even being considered as it will be a grotesque eye sore for the area.

It seems to violate not only every rule of common sense but also basic building restrictions.

Compared to other buildings in the area, the height is excessive, the amount of area of the block that will be a high rise is excessive, the massive glass structure (mirror effect) will be ugly & waiving the setback required by other buildings makes no sense at all.

Bottom line is, this building will ruin the east village charm.

Please save our community by not letting this building proceed as currently designed.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "MLeyton". The letters are cursive and fluid, with the "M" and "L" being particularly prominent.

Mitch Leyton

**DOWNTOWN 15168
CONSISTENCY EVALUATION
FOR
7th & MARKET**

August 26, 2016

Prepared for: Cisterra 7th & Market, LLC
3580 Carmel Mountain Road, Suite 460
San Diego, CA 92130

Prepared by: Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101

Downtown 15168 Consistency Evaluation

1. PROJECT TITLE: 7th & Market ("Project")

2. DEVELOPER: Cisterra 7th & Market, LLC

3. PROJECT LOCATION: The Project site is an approximately 60,000 SF premises located on the full block bounded by Market Street and Island, Seventh and Eighth avenues in the East Village neighborhood of the Downtown Community Plan (DCP) area. The DCP Area includes approximately 1,500 acres within the metropolitan core of the City of San Diego, bounded by Laurel Street and Interstate 5 on the north; Interstate 5, Commercial Street, 16th Street, Sigsbee Street, Newton Avenue, Harbor Drive, and the extension of Beardsley Street on the east and southeast; and San Diego Bay on the south and west and southwest. The major north-south access routes to downtown are Interstate 5, State Route 163, and Pacific Highway. The major east-west access route to downtown is State Route 94. Surrounding areas include the community of Uptown and Balboa Park to the north, Golden Hill and Sherman Heights to the east, Barrio Logan and Logan Heights to the South and the City of Coronado to the west across San Diego Bay.

4. PROJECT SETTING: The Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance (CCPDO), and 10th Amendment to the Centre City Redevelopment Plan, certified by the Redevelopment Agency ("Former Agency") and City Council ("Council") on March 14, 2006 (Resolutions R-04001 and R-301265, respectively) and subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolutions R-04510), August 3, 2010 (Former Agency Resolution R-04544) and certified by City Council on February 12, 2014 (Resolution R-308724) and July 14, 2014 (Resolution R-309115) describes the setting of the DCP area including East Village. This description is hereby incorporated by reference.

The site generally slopes down in elevation from the northeast to the southwest by approximately seven feet of elevation change. The site is currently occupied by a surface parking lot and a three-story structure commonly known as the Clermont Hotel located at the southwest corner of the site. The Clermont Hotel currently contains 53 single-room occupancy (SRO) units and is designated as a local historic resource listed as Historic Resources Board Designation Number HRB SR 509. Surrounding land uses include low-rise residential and a surface parking lot to the north, high-rise office to the south, high-rise residential and low-rise commercial to the west, and high-rise residential to the east.

The land use district for the site, as designated in the Centre City Planned District Ordinance (CCPDO) is Employment/Residential Mixed-Use (ER) with the Commercial Street (CS) and Limited Vehicle Access overlays applying to the Market Street frontage only.

The ER district provides synergies between educational institutions and residential neighborhoods, or transition between the Core district and residential neighborhoods. A variety of uses are permitted in this district, including office, residential, hotel, research and development, educational, and medical facilities.

The CS Overlay requires a minimum 60% active commercial uses along Market Street, while the

Limited Vehicle Access Overlay prohibits curb cuts on Market Street unless driveway access is not feasible on adjacent streets due to lot size, lot configuration, or other significant factors.

5. PROJECT DESCRIPTION:

This Project proposes the construction of 39-story and 19-story towers (approximately 475 feet and 227 feet tall, respectively) and is comprised of 218 DUs (34 affordable units, 125 market-rate apartments, 59 hotel-branded condominiums); approximately 156,000 SF of office space; a proposed 153-room hotel with a ballroom and 20th-level restaurant/bar; an estimated 40,000 SF retail space for a grocer; and, 887 automobile parking spaces including a minimum of 200 public parking spaces. Five levels of subterranean parking and three levels of above-grade parking are proposed with all public parking spaces being located in the above-ground levels. The Base Maximum FAR for the Project site is 6.0, with a maximum allowable FAR of 12.1. The Project has a FAR of 11.43.

Approval of a Development and Disposition Agreement by the San Diego City Council must be completed for the conveyance of the property from the City of San Diego to the developer in order to allow construction of the Project.

6. CEQA COMPLIANCE: The DCP, CCPDO, Redevelopment Plan for the Centre City Redevelopment Project and related activities have been addressed by the following environmental documents, which were prepared prior to this Consistency Evaluation and are hereby incorporated by reference:

FEIR for the DCP, CCPDO, and 10th Amendment to the Redevelopment Plan for the Centre City Project (State Clearinghouse Number 2003041001, certified by the Redevelopment Agency (Resolution No. R-04001) and the San Diego City Council (City Council) (Resolution No. R-301265), with date of final passage on March 14, 2006.

Addendum to the Downtown FEIR for the 11th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project, Amendments to the DCP, CCPDO, Marina Planned District Ordinance, and Mitigation, Monitoring and Reporting Program of the Downtown FEIR for the DCP, CCPDO, and the Redevelopment Plan for the Centre City Redevelopment Project certified by the Redevelopment Agency (Resolution No. R-04193) and by the City Council (Resolution No. R-302932), with date of final passage on July 31, 2007.

Second Addendum to the Downtown FEIR for the proposed amendments to the DCP, CCPDO, Marina Planned District Ordinance, and Mitigation, Monitoring and Reporting Program (MMRP) certified by the Redevelopment Agency (Resolution No. R-04508), with date of final passage on April 21, 2010.

Third Addendum to the Downtown FEIR for the RE District Amendments to the CCPDO certified by the Redevelopment Agency (Resolution No. R-04510), with date of final passage on April 21, 2010.

Fourth Addendum to the Downtown FEIR for the San Diego Civic Center Complex Project certified by the Redevelopment Agency (Resolution No. R-04544) with date of final passage on August 3, 2010.

Fifth Addendum to the Downtown FEIR for the Industrial Buffer Overlay Zone Amendments to the CCPDO certified by the City Council (Resolution No. R-308724) with a date of final passage on February 12, 2014.

Sixth Addendum to the Downtown FEIR for the India and Date Project certified by the City Council (Resolution No. R-309115) with a date of final passage on July 14, 2014.

The Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561).

The City of San Diego FEIR for the Climate Action Plan (“CAP FEIR”) certified by the City Council on December 15, 2015, (City Council Resolution R-310176) which includes the Addendum to the CAP FEIR certified by the City Council on July 12, 2016.

The Downtown FEIR and the CAP FEIR are “Program EIRs” prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The aforementioned environmental documents are the most recent and comprehensive environmental documents pertaining to the proposed Project. The Downtown FEIR and subsequent addenda are available for review at the offices of the Civic San Diego (“CivicSD”) located at 401 B Street, Suite 400, San Diego, CA 92101. The CAP FEIR is available at the offices of the City of San Diego Planning Department located at 1010 Second Avenue, Suite 1200, San Diego, CA 92101.

This Downtown FEIR Consistency Evaluation (“Evaluation”) has been prepared for the Project in compliance with State CEQA and Local Guidelines. Under these Guidelines, environmental review for subsequent proposed actions is accomplished using the Evaluation process, as allowed by Sections 15168 and 15180 of the State CEQA Guidelines. The Evaluation includes the evaluation criteria as defined in Section 15063 of the State CEQA Guidelines.

Under this process, an Evaluation is prepared for each subsequent proposed action to determine whether the potential impacts were anticipated in the Downtown FEIR and the CAP FEIR. No additional documentation is required for subsequent proposed actions if the Evaluation determines that the potential impacts have been adequately addressed in the CAP FEIR and the Downtown FEIR and subsequent proposed actions implement appropriate mitigation measures identified in the MMRP that accompanies the FEIR.

If the Evaluation identifies new impacts or a substantial change in circumstances, additional environmental documentation is required. The form of this documentation depends upon the nature of the impacts of the subsequent proposed action being proposed. Should a proposed action result in: a) new or substantially more severe significant impacts that are not adequately addressed in the Downtown FEIR or CAP FEIR, or b) there is a substantial change in circumstances that would require major revision to the Downtown FEIR or the CAP FEIR, or c) that any mitigation measures or alternatives previously found not to be feasible or not previously

considered would substantially reduce or lessen any significant effects of the Project on the environment, a Subsequent or Supplemental Environmental Impact Report (EIR) would be prepared in accordance with Sections 15162 or 15163 of the State CEQA Guidelines (CEQA Statutes Section 21166).

If the lead agency under CEQA finds that pursuant to Sections 15162 and 15163, no new significant impacts will occur or no new mitigation will be required, the lead agency can approve the subsequent proposed action to be within the scope of the Project covered by the Downtown FEIR and CAP FEIR, and no new environmental document is required.

7. PROJECT-SPECIFIC ENVIRONMENTAL ANALYSIS: See attached Environmental Checklist and Section 10 *Evaluation of Environmental Impacts*.

8. MITIGATION, MONITORING AND REPORTING PROGRAM: As described in the Environmental Checklist and summarized in **Attachment A**, the following mitigation measures included in the MMRP, found in Volume 1.B.2 of the Downtown FEIR, will be implemented by the proposed Project:

AQ-B.1-1; HIST-B.1-1; NOI-B.1-1; NOI-C.1-1; PAL-A.1-1

9. DETERMINATION: In accordance with Sections 15168 and 15180 of the CEQA Guidelines, the potential impacts associated with future development within the DCP area are addressed in the Downtown FEIR prepared for the DCP, CCPDO, and the six subsequent addenda to the Downtown FEIR listed in Section 6 above, as well as the Final Supplemental EIR for the Downtown San Diego Mobility Plan and the CAP FEIR. These documents address the potential environmental effects of future development within the Centre City Redevelopment Project based on build out forecasts projected from the land use designations, density bonus, and other policies and regulations governing development intensity and density. Based on this analysis, the Downtown FEIR and its subsequent addenda and the CAP FEIR, as listed in Section 6 above, concluded that development would result in significant impacts related to the following issues (mitigation and type of impact shown in parentheses):

Significant but Mitigated Impacts

- Air Quality: Construction Emissions (AQ-B.1) (D)
- Paleontology: Impacts to Significant Paleontological Resources (PAL-A.1) (D/C)
- Noise: Interior Traffic Level Increase on Grid Streets (NOI-B.1) (D/C)

Significant and Not Mitigated Impacts

- Air Quality: Mobile Source Emissions (AQ-A.1) (C)
- Historical Resources: Archeological (HIST-B.1) (D/C)
- Water Quality: Urban Runoff (WQ-A.1) (C)
- Land Use: Physical Changes Related to Transient Activity (LU-B.6) (C)
- Noise: Exterior Traffic Level Increase on Grid Streets (NOI-A.1) (C)
- Noise: Exterior Traffic Noise in Residential Development (NOI-C.1) (D/C)

- Traffic: Impact on Surrounding Streets (TRF-A.1) (C)
- Traffic: Impact on Freeway Ramps and Segments (TRF-A.2) (C)

In certifying the Downtown FEIR and approving the DCP, CCPDO, and 10th Amendment to the Redevelopment Plan, the City Council and Redevelopment Agency adopted a Statement of Overriding Considerations which determined that the unmitigated impacts were acceptable in light of economic, legal, social, technological or other factors including the following.

Overriding Considerations

- Develop downtown as the primary urban center for the region
- Maximize employment opportunities within the downtown area
- Develop full-service, walkable neighborhoods linked to the assets downtown offers
- Increase and improve parks and public spaces
- Relieve growth pressure on outlying communities
- Maximize the advantages of downtown's climate and waterfront setting
- Implement a coordinated, efficient system of vehicular, transit, bicycle, and pedestrian traffic
- Integrate historical resources into the new downtown plan
- Facilitate and improve the development of business and economic opportunities located in the downtown area
- Integrate health and human services into neighborhoods within downtown
- Encourage a regular process of review to ensure that the Plan and related activities are best meeting the vision and goals of the Plan

The proposed activity detailed and analyzed in this Evaluation are adequately addressed in the environmental documents noted above and there is no change in circumstance, substantial additional information, or substantial Project changes to warrant additional environmental review. Because the prior environmental documents adequately covered this activity as part of the previously approved Project, this activity is not a separate Project for purposes of review under CEQA pursuant to CEQA Guidelines Sections 15060(c)(3), 15180, and 15378(c).

SUMMARY OF FINDINGS: In accordance with Public Resources Code Sections 21166, 21083.3, and CEQA Guidelines Sections 15168 and 15183, the following findings are derived from the environmental review documented by this Evaluation and the Downtown FEIR and CAP FEIR as amended:

1. No substantial changes are proposed in the Centre City Redevelopment Project, or with respect to the circumstances under which the Centre City Redevelopment Project is to be undertaken as a result of the development of the proposed Project, which will require important or major revisions in the Downtown FEIR and the six subsequent addenda to the FEIR or with the CAP FEIR;

2. No new information of substantial importance to the Centre City Redevelopment Project has become available that shows the Project will have any significant effects not discussed previously in the Downtown FEIR or subsequent addenda to the Downtown FEIR or CAP FEIR; or that any significant effects previously examined will be substantially more severe than shown in the CAP FEIR and the Downtown FEIR or subsequent addenda to the FEIR; or that any mitigation measures or alternatives previously found not to be feasible or not previously considered would substantially reduce or lessen any significant effects of the Project on the environment;
3. No Negative Declaration, Subsequent EIR, or Supplement or Addendum to the CAP EIR and the Downtown FEIR, as amended, is necessary or required;
4. The proposed actions will have no significant effect on the environment, except as identified and considered in the CAP FEIR and the Downtown FEIR and subsequent addenda to the Downtown FEIR for the Centre City Redevelopment Project. No new or additional project-specific mitigation measures are required for this Project; and
5. The proposed actions would not have any new effects that were not adequately covered in the CAP FEIR and Downtown FEIR or addenda to the Downtown FEIR, and therefore, the proposed Project is within the scope of the program approved under the CAP FEIR and Downtown FEIR and subsequent addenda listed in Section 6 above.

CivicSD, the implementing body for the City of San Diego, administered the preparation of this Evaluation.



Aaron Hollister, Senior Planner, CivicSD
Lead Agency Representative/Preparer

08/26/2016

Date

ENVIRONMENTAL CHECKLIST

10. EVALUATION OF ENVIRONMENTAL IMPACTS

This environmental checklist evaluates the potential environmental effects of the proposed Project consistent with the significance thresholds and analysis methods contained in the CAP FEIR and the Downtown FEIR for the DCP, CCPDO, and Redevelopment Plan for the Centre City Project Area. Based on the assumption that the proposed activity is adequately addressed in the Downtown FEIR and CAP FEIR, the following table indicates how the impacts of the proposed activity relate to the conclusions of the Downtown FEIR and CAP FEIR. As a result, the impacts are classified into one of the following categories:

- Significant and Not Mitigated (SNM)
- Significant but Mitigated (SM)
- Not Significant (NS)

The checklist identifies each potential environmental effect and provides information supporting the conclusion drawn as to the degree of impact associated with the proposed Project. As applicable, mitigation measures from the Downtown FEIR and CAP FEIR are identified and are summarized in **Attachment A** to this Evaluation. Some of the mitigation measures are plan-wide and not within the control of the proposed Project. Other measures, however, are to be specifically implemented by the proposed Project. Consistent with the Downtown FEIR and CAP FEIR analysis, the following issue areas have been identified as Significant and Not Mitigated even with inclusion of the proposed mitigation measures, where feasible:

- Air Quality: Mobile Source Emissions (AQ-A.1) (C)
- Historical Resources: Archeological (HIST-B.1) (D/C)
- Water Quality: Urban Runoff (WQ-A.1) (C)
- Land Use: Physical Changes Related to Transient Activity (LU-B.6) (C)
- Noise: Exterior Traffic Level Increase on Grid Streets (NOI-A.1) (C)
- Noise: Exterior Traffic Noise in Residential Development (NOI-C.1) (D/C)
- Traffic: Impact on Surrounding Streets (TRF-A.1) (C)
- Traffic: Impact on Freeway Ramps and Segments (TRF-A.2) (C)

The following Overriding Considerations apply directly to the proposed Project:

- Develop downtown as the primary urban center for the region
- Maximize employment opportunities within the downtown area
- Develop full-service, walkable neighborhoods linked to the assets downtown offers
- Relieve Growth Pressure On Outlying Communities

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
1. AESTHETICS/VISUAL QUALITY:						
<p><i>Substantially disturb a scenic resource, vista or view from a public viewing area, including a State scenic highway or view corridor designated by the DCP?</i></p> <p>Views of scenic vistas, including San Diego Bay, San Diego-Coronado Bay Bridge, Point Loma, Coronado, Petco Park, and the downtown skyline, are afforded by the public viewing areas within and around the downtown and along view corridor streets within the DCP Area. The CCPDO includes several requirements that reduce the impacts of development within the DCP Area on scenic vistas. The CCPDO establishes view corridor setbacks on specific streets to maintain views and controls building bulk by setting limits on minimum tower spacing, street wall design, maximum lot coverage, and building dimensions. The project site is not located within a view corridor described in Figure 5.6-2 in the DCP FEIR. The project would involve construction of a mixed use development in the East Village neighborhood. The project would create a 40-story tower along Market Street that combines a mix of residential, retail, hotel and public parking uses, and then steps down to an office tower along Island Avenue of height comparable to nearby buildings, including the Sempra Energy and Diamond View Tower buildings.</p> <p>At the project site, the maximum lot coverage for the building base is 100 percent and the maximum lot coverage for the tower of a building is 50 percent of the lot area. At the ground floor level, the project's footprint is approximately 46,200 square feet. The remainder of the new site area (approximately 8,888 square feet) consists of the landscaped urban plaza, arcaded entries, and covered garage entries. The Clermont Hotel and courtyard comprise the last 5,050 square feet of the 60,138 sf site. The upper tower floorplate varies in size with the largest being 27,123 square feet (of occupied space), which is</p>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p>under the maximum allowable floorplate of 30,000 square feet (50% of the site area).The project would comply with all CCPDO requirements related to maximum lot coverage.</p> <p>The CCPDO requires a street wall that is a minimum of 45 feet and a maximum of 85 feet (except at towers) along all street frontages. The five-story retail/hotel/housing/parking podium that connects between the towers creates a street wall that is consistent with the CCPDO requirements except for an approximate 18.5-foot wide area on Eighth Avenue streetwall that will measure 31.5 feet in height, which will require a minimum streetwall height deviation.. A five-story atrium is located at the corner of Market and 8th, providing a transparent, retail-oriented street wall façade that is less than the 85-foot street wall maximum along its length. The west podium’s street wall has an articulated metal/glass/precast concrete façade that also stays below the 85 foot maximum along its length. The project would comply with all CCPDO requirements related to street wall design.</p> <p>The proposed project deviates from the CCPDO’s tower separation requirements (Section 156.0310,(d),3(C)) that adjacent towers on the same site be separated by 60 feet. Instead, the project design meets the horizontal separation requirement at all occupied floors, but includes a two-story connection below the 20th floor of the upper tower, connecting it to the lower tower. This deviation would reduce tower massing and impacts to east/west views through the project site to the San Diego Bay, Point Loma, Coronado, and the downtown skyline from public viewing areas that would result from strict compliance with the CCPDO’s tower separation requirements.</p> <p>The project also includes a deviation from the CCPDO’s maximum tower dimension requirements. Per CCPDO Table 156-0310-A, the maximum tower width in the east/west direction for the project site is 130 feet. In the</p>						

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p>north/south direction, the maximum dimension is 200 feet. The project would meet dimension requirements for the lower tower and for the first 27 floors of the upper tower. However, the proposed deviation would expand the east face of the upper tower (levels 30-40) such that the tower width would be approximately 141 feet on upper levels. The increased width of approximately 11 feet beyond the CCPDO's maximum tower dimension requirements would occur above the highest floors of neighboring buildings within the project area and would not adversely affect views from these buildings through the project site. Strict compliance with the tower dimension requirements would require more building mass to be placed in the lower portion of the tower, resulting in a bulkier lower tower that would reduce views through the project site.</p> <p>The project would be consistent with the CCPDO's requirements for maximum lot coverage. Although the project would deviate from the CCPDO's requirements for tower separation and dimensions and minimum streetwall height, the deviation is permitted pursuant to uniformly applied development standards set forth in the CCPDO and would substantially reduce project impacts to scenic views. Therefore, impacts associated with scenic vistas would be similar to the DCP FEIR and would not be significant</p>						
<p><i>(b) Substantially incompatible with the bulk, scale, color and/or design of surrounding development?</i> The bulk, scale, and design of the Project would be compatible with existing and planned developments in the East Village neighborhood. Development of the site would improve the area by providing a new, modern building on a currently underutilized site. The Project would utilize high quality materials and contemporary design sensitive to the character of the surrounding neighborhood. Additionally, a variety of mid, low and high-rise buildings are located within the vicinity of the Project site and the scale of the proposed Project would be consistent with that of surrounding</p>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
buildings. Therefore, project-level and cumulative impacts associated with this issue would not occur.						
(c) <i>Substantially affect daytime or nighttime views in the area due to lighting?</i> The proposed project would not involve a substantial amount of exterior lighting or include materials that would generate substantial glare. Furthermore, outdoor lighting that would be incorporated into the proposed project would be shielded or directed away so that direct light or glare does not adversely impact adjacent land uses. The City's Light Pollution Law (Municipal Code Section 101.1300 et seq.) also protects nighttime views (e.g., astronomical activities) and light-sensitive land uses from excessive light generated by development in the downtown area. The proposed project's conformance with these requirements would ensure that direct and cumulative impacts associated with this issue are not significant					X	X
2. AGRICULTURAL RESOURCES:						
(a) <i>Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland) to non-agricultural use?</i> The DCP Area is an urban downtown environment that does not contain land designated as prime agricultural soil by the Soils Conservation Service. In addition, it does not contain prime farmland designated by the California Department of Conservation. Therefore, no impact to agricultural resources would occur.					X	X
(b) <i>Conflict with existing zoning for agricultural use, or a Williamson Act contract?</i> The DCP Area does not contain, nor is it near, land zoned for agricultural use or land subject to a Williamson Act Contract pursuant to Section 512101 of the California Government Code. Therefore, impacts resulting from conflicts with existing zoning for agricultural use or a Williamson Act Contract would not occur.					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
3. AIR QUALITY:						
(a) <i>Conflict with or obstruct implementation of an applicable air quality plan, including the County's Regional Air Quality Strategies (RAQS) or the State Implementation Plan?</i> The proposed Project site is located within the San Diego Air Basin, which is under the jurisdiction of the San Diego Air Pollution Control District (SDAPCD). The San Diego Air Basin is designated by state and federal air quality standards as nonattainment for ozone and particulate matter (PM) less than 10 microns (PM10) and less than 2.5 microns (PM 2.5) in equivalent diameter. The SDAPCD has developed a Regional Air Quality Strategy (RAQS) to attain the state air quality standards for ozone. The proposed Project is consistent with the land use and transit-supportive policies and regulations of the DCP and CCPDO; which are in accordance with those of the RAQs. Therefore, the proposed Project would not conflict with, but would help implement, the RAQS with its compact, high intensity land use and transit-supportive design. Therefore, no impact to the applicable air quality plan would occur.					X	X
(b) <i>Expose sensitive receptors to substantial air contaminants including, but not limited to, criteria pollutants, smoke, soot, grime, toxic fumes and substances, particulate matter, or any other emissions that may endanger human health?</i> The Project could involve the exposure of sensitive receptors to substantial air contaminants during short-term construction activities and over the long-term operation of the Project. Construction activities associated with the Project could result in potentially significant impacts related to the exposure of sensitive receptors to substantial emissions of particulate matter. The potential for impacts to sensitive receptors during construction activities would be mitigated to below a level of significance through compliance with the City's mandatory standard dust control measures			X			X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p>and the dust control and construction equipment emission reduction measures required by FEIR Mitigation Measure AQ-B.1-1 (see Attachment A).</p> <p>The Project could also involve the exposure of sensitive receptors to air contaminants over the long-term operation of the Project, such as carbon monoxide exposure (commonly referred to as CO “hot spots”) due to traffic congestion near the Project site. However, the FEIR concludes that development within the DCP Area would not expose sensitive receptors to significant levels of any of the substantial air contaminants. Since the land use designation of the proposed development does not differ from the land use designation assumed in the FEIR analysis, the Project would not expose sensitive receptors to substantial air contaminants beyond the levels assumed in the FEIR. Additionally, the Project is not located close enough to any industrial activities to be impacted by any emissions potentially associated with such activities. Therefore, impacts associated with this issue would not be significant. Project impacts associated with the generation of substantial air contaminants are discussed below in Section 3.c.</p>						
<p>(c) <i>Generate substantial air contaminants including, but not limited to, criteria pollutants, smoke, soot, grime, toxic fumes and substances, particulate matter, or any other emissions that may endanger human health?</i> Implementation of the Project could result in potentially adverse air quality impacts related to the following air emission generators: construction and mobile-sources. Site preparation activities and construction of the Project would involve short-term, potentially adverse impacts associated with the creation of dust and the generation of construction equipment emissions. The clearing, grading, excavation, and other construction activities associated with the Project would result in dust and equipment emissions that, when considered together, could endanger human health. Implementation of FEIR</p>		X	X			

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p>Mitigation Measure AQ-B.1-1 (see Attachment A) would reduce dust and construction equipment emissions generated during construction of the Project to a level below significance.</p> <p>The air emissions generated by automobile trips associated with the Project would not exceed air quality significance standards established by the San Diego Air Pollution Control District. However, the Project's mobile source emissions, in combination with dust generated during the construction of the Project, would contribute to the significant and unmitigated cumulative impact to air quality identified in the FEIR. No uses are proposed that would significantly increase stationary-source emissions in the DCP Area; therefore, impacts from stationary sources would be not significant.</p>						
4. BIOLOGICAL RESOURCES:						
<p>(a) <i>Substantially effect, either directly or through habitat modifications, any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by local, state or federal agencies?</i> Due to the highly urbanized nature of the DCP Area, there are no sensitive plants or animal species, habitats, or wildlife migration corridors. In addition, the ornamental trees and landscaping included in the Project are considered of no significant value to the native wildlife in their proposed location. Therefore, no impact associated with this issue could occur.</p>					X	X
<p>(b) <i>Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations by local, state or federal agencies?</i> As identified in the FEIR, the DCP Area is not within a sub-region of the San Diego County Multiple Species Conservation Program (MSCP). Therefore, impacts associated with substantial adverse effects on riparian habitat or other sensitive natural communities identified in local or regional plans, policies, and regulations by local, state</p>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
or federal agencies would not occur.						
5. GEOLOGY AND SOILS:						
<p>(a) <i>Substantial health and safety risk associated with seismic or geologic hazards?</i> The proposed Project site is in a seismically active region. There are no known active or potentially active faults located on the Project site. However, the Project site is located within the Rose Canyon Fault Zone, which is designated as an Earthquake Fault Zone by the California Department of Mines and Geology. Within this fault zone is the Downtown Graben and San Diego Fault and a seismic event on this fault could cause significant ground shaking on the proposed Project site. Therefore, the potential exists for substantial health and safety risks on the Project site associated with a seismic hazard.</p> <p>Construction Testing & Engineering, Inc prepared a Geotechnical Investigation for the project in 2016. According to the Geotechnical Investigation, the project site is located within the City of San Diego Seismic Safety Hazard Category 13 Downtown Special Fault Zone. The site is not located within an Alquist-Priolo Earthquake Fault Zone, as defined by the California Geological Survey (CGS) 2003, and no known active or potentially active faults project toward the site. Construction Testing & Engineering, Inc. did not observe any active faulting within the exploratory trenches completed at the site. Therefore, the potential for surface rupture from displacement or fault movement beneath the proposed improvements is considered to be low.</p> <p>Although the potential for geologic hazards (landslides, liquefaction, slope failure, and seismically-induced settlement) is considered low due to the site's moderate to non-expansive geologic structure, such hazards could nevertheless occur. Conformance with, and implementation of, all</p>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
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seismic-safety development requirements, including all applicable requirements of the Alquist-Priolo Zone Act, the seismic design requirements of the International Building Code (IBC), the City of San Diego Notification of Geologic Hazard procedures, and all other applicable requirements would ensure that the potential impacts associated with seismic and geologic hazards are not significant.						
6. GREENHOUSE GAS EMISSIONS:						
<p>(a) <i>Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?</i> The Downtown Community Plan provides for the growth and buildout of Downtown Community Plan area (“Downtown”). The City’s Climate Action Plan (“CAP”) EIR analyzed greenhouse gas (“GHG”) emissions on a citywide basis – inclusive of the anticipated assumptions for the growth and buildout of Downtown. The City’s CAP outlines measures that would support substantial progress towards the City’s 2035 GHG emissions reduction targets, which are intended to keep the City in-line to achieve its share of 2050 GHG reductions.</p> <p>The CAP Consistency Checklist was adopted on July 12, 2016 to uniformly implement the CAP for project-specific analyses of GHG emission impacts. The Project has been analyzed against the CAP Consistency Checklist and based this analysis, it has been determined that the Project would be consistent with the CAP and would not contribute to cumulative GHG emissions that would be inconsistent with the CAP. As such, the Project would be consistent with the anticipated growth and buildout assumptions of both the Downtown Community Plan and the CAP. Therefore, this impact is considered not significant.</p>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
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(b) <i>Conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gas?</i> As stated above in Section 6.a., construction and operation of the proposed Project would not result in a significant impact related to GHG emissions on the environment. The Project is consistent with the City's CAP and growth assumptions under the Downtown Community Plan as stated in Section 6.a. Additionally, the Project would be consistent with the recommendations within Policy CE-A.2 of the City of San Diego's General Plan Conservation Element. Therefore, the Project does not conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases. This impact is considered not significant.					X	X
7. HAZARDS AND HAZARDOUS MATERIALS:						
(a) <i>Substantial health and safety risk related to onsite hazardous materials?</i> The FEIR states that contact with, or exposure to, hazardous building materials, soil and ground water contaminated with hazardous materials, or other hazardous materials could adversely affect human health and safety during short-term construction or long term operation of a development. The Project is subject to federal, state, and local agency regulations for the handling of hazardous building materials and waste. Compliance with all applicable requirements of the County of San Diego Department of Environmental Health and federal, state, and local regulations for the handling of hazardous building materials and waste would ensure that potential health and safety impacts caused by exposure to on-site hazardous materials are not significant during short term, construction activities. In addition, herbicides and fertilizers associated with the landscaping of the Project could pose a significant health risk over the long term operation of the Project. However, the Project's adherence to existing mandatory federal, state, and local regulations					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
controlling these materials would ensure that long-term health and safety impacts associated with on-site hazardous materials over the long term operation of the Project are not significant.						
<p>(b) <i>Be located on or within 2,000 feet of a site that is included on a list of hazardous materials sites compiled pursuant to Government Code § 65962.5 and, as a result, would it create a significant hazard to the public or the environment?</i> Advantage Environmental Consultants (AEC), LLC prepared a Phase I Environmental Site Assessment (ESA) for the project site in 2015. AEC reviewed Federal and State environmental databases, compiled pursuant to Government Code Section 65962.5, for information pertaining to documented and/or suspected releases of regulated hazardous substances and/or petroleum products within specified search distances. The Phase I ESA identified four references to the project site within federal and state databases, but all cases had regulatory statuses of “closed” as of March 11, 2014. Several listings for adjacent and nearby properties were identified in the standard regulatory databases within 1/8th mile of the project site. However, according to ACE, none of the listed properties are considered to be of significant environmental impact to the project site due to several factors including, the nature of the regulatory database listings, distance of the off-site listed properties from the site, orientation of the listed properties relative to the site, interpreted direction of groundwater flow, and/or regulatory case status information for the various properties as described in the databases.</p> <p>According to the Phase I ESA, the presence of residual petroleum hydrocarbons in soil and groundwater beneath the site and the presence of artificial/undocumented fill material beneath portions of the site represent recognized environmental conditions. However, the Phase I ESA found that</p>					X	X

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	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p>these environmental conditions do not represent a significant threat to public health or the environment in its current state and this impact will be mitigated during the course of future construction activities for the project.</p> <p>Furthermore, the DCP FEIR states that significant impacts to human health and the environment regarding hazardous waste sites would be avoided through compliance with mandatory federal, state, and local regulations as described in Section 8(a) above. Impacts would be less than significant.</p>						
<p>(c) <i>Substantial safety risk to operations at San Diego International Airport?</i> According to the Airport Land Use Compatibility Plan for San Diego International Airport (SDIA), the entire downtown planning area is located within the SDIS Airport Influence Area. The FEIR identifies policies that regulate development within areas affected by Lindbergh Field including building heights, use and intensity limitations, and noise sensitive uses. The Project does not exceed the intensity of development assumed under the FEIR, nor does it include components that would in any way violate or impede adherence to these policies, impacts related to the creation of substantial safety risks at San Diego International Airport would not be significant, consistent with the analysis in the FEIR. Therefore, there are no potential direct or cumulative impacts related to this issue.</p>					X	X
<p>(d) <i>Substantially impair implementation of an adopted emergency response plan or emergency evacuation plan?</i> The Project does not propose any features that would affect an emergency response or evacuation plan. Therefore, no impact associated with this issue is anticipated.</p>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
8. HISTORICAL RESOURCES:						
<p>(a) <i>Substantially impact a significant historical resource, as defined in § 15064.5?</i> The project site is currently a surface parking lot and contains the historic Clermont Hotel, which is locally designated in the San Diego Register (DCP FEIR, p. 5.3-8). The historic Clermont Hotel currently operates as a single room occupancy hotel. The project includes restoration of the exterior of this historic building and continuing its use as a hotel with an African American exhibit space on the first floor, which are supportive of DCP Goals 9.1-G-1, “Protect historic resources to communicate downtown’s heritage,” and 9.1-G-2, “Encourage the rehabilitation and reuse of designated historic properties.” Mitigation Measure Hist-A.1-1 requires compliance with Chapter 14, Article 3, Division 2 of the San Diego Municipal Code, which regulates historic resources. Hist-A.1-2 requires the applicant to submit a Treatment Plan for retained historic resources for review and approval. Implementation of San Diego Municipal Code §143.0201 et seq, as required by DCP FEIR Mitigation Measures HIST-A.1-1 and HIST-A.1-2 (see Appendix B), will further ensure that the restoration of the Clermont Hotel will not significantly impact the historic resource. The project would not result in a substantial adverse change in the significance of the Clermont Hotel; therefore, no significant impacts associated with this issue would occur.</p>					X	X
<p>(b) <i>Substantially impact a significant archaeological resource pursuant to § 15064.5, including the disturbance of human remains interred outside of formal cemeteries?</i> According to the FEIR, the likelihood of encountering archaeological resources is greatest for Projects that include grading and/or excavation of areas on which past grading and/or excavation activities have been minimal (e.g., surface parking lots). Since archaeological resources have been found within inches of the ground surface in the</p>	X	X				

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	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p>DCP Area, even minimal grading activities can impact these resources. In addition, the likelihood of encountering subsurface human remains during construction and excavation activities, although considered low, is possible. Thus, the excavation, demolition, and surface clearance activities associated with development of the Project and the five levels of subterranean parking could have potentially adverse impacts to archaeological resources, including buried human remains.</p> <p>Additionally, Brian F. Smith and Associates, Inc. prepared a Cultural Resource Survey and Archaeological Test Plan (ATP) for the project in 2015 as required by the City of San Diego in conformance with Section 21083.2 of the California Public Resources Code and CEQA Guidelines, and in accordance with the CCPDO and Mitigation Measure HIST-B.1-1 of the DCP FEIR, as well as the City of San Diego Historical Resources Guidelines (Municipal Code §143.0212). The ATP is a plan to search for archaeological features or deposits based on the findings of the Cultural Resource Survey. Under the ATP, if archaeological features, deposits, or artifacts are discovered during testing, these shall be evaluated for significance in accordance with City of San Diego Municipal Code §143.02 and Section 21083.2 of the Public Resources Code. Since the potential for archaeological resources and human remains on the project site cannot be confirmed until the ATP or ground disturbance is conducted, the exact nature and extent of impacts associated with the proposed project cannot be predicted. Consequently, compliance with the ATP and Mitigation Measure HIST-B.1-1 may or may not be sufficient to reduce these direct project-level impacts to below a level of significance. However, archeological impacts associated with development of the site were analyzed in the DCP FEIR and project-level impacts associated with archaeological resources are not peculiar to the</p>						

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	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
site, nor would the project increase the severity of these previously identified impacts. Consistent with the findings of the DCP FEIR, impacts to archaeological resources would remain potentially significant and not fully mitigated. Project-level significant impacts to important archaeological resources would contribute to the potentially significant and unmitigated cumulative impacts identified in the DCP FEIR.						
(c) <i>Substantially impact a unique paleontological resource or site or unique geologic feature?</i> The Project site is underlain by the San Diego Formation and Bay Point Formation, which has high paleontological resource potential. The FEIR concludes that development would have potentially adverse impacts to paleontological resources if grading and/or excavation activities are conducted beyond a depth of 1-3 feet. The Project's proposal for five levels of subterranean parking would involve excavation beyond the FEIR standard, resulting in potentially significant impacts to paleontological resources. Implementation of FEIR Mitigation Measure PAL-A.1-1 (see Attachment A) would ensure that the Project's potentially direct impacts to paleontological resources are not significant. Furthermore, the Project would not impact any resources outside of the Project site. The mitigation measures for direct impacts fully mitigate for paleontological impacts, therefore, the Project's contribution to cumulative impacts to paleontological resources would be significant but mitigated because the same measures that mitigate direct impacts would also mitigate for any cumulative impacts.			X	X		
9. HYDROLOGY AND WATER QUALITY:						
(a) <i>Substantially degrade groundwater or surface water quality?</i> The Project's construction and grading activities may involve soil excavation at a depth that could surpass known groundwater levels, which		X			X	

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	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p>would indicate that groundwater dewatering might be required. Compliance with the requirements of either (1) the San Diego Regional Water Quality Control Board under a National Pollution Discharge Elimination system general permit for construction dewatering (if dewatering is discharged to surface waters), or (2) the City of San Diego Metropolitan Wastewater Department (if dewatering is discharged into the City's sanitary sewer system under the Industrial Waste Pretreatment Program), and (3) the mandatory requirements controlling the treatment and disposal of contaminated dewatered groundwater would ensure that potential impacts associated with construction dewatering and the handling of contaminated groundwater are not significant. In addition, Best Management Practices (BMPs) required as part of the local Storm Water Pollution Prevention Plan (SWPPP) would ensure that short-term water quality impacts during construction are not significant. The proposed Project would result in hard structure areas and other impervious surfaces that would generate urban runoff with the potential to degrade groundwater or surface water quality. However, implementation of BMPs required by the local Standard Urban Storm water Mitigation Program (SUSMP) and Storm water Standards would reduce the Project's long-term impacts. Thus, adherence to the state and local water quality controls would ensure that direct impacts to groundwater and surface water quality would not be significant.</p> <p>Despite not resulting in direct impacts to water quality, the FEIR found that the urban runoff generated by the cumulative development in the downtown would contribute to the existing significant cumulative impact to the water quality of San Diego Bay. No mitigation other than adherence to existing regulations has been identified in the FEIR to feasibly reduce this cumulative impact to below a level of significance. Consistent with the FEIR, the Project's contribution to</p>						

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	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
the cumulative water quality impact would remain significant and unmitigated.						
(b) <i>Substantially increase impervious surfaces and associated runoff flow rates or volumes?</i> The project site is currently developed and covered with impervious surfaces. Implementation of the Project would not substantially increase the runoff volume entering the storm drain system. The FEIR found that implementation of the Downtown Community Plan would not result in a substantial increase in impervious surfaces within the downtown planning area because the area is a highly urbanized area paved with pervious surfaces and very little vacant land (approximately 3 percent of the planning area). Redevelopment of downtown is therefore anticipated to replace impervious surfaces that already exist and development of the small number of undeveloped sites would not result in a substantial increase in impermeable surface area or a significant impact on the existing storm drain system. The Project is also required to comply with the City of San Diego Best Management Practices (BMPs) required as part of the local Storm Water Pollution Prevention Plan (SWPPP). The Project incorporates a variety of pervious surfaces (such as landscape areas and open spaces), as well as features designed to utilize storm water. Implementation of these features is encouraged by the DCP as they capture rain water and reduce surface volume entering the storm drain system. Therefore, impacts associated within this issue are not significant. (Impacts associated with the quality of urban runoff are analyzed in Section 9a.)					X	X
(c) <i>Substantially impede or redirect flows within a 100-year flood hazard area?</i> The Project site is not located within a 100-year floodplain. Similarly, the Project would not affect off-site flood hazard areas, as no 100-year floodplains are located downstream. Therefore, impacts associated with these issues are not					X	X

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	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
significant.						
<p><i>(d) Substantially increase erosion and sedimentation?</i> The potential for erosion and sedimentation could increase during the short-term during site preparation and other construction activities. As discussed in the FEIR, the proposed Project's compliance with regulations mandating the preparation and implementation of a SWPPP would ensure that impacts associated with erosion and sedimentation are not significant.</p>					X	X
10. LAND USE AND PLANNING:						
<p><i>(a) Physically divide an established community?</i> The Project does not propose any features or structures that would physically divide an established community. Impacts associated with this issue would not occur.</p>					X	X
<p><i>(b) Substantially conflict with the City's General Plan and Progress Guide, Downtown Community Plan or other applicable land use plan, policy, or regulation?</i></p> <p>The Land Use District for the site is Employment/Residential Mixed-Use (ER), which provides synergies between educational institutions and residential neighborhoods, or transition between the Core district and residential neighborhoods. A variety of uses are permitted in this district, including office, residential, hotel, research and development, educational, and medical facilities. The Commercial Street (CS) Overlay and the Limited Vehicle Access Overlays apply to the Market Street frontage only.</p> <p>The Project would not conflict with other applicable land use plans, policies, or regulations. The Project complies with the goals and policies of the DCP and the approval of the requested PDP the Project will meet all applicable development standards of the CCPDO and San Diego Municipal Code. Therefore,</p>					X	X

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	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
no significant direct or cumulative impacts associated with an adopted land use plan would occur.						
<p>(c) <i>Substantial incompatibility with surrounding land uses?</i> Sources of land use incompatibility include lighting, industrial activities, shading, and noise. The Project would not result in or be subject to, adverse impacts due to substantially incompatible land uses. Compliance with the City's Light Pollution Ordinance would ensure that land use incompatibility impacts related to the Project's emission of, and exposure to, lighting are not significant. In addition, the FEIR concludes that existing mandatory regulations addressing land use compatibility with industrial activities would ensure that residents of, and visitors to, the Project are not subject to potential land use incompatibilities (potential land use incompatibilities resulting from hazardous materials and air emissions are evaluated elsewhere in this evaluation).</p> <p>Potentially significant impacts associated with the Project's incompatibility with traffic noise on adjacent grid streets are discussed in Sections 12.b and 12.c. No impacts associated with incompatibility with surrounding land use would occur.</p>					X	X
<p>(d) <i>Substantially impact surrounding communities due to sanitation and litter problems generated by transients displaced by downtown development?</i> Although not expected to be a substantial direct impact of the Project because substantial numbers of transients are not known to congregate on-site, the Project, in tandem with other downtown development activities, would have a significant cumulative impact on surrounding communities resulting from sanitation problems and litter generation by transients who are displaced from downtown into surrounding canyons and vacant land as discussed in the FEIR. Continued support of Homeless Outreach Teams (HOTs) and similar transient outreach efforts would reduce, but</p>		X			X	

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
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not fully mitigate, the adverse impacts to surrounding neighborhoods caused by the transient relocation. Therefore, the proposed Project would result in cumulatively significant and not fully mitigated impacts to surrounding neighborhoods.						
11. MINERAL RESOURCES:						
(a) <i>Substantially reduce the availability of important mineral resources?</i> The FEIR states that the viable extraction of mineral resources is limited in the DCP Area due to its urban nature and the fact that the area is not recognized for having high mineral resource potential. Therefore, no impact associated with this issue would occur.					X	X
12. NOISE:						
(a) <i>Substantial noise generation?</i> The Project would not result in substantial noise generation from any stationary sources over the long-term. Short-term construction noise impacts would be avoided by adherence to construction noise limitations imposed by the City's Noise Abatement and Control Ordinance. The FEIR defines a significant long-term traffic noise increase as an increase of at least 3.0 dB (A) CNEL for street. The FEIR identified nine street segments in the downtown area that would be significantly impacted as a result of traffic generation; however, none of these identified segments are in the direct vicinity of the Project site. Nevertheless, automobile trips generated by the project, would, in combination with other development in downtown significantly increase noise on several street segments resulting in cumulatively significant noise impacts. The FEIR concludes that there are no feasible mitigation measures available to reduce the significant noise increase in noise on affected roadways and this		X			X	

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	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
impact remains significant and unavoidable.						
<p><i>(b) Substantial exposure of required outdoor residential open spaces or public parks and plazas to noise levels (e.g. exposure to levels exceeding 65 dBA CNEL)?</i> The Project contains a residential component containing approximately 218 residential units. Under the CCPDO, developments of this size are required to contain common outdoor open space areas. No public parks and/or plazas are proposed as part of this Project.</p> <p>As required by DCP FEIR Mitigation Measure NOI-B.1-1, NOI-B.1-2, and NOI-C.1-1, Veneklasen Associates prepared an Exterior Envelope Acoustical Design Study in 2015. The study found that with amenity deck edges and project structures, common outdoor amenity decks would not experience noise in excess of 60 dBA CNEL, which meets the City of San Diego's exterior noise goals. The study also found that private balconies at some locations would be exposed to noise levels between 60 and 70 dBA CNEL. According to NOI-B.1-2, an acoustical analysis must be performed to determine if any required outdoor open space areas would be exposed to noise levels in excess of 65 dBA CNEL and, provided noise attenuation would not interfere with the primary purpose or design intent of the exterior use, measures must be included in the building plan to reduce noise exposure, to the extent feasible. No feasible noise mitigation techniques exist to reduce noise at private balcony locations. Furthermore, full attenuation of noise may be contrary to the goal of creating outdoor open spaces for residences. If full enclosure of the open space would be required to fully attenuate noise, it would defeat the basic goal of providing "outdoor" open space. The project does not exceed the intensity of development assumed under the DCP FEIR. Impacts associated with DCP buildout would remain significant and unavoidable, but the project would not</p>			X			X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
increase the severity of impacts related to exterior traffic noise in residential development.						
(c) <i>Substantial interior noise within habitable rooms (e.g. levels in excess of 45 dBA CNEL)?</i> According to the Exterior Envelope Acoustical Design Study (2015), interior noise levels within habitable rooms (including hotel rooms) facing Market Street (floor levels 1 through 29), Island Avenue (floor levels 1 through 18), 7th Avenue (floor levels 1 through 18), and 8th Avenue (floor levels 1 through 18) would exceed 45 dBA CNEL (the standard set forth in the DCP FEIR). Pursuant to Mitigation Measure NOI-B.1-1, the project would be required to implement the design features included in the Exterior Envelope Acoustical Design Study (2015), such as windows and glass doors with minimum rating of STC 30 and mechanical ventilation, or other means of natural ventilation, in residential units exposed to exterior noise levels in excess of 60 dBA CNEL. Therefore, project impacts related to the exposure of persons to or generation of noise levels in excess of noise standards would be less than significant with mitigation included in the DCP FEIR.			X	X		
13. POPULATION AND HOUSING:						
(a) <i>Substantially induce population growth in an area?</i> The FEIR concludes that build-out of the DCP would not induce substantial population growth that results in adverse physical changes. The Project is consistent with the DCP and CCPDO and does not exceed those analyzed throughout the FEIR. Therefore, project-level and cumulative impacts associated with this issue are not significant.					X	X
(b) <i>Substantial displacement of existing housing units or people?</i> The project site is currently occupied by a surface parking lot and the Clermont Hotel. No existing housing units are located onsite or would be affected by the development or operation of the					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
proposed project. Overall displacement of existing housing units or persons would not occur as a result of the proposed project, and the construction of replacement housing would not be required. Therefore, no direct or cumulative impacts associated with this issue would occur.						
14. PUBLIC SERVICES AND UTILITIES:						
(a) <i>Substantial adverse physical impacts associated with the provision of new schools?</i> The population of school-aged children attending public schools is dependent on current and future residential development. In and of itself, the Project would not generate a sufficient number of students to warrant construction of a new school facility. However, the FEIR concludes that the additional student population anticipated at build out of the DCP Area would require the construction of at least one additional school, and that additional capacity could potentially be accommodated in existing facilities. The specific future location of new facilities is unknown at the present time. Pursuant to Section 15145 of CEQA, analysis of the physical changes in the DCP Area, which may occur from future construction of these public facilities, would be speculative and no further analysis of their impacts is required. Construction of any additional schools would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, implementation of the Project would not result in direct or cumulative impacts associated with this issue.					X	X
(b) <i>Substantial adverse physical impacts associated with the provision of new libraries?</i> The FEIR concludes that, cumulatively, development in downtown would generate the need for a new Main Library and possibly several smaller libraries in downtown. In and of itself, the proposed Project would not generate additional demand necessitating the construction of new library					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
facilities. However, according to the analysis in the FEIR, future development projects are considered to contribute to the cumulative need for new library facilities downtown identified in the FEIR. Nevertheless, the specific future location of these facilities (except for the Main Library) is unknown at present. Pursuant to Section 15145 of CEQA, analysis of the physical changes in the downtown planning area, which may occur from future construction of these public facilities, would be speculative and no further analysis of their impacts is required. (The environmental impacts of the Main Library were analyzed in a Secondary Study prepared by Civic SD (formerly CCDC) in 2001.) Construction of any additional library facilities would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, approval of the Project would not result in direct or cumulative impacts associated with this issue.						
(c) <i>Substantial adverse physical impacts associated with the provision of new fire protection/emergency facilities?</i> The Project would not generate a level of demand for fire protection/emergency facilities beyond the level assumed by the FEIR. However, the FEIR reports that the San Diego Fire Department is in the process of securing sites for two new fire stations in the downtown area. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the downtown planning area that may occur from future construction of this fire station facility would be speculative and no further analysis of the impact is required. However, construction of the second new fire protection facility would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify significant impacts and appropriate mitigation measures.					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p>(d) <i>Substantial adverse physical impacts associated with the provision of new law enforcement facilities?</i> The FEIR analyzes impacts to law enforcement service resulting from the cumulative development of the downtown and concludes the construction of new law enforcement facilities would not be required. Since the land use designation of the proposed development is consistent with the land use designation assumed in the FEIR analysis, the Project would not generate a level of demand for law enforcement facilities beyond the level assumed by the FEIR. However, the need for a new facility could be identified in the future. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the downtown planning area that may occur from the future construction of law enforcement facilities would be speculative and no future analysis of their impacts would be required. However, construction of new law enforcement facilities would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures.</p>					X	X
<p>(e) <i>Substantial adverse physical impacts associated with the provision of new water transmission or treatment facilities?</i> The Public Utilities Department provides water service to the downtown and delivers more than 200,000 million acre-feet annually to over 1.3 million residents. During an average year the Department's water supply is made up of 10 to 20 percent of local rainfall, with the remaining amount imported from regional water suppliers including the San Diego County Water Authority (SDWA) and the Metropolitan Water District (MWD). Potable water pipelines are located underneath the majority of downtown's streets mimicking the above-ground street grid pattern.</p> <p>According to the DCP FEIR, in the short term, planned water supplies and transmission or treatment</p>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p>facilities are adequate for development of the DCP. Water transmission infrastructure necessary to transport water supply to the downtown area is already in place. Build out of the 2006 DCP, however, would generate more water demand than planned for in the adopted 2010 UWMP. This additional demand was not considered in SDCWA's Urban Water Management Plan (UWMP). To supplement this and meet the additional need, SDCWA indicates in the DCP FEIR that it will increase local water supply (from surface water, water recycling, groundwater, and seawater desalination) to meet the additional demand resulting from build out of the DCP.</p> <p>California Water Code Section 10910 requires projects analyzed under CEQA to assess water demand and compare that finding to the jurisdiction's projected water supply. The City of San Diego Public Utilities Department prepared a Water Supply Assessment ("WSA") dated April 6, 2016 for the project finding that there is sufficient water supply planned to serve the project's future water demands within the Department's service area in normal, single-dry year, and multiple-dry year forecasts over a 20-year projection period (2016). The WSA disclosed that the City's 2010 UWMP planned water demand for the project site was 11,116 gallons of water per day, or 12.45 acre feet per year, but the anticipated demand for proposed project is 116,328 gallons of water per day or 128 acre feet of water per year. Accordingly, 105,091 gallons per day or 115.6 acre feet per year of the project's water demand was not planned for in the 2010 UWMP. The WSA explains that the City can nevertheless serve this unanticipated demand through the "Accelerated Forecasted Growth" demand increment, which is intended to cover development identified in SANDAG's land use plan that is not yet covered in the local General Plan. In other words, the Accelerated Forecasted Growth demand increment represents an available, but unallocated supply of water to serve demand not contemplated by the 2010</p>						

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p>UWMP, such as the project's water demand. As set forth in Appendix B of the WSA, the 2010 UWMP Accelerated Growth Forecast set aside a water supply of 10,048 acre feet per year for developments not planned for in the 2010 UWMP, and the City has allocated 4,212 acre feet of that supply to developments, including the project. Section 5 of the WSA describes the existing and future water supplies to serve the City's projected water demands, including the Accelerated Forecasted Growth Demand increment. That water supply is provided through agreements with the San Diego County Water Authority and the Metropolitan Water District of Southern California, which in turn obtain water from the Colorado River, the State Water Project and other supplies. The City also manages water supplies from local surface water supplies and through drought management, conservation, recycled water and capital improvement programs.</p> <p>The WSA dated April 6, 2016, prepared by the City's Public Utilities Department concluded that the projected level of water use for the project is within the regional water resource planning documents of the City, the San Diego County Water Authority and the Metropolitan Water District of Southern California (MWD). The San Diego City Council will consider formal adoption of the WSA at a public hearing. At the time of adoption of the WSA by the City Council, the WSA will become final. Current and future water supplies, as well as the actions necessary to develop these supplies, have been identified in the water resources planning documents of the Department, the Water Authority, and MWD to serve the projected demands of the project, in addition to existing and planned future water demands of the Department. Therefore, impacts related to water supply would not be significant.</p>						
<i>(f) Substantial adverse physical impacts associated with the provision of new storm water facilities? The FEIR</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
concludes that the cumulative development of the downtown would not impact the existing downtown storm drain system. Since implementation of the Project would not result in a significant increase of impervious surfaces, the amount of runoff volume entering the storm drain system would not create demand for new storm water facilities. Direct and cumulative impacts associated with this issue are considered not significant.						
(g) <i>Substantial adverse physical impacts associated with the provision of new wastewater transmission or treatment facilities?</i> The FEIR concludes that new wastewater treatment facilities would not be required to address the cumulative development of the downtown. In addition, sewer improvements that may be needed to serve the Project are categorically exempt from environmental review under CEQA as stated in the FEIR. Therefore, impacts associated with this issue would not be significant.					X	X
(h) <i>Substantial adverse physical impacts associated with the provision of new landfill facilities?</i> The FEIR concludes that cumulative development within the downtown would increase the amount of solid waste to the Miramar Landfill and contribute to the eventual need for an alternative landfill. Although the proposed Project would generate a higher level of solid waste than the existing use of the site, implementation of a mandatory Waste Management Plan and compliance with the applicable provisions of the San Diego Municipal Code would ensure that both short-term and long-term project-level impacts are not significant. However, the Project would contribute, in combination with other development activities in downtown, to the cumulative increase in the generation of solid waste sent to Miramar Landfill and the eventual need for a new landfill as identified in the FEIR. The location and size of a new landfill is unknown at this time. Pursuant to Section 15145 of					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
CEQA, analysis from the physical changes that may occur from future construction of landfills would be speculative and no further analysis of their impacts is required. However, construction or expansion of a landfill would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts of the proposed Project and appropriate mitigation measures. Therefore, cumulative impacts of the proposed Project are also considered not significant.						
15. PARKS AND RECREATIONAL FACILITIES:						
(a) <i>Substantial increase in the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?</i> The FEIR discusses impacts to parks and other recreational facilities and the maintenance thereof and concludes that build out of the DCP would not result in significant impacts associated with this issue. Since the land use designation of the proposed development does not differ from the land use designation assumed in the FEIR analysis, the Project would not generate a level of demand for parks and recreational facilities beyond the level assumed by the FEIR. Therefore, substantial deterioration of existing neighborhood or regional parks would not occur or be substantially accelerated as a result of the Project. No significant impacts with this issue would occur.					X	X
16. TRANSPORTATION/TRAFFIC:						
(a) <i>Cause the LOS on a roadway segment or intersection to drop below LOS E?</i> The FEIR states that projects generating greater than 2,400 ADT would result in potentially significant impacts to the level of service (LOS) of roadway segment or intersection and requires implementation of mitigation measures at the Project level to mitigate the impact. Chen Ryan prepared a Traffic Impact Study for the project in 2016. The Traffic		X			X	

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p>Impact Study found that the project would generate 7,305 ADT. The study examined the project's impact to 27 intersections in the project area under existing and near-term traffic conditions. As shown therein, all study area intersections would continue to operate at acceptable level of service (LOS) C or better under Existing Plus Project conditions during both the AM and PM peak hours. The project driveway (exit) at 7th Avenue would operate at LOS B or better during the peak hours. Furthermore, the Traffic Impact Study found that the key study area intersections are projected to operate at acceptable LOS E or better under Near-Term Base Plus Project conditions, with the exception of the intersections at 16th Street/F Street and 13th Street/G Street. However, although the intersections at 16th Street/F Street and 13th Street/G Street would operate at LOS F, the project would not result in a change in delay greater than the allowable two-second threshold. The project driveway at 7th Avenue would operate at LOS C or better during peak hours under Near-Term Base Plus Project conditions.</p> <p>Traffic generated by the proposed project in combination with traffic generated by other downtown development would contribute to the significant cumulative impacts projected in the DCP FEIR to occur on a number of downtown roadway segments and intersections, and street within neighborhoods surrounding the DCP area at buildout of the downtown. However, the project's direct impacts on downtown roadway segments or intersections would not be significant.</p> <p>The DCP FEIR includes mitigation measures to address impacts associated with buildout of the DCP, but the DCP FEIR acknowledges that the identified measures may or may not be able to fully mitigate these cumulative impacts due to constraints imposed by bicycle and pedestrian activities and the land uses adjacent to affected roadways. Pursuant to Mitigation</p>						

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
Measure TRAF-A.1.1-2, the applicant will also be required to pay development impact fees to fund a fair share fee towards transportation improvements for the DCP Area. As required by Mitigation Measure TRAF-A.1.1-3, the City adopted the Downtown Community Public Facilities Financing Plan 2015 that established a transportation fee. The transportation fee is intended to fund street, transit, bicycle, pedestrian improvements, promenades, and below grade parking structures, as further set forth in the Downtown Community PFFP.						
(b) <i>Cause the LOS on a freeway segment to drop below LOS E or cause a ramp delay in excess of 15 minutes?</i> The FEIR concludes that development within downtown will result in significant cumulative impacts to freeway segments and ramps serving the downtown planning area. Since the land use designation of the Project is consistent with the land use designation assumed in the FEIR analysis, the Project would contribute on a cumulative-level to the substandard LOS F identified in the FEIR on all freeway segments in the downtown area and several ramps serving the downtown. FEIR Mitigation Measure TRF-A.2.1-1 would reduce these impacts to the extent feasible, but not to below the level of significance. This mitigation measure is not the responsibility of the Project, and therefore is not included in Attachment A. The FEIR concludes that the uncertainty associated with implementing freeway improvements and limitations in increasing ramp capacity limits the feasibility of fully mitigating impacts to these facilities. Thus, the Project's cumulative-level impacts to freeways would remain significant and unavoidable, consistent with the analysis of the FEIR. The Project would not have a direct impact on freeway segments and ramps.		X			X	
(c) <i>Substantially discourage the use of alternative modes of transportation or cause transit service capacity to be exceeded?</i> The proposed Project in and of itself					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
does not include any features that would discourage the use of alternative modes of transportation. The Project's proximity to several other community serving uses, including nearby shopping and recreational activities also encourage walking. Additionally, visitors of the proposed Project would be encouraged to use alternative transportation means as there are several bus lines within a five-minute walk. Therefore, the Project will cause no significant impacts related to alternative modes of transportation or cause transit service capacity to be exceeded.						
17. MANDATORY FINDINGS OF SIGNIFICANCE:						
(a) <i>Does the Project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?</i> As indicated in the FEIR, due to the highly urbanized nature of the downtown area, no sensitive plant or animal species, habitats, or wildlife migration corridors are located in the DCP area. Additionally, the Project does not have the potential to eliminate important examples of major periods of California history or pre-history at the Project level. No other aspects of the Project would substantially degrade the environment. Cumulative impacts are described in Section 17.b below.					X	X
(b) <i>Does the Project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a Project are considerable when viewed in connection with the effects of past Projects, the effects of other current Projects, and the effects of probable future Projects)?</i> As acknowledged in the FEIR, implementation of the DCP, CCPDO, and		X				

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
Redevelopment Plan would result in cumulative impacts associated with: air quality, historical resources, paleontological resources, physical changes associated with transient activities, noise, parking, traffic, and water quality. This Project would contribute to those impacts. Implementation of the mitigation measures identified in the FEIR would reduce some significant impacts; however, the impacts would remain significant and immitigable as identified in the FEIR and the Statement of Overriding Considerations adopted by the City. This Project's contribution would not be greater than anticipated by the FEIR and therefore no further analysis is required.						
(c) <i>Does the Project have environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly?</i> As acknowledged in the FEIR, implementation of the DCP, CCPDO, and Redevelopment Plan would result in cumulative impacts associated with: air quality, historical resources, paleontological resources, physical changes associated with transient activities, noise, traffic, and water quality. This Project would contribute to those impacts. However, the impacts associated with this Project would be no greater than those assumed in the FEIR and therefore no further environmental review is required under CEQA.	X	X				

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**Downtown FEIR/SEIR
Mitigation Monitoring and Reporting Program**

Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
AIR QUALITY (AQ)				
Impact AQ-B.1	Dust and construction equipment engine emissions generated during grading and demolition would impact local and regional air quality. (Direct and Cumulative)			
	<p>Mitigation Measure AQ-B.1-1: Prior to approval of a Grading or Demolition Permit, the City shall confirm that the following conditions have been applied, as appropriate:</p> <ol style="list-style-type: none">Exposed soil areas shall be watered twice per day. On windy days or when fugitive dust can be observed leaving the development site, additional applications of water shall be applied as necessary to prevent visible dust plumes from leaving the development site. When wind velocities are forecast to exceed 25 mph, all ground disturbing activities shall be halted until winds that are forecast to abate below this threshold.Dust suppression techniques shall be implemented including, but not limited to, the following:<ol style="list-style-type: none">Portions of the construction site to remain inactive longer than a period of three months shall be seeded and watered until grass cover is grown or otherwise stabilized in a manner acceptable to Civic San Diego.On-site access points shall be paved as soon as feasible or watered periodically or otherwise stabilized.Material transported off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust.The area disturbed by clearing, grading, earthmoving, or excavation operations shall be minimized at all times.Vehicles on the construction site shall travel at speeds less than 15 mph.Material stockpiles subject to wind erosion during construction activities, which will not be utilized within three days, shall be covered with plastic, an alternative cover deemed equivalent to plastic, or sprayed with a nontoxic chemical stabilizer.Where vehicles leave the construction site and enter adjacent public streets, the streets shall be swept daily or washed down at the end of the work day to remove soil tracked onto the paved surface. Any visible track-out extending for more than fifty (50) feet from the access point shall be swept or washed within thirty (30) minutes of deposition.	Prior to Demolition or Grading Permit (Design)	Developer	City

**Downtown FEIR/SEIR
Mitigation Monitoring and Reporting Program**

Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<p>6. All diesel-powered vehicles and equipment shall be properly operated and maintained.</p> <p>7. All diesel-powered vehicles and gasoline-powered equipment shall be turned off when not in use for more than five minutes, as required by state law.</p> <p>8. The construction contractor shall utilize electric or natural gas-powered equipment in lieu of gasoline or diesel-powered engines, where feasible.</p> <p>9. As much as possible, the construction contractor shall time the construction activities so as not to interfere with peak hour traffic. In order to minimize obstruction of through traffic lanes adjacent to the site, a flag-person shall be retained to maintain safety adjacent to existing roadways, if necessary.</p> <p>10. The construction contractor shall support and encourage ridesharing and transit incentives for the construction crew.</p> <p>11. Low VOC coatings shall be used as required by SDAPCD Rule 67. Spray equipment with high transfer efficiency, such as the high volume-low pressure spray method, or manual coatings application such as paint brush hand roller, trowel, spatula, dauber, rag, or sponge, shall be used to reduce VOC emissions, where feasible.</p> <p>12. If construction equipment powered by alternative fuel sources (liquefied natural gas/compressed natural gas) is available at comparable cost, the developer shall specify that such equipment be used during all construction activities on the development site.</p> <p>13. The developer shall require the use of particulate filters on diesel construction equipment if use of such filters is demonstrated to be cost-competitive for use on this development.</p> <p>14. During demolition activities, safety measures as required by City/County/State for removal of toxic or hazardous materials shall be utilized.</p> <p>15. Rubble piles shall be maintained in a damp state to minimize dust generation.</p> <p>16. During finish work, low-VOC paints and efficient transfer systems shall be utilized, to the extent possible.</p> <p>17. If alternative-fueled and/or particulate filter-equipped construction equipment is not feasible, construction equipment shall use the newest, least-polluting equipment, whenever possible. During finish work, low-VOC paints and efficient transfer systems shall be utilized, to the extent possible.</p>			

**Downtown FEIR/SEIR
Mitigation Monitoring and Reporting Program**

Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
HISTORICAL RESOURCES (HIST)				
Impact HIST-A.1	Future development in Downtown could impact significant architectural structures. (Direct and Cumulative)			
	<p>Mitigation Measure HIST-A.1-1: For construction or development permits that may impact potentially historical resources which are 45 years of age or older and which have not been evaluated for local, state and federal historic significance, a site specific survey shall be required in accordance with the Historical Resources Regulations in the LDC. Based on the survey and the best information available, City Staff to the Historical Resources Board (HRB) shall determine whether historical resources exist, whether potential historical resource(s) is/are eligible for designation as designated historical resource(s) by the HRB, and the precise location of the resource(s). The identified historical resource(s) may be nominated for HRB designation as a result of the survey pursuant to Chapter 12, Article 3, Division 2, Designation of Historical Resource procedures, of the LDC.</p> <p>All applications for construction and development permits where historical resources are present on the site shall be evaluated by City Staff to the HRB pursuant to Chapter 14, Article 3, Division 2, Historical Resources Regulations of the LDC.</p> <p>1. National Register-Listed/Eligible, California Register-Listed/Eligible Resources: Resources listed in or formally determined eligible for the National Register or California Register and resources identified as contributing within a National or California Register District, shall be retained onsite and any improvements, renovation, rehabilitation and/or adaptive reuse of the property shall ensure its preservation and be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995) and the associated Guidelines.</p> <p>2. San Diego Register-Listed Resources: Resources listed in the San Diego Register of Historical Resources, or determined to be a contributor to a San Diego Register District, shall, whenever possible, be retained on-site. Partial retention, relocation, or demolition of a resource shall only be permitted according to Chapter 14, Article 3, Division 2, Historical Resources Regulations of the LDC.</p>	Prior to Development Permit (Design) Prior to Demolition, Grading, and/or Building Permit (Design) Prior to Certificate of Occupancy (Implementation)	Developer	Civic San Diego /City

**Downtown FEIR/SEIR
Mitigation Monitoring and Reporting Program**

Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<p><i>Mitigation Measure HIST-A.1-2:</i> If the potential exists for direct and/or indirect impacts to retained or relocated designated and/or potential historical resources (“historical resources”), the following measures shall be implemented in coordination with a Development Services Department designee and/or City Staff to the HRB (“City Staff”) in accordance with Chapter 14, Article 3, Division 2, Historical Resources Regulations of the LDC.</p> <p>I. Prior to Permit Issuance</p> <p>A. Construction Plan Check</p> <ol style="list-style-type: none"> 1. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit Building Permits, but prior to the first Preconstruction (Precon) Meeting, whichever is applicable, City Staff shall verify that the requirements for historical monitoring during demolition and/or stabilization have been noted on the appropriate construction documents. <ol style="list-style-type: none"> (a) Stabilization work cannot begin until a Precon Meeting has been held at least one week prior to issuance of appropriate permits. (b) Physical description, including the year and type of historical resource, and extent of stabilization shall be noted on the plans. <p>B. Submittal of Treatment Plan for Retained Historical Resources</p> <ol style="list-style-type: none"> 1. Prior to NTP for any construction permits, including but not limited to, the first Grading Permit and Building Permits, but prior to the first Precon Meeting, whichever is applicable, the Applicant shall submit a Treatment Plan to City Staff for review and approval in accordance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties (1995) and the associated Guidelines. The Treatment Plan shall include measures for protecting any historical resources, as defined in the LDC, during construction related activities (e.g., removal of non-historic features, demolition of adjacent structures, subsurface structural support, etc.). The Treatment Plan shall be shown as notes on all construction documents (i.e., Grading and/or Building Plans). 			

**Downtown FEIR/SEIR
Mitigation Monitoring and Reporting Program**

Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<p>C. Letters of Qualification have been submitted to City Staff</p> <ol style="list-style-type: none"> 1. The applicant shall submit a letter of verification to City Staff identifying the Principal Investigator (PI) for the project and the names of all persons involved in this MMRP (i.e., Architectural Historian, Historic Architect and/or Historian), as defined in the City of San Diego HRG. 2. City Staff will provide a letter to the applicant confirming that the qualifications of the PI and all persons involved in the historical monitoring of the project meet the qualification standards established by the HRG. 3. Prior to the start of work, the applicant must obtain approval from City Staff for any personnel changes associated with the monitoring program. <p>II. Prior to Start of Construction</p> <p>A. Documentation Program (DP)</p> <ol style="list-style-type: none"> 1. Prior to the first Precon Meeting and/or issuance of any construction permit, the DP shall be submitted to City Staff for review and approval and shall include the following: <ol style="list-style-type: none"> (a) Photo Documentation <ol style="list-style-type: none"> (1) Documentation shall include professional quality photo documentation of the historical resource(s) prior to any construction that may cause direct and/or indirect impacts to the resource(s) with 35mm black and white photographs, 4x6 standard format, taken of all four elevations and close-ups of select architectural elements, such as, but not limited to, roof/wall junctions, window treatments, and decorative hardware. Photographs shall be of archival quality and easily reproducible. (2) Xerox copies or CD of the photographs shall be submitted for archival storage with the City of San Diego HRB and the Civic San Diego Project file. One set of original photographs and negatives shall be submitted for archival storage with the California Room of the City of San Diego Public Library, the San Diego Historical Society and/or other relative historical society or group(s). 			

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	<p>(b) Required drawings</p> <p>(1) Measured drawings of the building's exterior elevations depicting existing conditions or other relevant features shall be produced from recorded, accurate measurements. If portions of the building are not accessible for measurement, or cannot be reproduced from historic sources, they should not be drawn, but clearly labeled as not accessible. Drawings produced in ink on translucent material or archivally stable material (blue-line drawings) are acceptable). Standard drawing sizes are 19 by 24 inches or 24 by 36 inches, standard scale is 1/4 inch = 1 foot.</p> <p>(2) One set of measured drawings shall be submitted for archival storage with the City of San Diego HRB, the Civic San Diego Project file, the South Coastal Information Center, the California Room of the City of San Diego Public Library, the San Diego Historical Society and/or other historical society or group(s).</p> <p>2. Prior to the first Precon Meeting, City Staff shall verify that the DP has been approved.</p> <p>B. PI Shall Attend Precon Meetings</p> <p>1. Prior to beginning any work that may impact any historical resource(s) which is/are subject to this MMRP, the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Historical Monitor(s), Building Inspector (BI), if appropriate, and City Staff. The qualified Historian and/or Architectural Historian shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Historical Monitoring program with the Construction Manager and/or Grading Contractor.</p> <p>(a) If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with City Staff, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.</p> <p>2. Historical Monitoring Plan</p> <p>(a) Prior to the start of any work that is subject to an Historical Monitoring Plan,</p>			

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	<p>the PI shall submit an Historical Monitoring Plan which describes how the monitoring would be accomplished for approval by City Staff. The Historical Monitoring Plan shall include an Historical Monitoring Exhibit (HME) based on the appropriate construction documents (reduced to 11x17 inches) to City Staff identifying the areas to be monitored including the delineation of grading/excavation limits.</p> <p>(b) Prior to the start of any work, the PI shall also submit a construction schedule to City Staff through the RE indicating when and where monitoring will occur.</p> <p>(c) The PI may submit a detailed letter to City Staff prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate site conditions such as underpinning, shoring and/or extensive excavation which could result in impacts to, and/or reduce impacts to the on-site or adjacent historical resource.</p> <p>C. Implementation of Approved Treatment Plan for Historical Resources</p> <ol style="list-style-type: none"> 1. Implementation of the approved Treatment Plan for the protection of historical resources within the project site may not begin prior to the completion of the Documentation Program as defined above. 2. The qualified Historical Monitor(s) shall attend weekly jobsite meetings and be on-site daily during the stabilization phase for any retained or adjacent historical resource to photo document the Treatment Plan process. 3. The qualified Historical Monitor(s) shall document activity via the Consultant Site Visit Record (CSV). The CSV's shall be faxed by the CM to the RE the first day and last day (Notification of Monitoring Completion) of the Treatment Plan process and in the case of ANY unanticipated incidents. The RE shall forward copies to City Staff. 4. Prior to the start of any construction related activities, the applicant shall provide verification to City Staff that all historical resources on-site have been adequately stabilized in accordance with the approved Treatment Plan. This may include a site visit with City Staff, the CM, RE or BI, but may also be accomplished through submittal of the draft Treatment Plan photo documentation report. 			

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	<p>5. City Staff will provide written verification to the RE or BI after the site visit or upon approval of draft Treatment Plan report indicating that construction related activities can proceed.</p> <p>III. During Construction</p> <p>A. Qualified Historical Monitor(s) Shall be Present During Grading/Excavation/Trenching</p> <ol style="list-style-type: none"> 1. The Qualified Historical Monitor(s) shall be present full-time during grading/excavation/trenching activities which could result in impacts to historical resources as identified on the HME. The Construction Manager is responsible for notifying the RE, PI, and City Staff of changes to any construction activities. 2. The Qualified Historical Monitor(s) shall document field activity via the CSV. The CSV's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (Notification of Monitoring Completion), and in the case of ANY incidents involving the historical resource. The RE shall forward copies to City Staff. 3. The PI may submit a detailed letter to City Staff during construction requesting a modification to the monitoring program when a field condition arises which could effect the historical resource being retained on-site or adjacent to the construction site. <p>B. Notification Process</p> <ol style="list-style-type: none"> 1. In the event of damage to a historical resource retained on-site or adjacent to the project site, the Qualified Historical Monitor(s) shall direct the contractor to temporarily divert construction activities in the area of historical resource and immediately notify the RE or BI, as appropriate, and the PI (unless Monitor is the PI). 2. The PI shall immediately notify City Staff by phone of the incident, and shall also submit written documentation to City Staff within 24 hours by fax or email with photos of the resource in context, if possible. 			

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	<p>C. Determination/Evaluation of Impacts to a Historical Resource</p> <ol style="list-style-type: none"> 1. The PI shall evaluate the incident relative to the historical resource. <ol style="list-style-type: none"> (a) The PI shall immediately notify City Staff by phone to discuss the incident and shall also submit a letter to City Staff indicating whether additional mitigation is required. (b) If impacts to the historical resource are significant, the PI shall submit a proposal for City Staff review and written approval in accordance with Chapter 14, Article 3, Division 2, Historical Resources Regulations of the LDC and the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995) and the associated Guidelines. Direct and/or indirect impacts to historical resources from construction activities must be mitigated before work will be allowed to resume. (c) If impacts to the historical resource are not considered significant, the PI shall submit a letter to City Staff indicating that the incident will be documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required. <p>IV. Night Work</p> <p>A. If night and/or weekend work is included in the contract</p> <ol style="list-style-type: none"> 1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the Precon Meeting. 2. The following procedures shall be followed. <ol style="list-style-type: none"> (a) No Impacts/Incidents <p>In the event that no historical resources were impacted during night and/or weekend work, the PI shall record the information on the CSVr and submit to City Staff via fax by 8 a.m. of the next business day.</p> (b) Potentially Significant Impacts <p>If the PI determines that a potentially significant impact has occurred to a historical resource, the procedures detailed under Section III - During</p> 			

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	<p>Construction shall be followed.</p> <p>(c) The PI shall immediately contact City Staff, or by 8 a.m. of the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.</p> <p>B. If night and/or weekend work becomes necessary during the course of construction:</p> <ol style="list-style-type: none"> 1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin. 2. The RE, or BI, as appropriate, shall notify City Staff immediately. <p>C. All other procedures described above shall apply, as appropriate.</p> <p>V. Post Construction</p> <p>A. Submittal of Draft Monitoring Report</p> <ol style="list-style-type: none"> 1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Historical Resources Guidelines (HRG) and Appendices which describes the results, analysis, and conclusions of all phases of the Historical Monitoring Plan (with appropriate graphics) to City Staff for review and approval within 90 days following the completion of monitoring. <ol style="list-style-type: none"> (a) The preconstruction Treatment Plan and Documentation Plan (photos and measured drawings) and Historical Commemorative Program, if applicable, shall be included and/or incorporated into the Draft Monitoring Report. (b) The PI shall be responsible for updating (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any existing site forms to document the partial and/or complete demolition of the resource. Updated forms shall be submitted to the South Coastal Information Center with the Final Monitoring Report. 2. City Staff shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report. 3. The PI shall submit revised Draft Monitoring Report to City Staff for approval. 			

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	<ol style="list-style-type: none"> 4. City Staff shall provide written verification to the PI of the approved report. 5. City Staff shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals. <p>B. Final Monitoring Report(s)</p> <ol style="list-style-type: none"> 1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to City Staff (even if negative), within 90 days after notification from City Staff that the draft report has been approved. 2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from City Staff. 			
	<p><i>Mitigation Measure HIST-A.1-3:</i> If a designated or potential historical resource (“historical resource”) as defined in the LDC would be demolished, the following measure shall be implemented in accordance with Chapter 14, Article 3, Division 2, Historical Resources Regulations of the LDC.</p> <p>I. Prior to Issuance of a Demolition Permit</p> <p>A. A DP shall be submitted to City Staff to the HRB (“City Staff”) for review and approval and shall include the following:</p> <ol style="list-style-type: none"> 1. Photo Documentation <ol style="list-style-type: none"> (a) Documentation shall include professional quality photo documentation of the structure prior to demolition with 35 millimeter black and white photographs, 4x6 inch standard format, taken of all four elevations and close-ups of select architectural elements, such as, but not limited to, roof/wall junctions, window treatments, decorative hardware. Photographs shall be of archival quality and easily reproducible. (b) Xerox copies or CD of the photographs shall be submitted for archival storage with the City of San Diego HRB and the Civic San Diego Project file. One set of original photographs and negatives shall be submitted for archival storage with the California Room of the City of San Diego Public Library, the San Diego Historical Society and/or other relative historical society or group(s). 			

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	<p>2. Required drawings</p> <p>(a) Measured drawings of the building's exterior elevations depicting existing conditions or other relevant features shall be produced from recorded, accurate measurements. If portions of the building are not accessible for measurement, or cannot be reproduced from historic sources, they should not be drawn, but clearly labeled as not accessible. Drawings produced in ink on translucent material or archivally stable material (blue-line drawings are acceptable). Standard drawing sizes are 19 by 24 inches or 24 by 36 inches, standard scale is 1/4 inch = 1 foot.</p> <p>(b) One set of measured drawings shall be submitted for archival storage with the City of San Diego HRB, the Civic San Diego Project file, the South Coastal Information Center, the California Room of the City of San Diego Public Library, the San Diego Historical Society and/or other historical society or group(s).</p> <p>B. Prior to the first Precon Meeting City Staff shall verify that the DP has been approved.</p> <p>C. In addition to the Documentation Program, the Applicant shall comply with any other conditions contained in the Site Development Permit pursuant to Chapter 14, Article 3, Division 2, Historical Resources Regulations of the LDC.</p>			
Impact HIST-B.1	Development in Downtown could impact significant buried archaeological resources. (Direct and Cumulative)			
	<p>Mitigation Measure HIST-B.1-1: If the potential exists for direct and/or indirect impacts to significant buried archaeological resources, the following measures shall be implemented in coordination with a Development Services Department designee and/or City Staff to the HRB ("City Staff") in accordance with Chapter 14, Article 3, Division 2, Historical Resources Regulations of the LDC. Prior to issuance of any permit that could directly affect an archaeological resource, City Staff shall assure that all elements of the MMRP are performed in accordance with all applicable City regulations and guidelines by an Archaeologist meeting the qualifications specified in Appendix B of the San Diego LDC, Historical Resources Guidelines. City Staff shall also require that the following steps be taken to determine: (1) the presence of archaeological resources and (2) the appropriate mitigation for any significant resources which may be impacted by a development activity. Sites may include residential and commercial properties, privies, trash pits, building foundations, and industrial features</p>	<p>Prior to Demolition or Grading Permit (Design)</p> <p>Prior to Certificate of Occupancy (Implementation)</p>	Developer	City Staff

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	<p>representing the contributions of people from diverse socio-economic and ethnic backgrounds. Sites may also include resources associated with pre-historic Native American activities. Archeological resources which also meet the definition of historical resources or unique archaeological resources under CEQA or the SDMC shall be treated in accordance with the following evaluation procedures and applicable mitigation program:</p> <p>Step 1–Initial Evaluation</p> <p>An initial evaluation for the potential of significant subsurface archaeological resources shall be prepared to the satisfaction of City Staff as part of an Environmental Secondary Study for any activity which involves excavation or building demolition. The initial evaluation shall be guided by an appropriate level research design in accordance with the City’s LDC, Historical Resources Guidelines. The person completing the initial review shall meet the qualification requirements as set forth in the Historical Resources Guidelines and shall be approved by City Staff. The initial evaluation shall consist , at a minimum, of a review of the following historical sources: The 1876 Bird’s Eye View of San Diego, all Sanborn Fire Insurance Company maps, appropriate City directories and maps that identify historical properties or archaeological sites, and a records search at the South Coastal Information Center for archaeological resources located within the property boundaries. Historical and existing land uses shall also be reviewed to assess the potential presence of significant prehistoric and historic archaeological resources. The person completing the initial review shall also consult with and consider input from local individuals and groups with expertise in the historical resources of the San Diego area. These experts may include the University of California, San Diego State University, San Diego Museum of Man, Save Our Heritage Organization, local historical and archaeological groups, the Native American Heritage Commission (NAHC), designated community planning groups, and other individuals or groups that may have specific knowledge of the area. Consultation with these or other individuals and groups shall occur as early as possible in the evaluation process.</p> <p>When the initial evaluation indicates that important archaeological sites may be present on a project site but their presence cannot be confirmed prior to construction or demolition due to obstructions or spatially limited testing and data recovery, the applicant shall prepare and implement an archaeological monitoring program as a condition of development approval to the satisfaction of City Staff. If the NAHC Sacred Lands File search is positive for Native American resources within the project site, then additional evaluation must include participation of a local Native American consultant in accordance with CEQA Sections 15064.5(d), 15126.4(b)(3) and Public Resources Code Section 21083.2.</p>			

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	<p>No further action is required if the initial evaluation demonstrates there is no potential for subsurface resources. The results of this research shall be summarized in the Secondary Study.</p> <p>Step 2–Testing</p> <p>A testing program is required if the initial evaluation demonstrates that there is a potential for subsurface resources. The testing program shall be conducted during the hazardous materials remediation or following the removal of any structure or surface covering which may be underlain by potential resources. The removal of these structures shall be conducted in a manner which minimizes disturbance of underlying soil. This shall entail a separate phase of investigations from any mitigation monitoring during construction.</p> <p>The testing program shall be performed by a qualified Historical Archaeologist meeting the qualifications specified in Appendix B of the San Diego LDC, HRG. The Historical Archaeologist must be approved by City Staff prior to commencement. Before commencing the testing, a treatment plan shall be submitted for City Staff approval that reviews the initial evaluation results and includes a research design. The research design shall be prepared in accordance with the City’s HRG and include a discussion of field methods, research questions against which discoveries shall be evaluated for significance, collection strategy, laboratory and analytical approaches, and curation arrangements. All tasks shall be in conformity with best practices in the field of historic urban archaeology.</p> <p>A recommended approach for historic urban sites is at a minimum fills and debris along interior lot lines or other areas indicated on Sanborn maps.</p> <p>Security measures such as a locked fence or surveillance shall be taken to prevent looting or vandalism of archaeological resources as soon as demolition is complete or paved surfaces are removed. These measures shall be maintained during archaeological field investigations. It is recommended that exposed features be covered with steel plates or fill dirt when not being investigated.</p> <p>The results of the testing phase shall be submitted in writing to City Staff and shall include the research design, testing results, significance evaluation, and recommendations for further treatment. Final determination of significance shall be made in consultation with City Staff , and with the Native American community, if the finds are prehistoric. If no significant resources are found and site conditions are such that there is no potential for further discoveries, then no further action is required. If no significant resources are found but results of the initial evaluation and testing phase indicates there is still a potential for resources to be</p>			

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	<p>present in portions of the property that could not be tested, then mitigation monitoring is required and shall be conducted in accordance with the provisions set forth in Step 4 - Monitoring. If significant resources are discovered during the testing program, then data recovery in accordance with Step 3 shall be undertaken prior to construction. If the existence or probable likelihood of Native American human remains or associated grave goods area discovered through the testing program, the Qualified Archaeologist shall stop work in the area, notify the City Building Inspector, City staff, and immediately implement the procedures set forth in CEQA Guidelines Section 15064.5 and the California PRC Section 5097.98 for discovery of human remains. This procedure is further detailed in the Mitigation, Monitoring and Reporting Program (Step 4). City Staff must concur with evaluation results before the next steps can proceed.</p> <p>Step 3–Data Recovery</p> <p>For any site determined to be significant, a Research Design and Data Recovery Program shall be prepared in accordance with the City's Historical Resources Guidelines, approved by City Staff, and carried out to mitigate impacts before any activity is conducted which could potentially disturb significant resources. The archaeologist shall notify City Staff of the date upon which data recovery will commence ten (10) working days in advance.</p> <p>All cultural materials collected shall be cleaned, catalogued and permanently curated with an appropriate institution. Native American burial resources shall be treated in the manner agreed to by the Native American representative or be reinterred on the site in an area not subject to further disturbance in accordance with CEQA section 15164.5 and the Public Resources Code section 5097.98. All artifacts shall be analyzed to identify function and chronology as they relate to the history of the area. Faunal material shall be identified as to species and specialty studies shall be completed, as appropriate. All newly discovered archaeological sites shall be recorded with the South Coastal Information Center at San Diego State University. Any human bones and associated grave goods of Native American origin encountered during Step 2-Testing, shall, upon consultation, be turned over to the appropriate Native American representative(s) for treatment in accordance with state regulations as further outlined under Step 4-Monitoring (Section IV. Discovery of Human Remains).</p> <p>A draft Data Recovery Report shall be submitted to City Staff within twelve months of the commencement of the data recovery. Data Recovery Reports shall describe the research design or questions, historic context of the finds, field results, analysis of artifacts, and conclusions. Appropriate figures, maps and tables shall accompany the text. The report shall also include a</p>			

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	<p>catalogue of all finds and a description of curation arrangements at an approved facility, and a general statement indicating the disposition of any human remains encountered during the data recovery effort (please note that the location of reinternment and/or repatriation is confidential and not subject to public disclosure in accordance with state law). Finalization of draft reports shall be subject to City Staff review.</p> <p>Step 4 – Monitoring</p> <p>If no significant resources are encountered, but results of the initial evaluation and testing phase indicates there is still a potential for resources to be present in portions of the property that could not be tested, then mitigation monitoring is required and shall be conducted in accordance with the following provisions and components:</p> <p>I. Prior to Permit Issuance</p> <p>A. Construction Plan Check</p> <ol style="list-style-type: none"> 1. Prior to NTP for any construction permits, including but not limited to, the first Grading Permit, Demolition Permits and Building Permits, but prior to the first Precon Meeting, whichever is applicable, City Staff shall verify that the requirements for Archaeological Monitoring and Native American monitoring, where the project may impact Native American resources, have been noted on the appropriate construction documents. <p>B. Letters of Qualification have been submitted to City Staff</p> <ol style="list-style-type: none"> 1. The applicant shall submit a letter of verification to City Staff identifying the PI for the project and the names of all persons involved in the archaeological monitoring program, as defined in the City of San Diego HRG. If applicable, individuals involved in the archaeological monitoring program must have completed the 40-hour Hazardous Waste Operations and Emergency Response training with certification documentation. 2. City Staff will provide a letter to the applicant confirming that the qualifications of the PI and all persons involved in the archaeological monitoring of the project meet the qualifications established in the HRG. 3. Prior to the start of work, the applicant must obtain written approval from City Staff for any personnel changes associated with the monitoring program. 			

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	<p>II. Prior to Start of Construction</p> <p>A. Verification of Records Search</p> <ol style="list-style-type: none"> 1. The PI shall provide verification to City Staff that a site-specific records search (1/4 mile radius) has been completed. Verification includes, but is not limited to a copy of a confirmation letter from South Coastal Information Center, or, if the search was in-house, a letter of verification from the PI stating that the search was completed. 2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities. 3. The PI may submit a detailed letter to City Staff requesting a reduction to the 1/4 mile radius. <p>B. PI Shall Attend Precon Meetings</p> <ol style="list-style-type: none"> 1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, Native American consultant/monitor (where Native American resources may be impacted), CM and/or Grading Contractor, RE, the Native American representative(s) (where Native American resources may be impacted), BI, if appropriate, and City Staff. The qualified Archaeologist and the Native American consultant/monitor shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Archaeological Monitoring program with the Construction Manager and/or Grading Contractor. <ol style="list-style-type: none"> (a) If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with City Staff, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring. 2. Archaeological Monitoring Plan (AMP) <ol style="list-style-type: none"> (a) Prior to the start of any work that requires monitoring, the PI shall submit an Archaeological Monitoring Plan (with verification that the AMP has been reviewed and approved by the Native American consultant/monitor when Native American resources may be impacted) which describes how the monitoring would be accomplished for approval by City Staff and the Native American monitor. The AMP shall include an Archaeological Monitoring 			

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	<p>Exhibit (AME) based on the appropriate construction documents (reduced to 11 by 17 inches) to City Staff identifying the areas to be monitored including the delineation of grading/excavation limits.</p> <p>(b) The AME shall be based on the results of a site-specific records search as well as information regarding existing known soil conditions (native or formation).</p> <p>(c) Prior to the start of any work, the PI shall also submit a construction schedule to City Staff through the RE indicating when and where monitoring will occur.</p> <p>(d) The PI may submit a detailed letter to City Staff prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate site conditions such as depth of excavation and/or site graded to bedrock, etc., which may reduce or increase the potential for resources to be present.</p> <p>III. During Construction</p> <p>A. Monitor(s) Shall be Present During Grading/Excavation/Trenching</p> <ol style="list-style-type: none"> 1. The Archaeological monitor shall be present full-time during all soil disturbing and grading/excavation /trenching activities which could result in impacts to archaeological resources as identified on the AME. The Construction Manager is responsible for notifying the RE, PI, and City Staff of changes to any construction activities. 2. The Native American consultant/monitor shall determine the extent of their presence during soil disturbing and grading/excavation/trenching activities based on the AME, and provide that information to the PI and City Staff. If prehistoric resources are encountered during the Native American consultant/monitor's absence, work shall stop and the Discovery Notification Processes detailed in Sections III.B-C, and IVA-D shall commence. 3. The archeological and Native American consultant/monitor shall document field activity via the CSV. The CSV's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (Notification of Monitoring Completion), and in the case of ANY discoveries. The RE shall forward copies to City Staff. 			

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	<p>4. The PI may submit a detailed letter to City Staff during construction requesting a modification to the monitoring program when a field condition such as modern disturbance post-dating the previous grading/trenching activities, presence of fossil formations, or when native soils are encountered that may reduce or increase the potential for resources to be present.</p> <p>B. Discovery Notification Process</p> <ol style="list-style-type: none"> 1. In the event of a discovery, the Archaeological Monitor shall direct the contractor to temporarily divert all soil disturbing activities, including but not limited to, digging, trenching, excavating, or grading activities in the area of discovery and in the area reasonably suspected to overlay adjacent resources and immediately notify the RE or BI, as appropriate. 2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery. 3. The PI shall immediately notify City Staff by phone of the discovery, and shall also submit written documentation to City Staff within 24 hours by fax or email with photos of the resource in context, if possible. 4. No soil shall be exported off-site until a determination can be made regarding the significance of the resource specifically if Native American resources are encountered. <p>C. Determination of Significance</p> <ol style="list-style-type: none"> 1. The PI and Native American consultant/monitor, where Native American resources are discovered, shall evaluate the significance of the resource. If Human Remains are involved, follow protocol in Section IV below. <ol style="list-style-type: none"> (a) The PI shall immediately notify City Staff by phone to discuss significance determination and shall also submit a letter to City Staff indicating whether additional mitigation is required. (b) If the resource is significant, the PI shall submit an Archaeological Data Recovery Program which has been reviewed by the Native American consultant/monitor when applicable, and obtain written approval from City Staff and the Native American representative(s), if applicable. Impacts to 			

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	<p>significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.</p> <p>(c) If the resource is not significant, the PI shall submit a letter to City Staff indicating that artifacts will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required.</p> <p>IV. Discovery of Human Remains</p> <p>If human remains are discovered, work shall halt in that area and no soil shall be exported off-site until a determination can be made regarding the provenance of the human remains; and the following procedures set forth in CEQA Section 15064.5(e), the California Public Resources Code (Sec. 5097.98) and State Health and Safety Code (Sec. 7050.5) shall be undertaken:</p> <p>A. Notification</p> <ol style="list-style-type: none"> 1. Archaeological Monitor shall notify the RE or BI as appropriate, City Staff, and the PI, if the Monitor is not qualified as a PI. City Staff will notify the appropriate Senior Planner in the Environmental Analysis Section of the Development Services Department to assist with the discovery process. 2. The PI shall notify the Medical Examiner after consultation with the RE, either in person or via telephone. <p>B. Isolate discovery site</p> <ol style="list-style-type: none"> 1. Work shall be directed away from the location of the discovery and any nearby area reasonably suspected to overlay adjacent human remains until a determination can be made by the Medical Examiner in consultation with the PI concerning the provenance of the remains. 2. The Medical Examiner, in consultation with the PI, will determine the need for a field examination to determine the provenance. 3. If a field examination is not warranted, the Medical Examiner will determine with input from the PI, if the remains are or are most likely to be of Native American origin. 			

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	<p>C. If Human Remains are determined to be Native American</p> <ol style="list-style-type: none"> 1. The Medical Examiner will notify the NAHC within 24 hours. By law, ONLY the Medical Examiner can make this call. 2. NAHC will immediately identify the person or persons determined to be the Most Likely Descendent (MLD) and provide contact information. 3. The MLD will contact the PI within 24 hours or sooner after the Medical Examiner has completed coordination, to begin the consultation process in accordance with CEQA Section 15064.5(e) and the California Public Resources and Health & Safety Codes. 4. The MLD will have 48 hours to make recommendations to the property owner or representative, for the treatment or disposition with proper dignity, of the human remains and associated grave goods. 5. Disposition of Native American Human Remains will be determined between the MLD and the PI, and if: <ol style="list-style-type: none"> (a) The NAHC is unable to identify the MLD, OR the MLD failed to make a recommendation within 48 hours after being notified by the Commission; OR; (b) The landowner or authorized representative rejects the recommendation of the MLD and mediation in accordance with PRC 5097.94 (k) by the NAHC fails to provide measures acceptable to the landowner, THEN, (c) In order to protect these sites, the Landowner shall do one or more of the following: <ol style="list-style-type: none"> (1) Record the site with the NAHC; (2) Record an open space or conservation easement on the site; (3) Record a document with the County. 6. Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from review of the site utilizing 			

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	<p>cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to Section 5.c., above.</p> <p>D. If Human Remains are not Native American</p> <ol style="list-style-type: none"> 1. The PI shall contact the Medical Examiner and notify them of the historic era context of the burial. 2. The Medical Examiner will determine the appropriate course of action with the PI and City staff (PRC 5097.98). 3. If the remains are of historic origin, they shall be appropriately removed and conveyed to the San Diego Museum of Man for analysis. The decision for internment of the human remains shall be made in consultation with City Staff, the applicant/landowner and the San Diego Museum of Man. <p>V. Night and/or Weekend Work</p> <p>A. If night and/or work is included in the contract</p> <ol style="list-style-type: none"> 1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the Precon Meeting. 2. The following procedures shall be followed. <ol style="list-style-type: none"> (a) No Discoveries In the event that no discoveries were encountered during night and/or weekend work, the PI shall record the information on the CSVr and submit to City Staff via fax by 8 am of the next business day. (b) Discoveries All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction, and IV – Discovery of Human Remains. Discovery of human remains shall always be treated as a significant discovery. 			

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
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	<p>(c) Potentially Significant Discoveries</p> <p>If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction and IV-Discovery of Human Remains shall be followed.</p> <p>(d) The PI shall immediately contact City Staff, or by 8 am of the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.</p> <p>B. If night and/or weekend work becomes necessary during the course of construction</p> <ol style="list-style-type: none"> 1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin. 2. The RE, or BI, as appropriate, shall notify City Staff immediately. <p>C. All other procedures described above shall apply, as appropriate.</p> <p>VI. Post Construction</p> <p>A. Submittal of Draft Monitoring Report</p> <ol style="list-style-type: none"> 1. The PI shall submit two copies of the Draft Monitoring Report (even if negative) prepared in accordance with the HRG and Appendices which describes the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program (with appropriate graphics) to City Staff, for review and approval within 90 days following the completion of monitoring, (a) For significant archaeological resources encountered during monitoring, the Archaeological Data Recovery Program shall be included in the Draft Monitoring Report. (b) Recording sites with State of California Department of Parks and Recreation <p>The PI shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any significant or potentially significant resources encountered during the Archaeological Monitoring Program in accordance with the City's Historical Resources Guidelines, and submittal of such forms to the South Coastal Information Center with the Final Monitoring Report.</p>			

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<ol style="list-style-type: none"> 2. City Staff shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report. 3. The PI shall submit revised Draft Monitoring Report to City Staff for approval. 4. City Staff shall provide written verification to the PI of the approved report. 5. City Staff shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals. <p>B. Handling of Artifacts and Submittal of Collections Management Plan, if applicable</p> <ol style="list-style-type: none"> 1. The PI shall be responsible for ensuring that all cultural remains collected are cleaned and catalogued. 2. The PI shall be responsible for ensuring that all artifacts are analyzed to identify function and chronology as they relate to the history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate. 3. The PI shall submit a Collections Management Plan to City Staff for review and approval for any project which results in a substantial collection of historical artifacts. <p>C. Curation of artifacts: Accession Agreement and Acceptance Verification</p> <ol style="list-style-type: none"> 1. The PI shall be responsible for ensuring that all artifacts associated with the survey, testing and/or data recovery for this project are permanently curated with an appropriate institution. This shall be completed in consultation with City Staff and the Native American representative, as applicable. 2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and City Staff. 3. When applicable to the situation, the PI shall include written verification from the Native American consultant/monitor indicating that Native American resources were treated in accordance with state law and/or applicable agreements. If the resources were reinterred, verification shall be provided to show what protective measures were taken to ensure no further disturbance in accordance with section IV – Discovery of Human Remains, subsection 5.(d). 			

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<p>D. Final Monitoring Report(s)</p> <ol style="list-style-type: none"> The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to City Staff (even if negative), within 90 days after notification from City Staff that the draft report has been approved. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from—City Staff which includes the Acceptance Verification from the curation institution. 			
LAND USE (LND)				
Impact LU-B.1	Noise generated by major ballpark events could cause interior noise levels in noise-sensitive uses (e.g. residential and hotels) within four blocks of the ballpark to exceed the 45 dB(A) limit mandated by Title 24 of the California Code. (Direct)			
	Implementation of the noise attenuation measures required by Mitigation Measure NOI-B.2-1 would reduce interior noise levels to 45 dB (A) CNEL and reduce potential impacts to below a level of significance.	<p>Prior to Building Permit (Design)</p> <p>Prior to Certificate of Occupancy (Implementation)</p>	Developer	Civic San Diego/City
Impact LU-B.2	Noise generated by I-5 and highly traveled grid streets could cause noise levels in noise-sensitive uses not governed by Title 24 to exceed 45 dB(A). (Direct)			
	Mitigation Measures NOI-B.1-1 and NOI-C.1.1, as described below.	<p>Prior to Building Permit (Design)</p> <p>Prior to Certificate of Occupancy (Implementation)</p>	Developer	Civic San Diego/City

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
Impact LU-B.3	Noise levels in Downtown areas within the 65 CNEL contour of SDIA could exceed 45 dB(A) for noise sensitive uses not covered by Title 24. (Direct)			
	Mitigation Measures NOI-B.1-1, as described below.	Prior to Building Permit (Design) Prior to Certificate of Occupancy (Implementation)	Developer	Civic San Diego/City
Impact LU-B.4	Noise generated by train horns, engines and wheels as well as bells at crossing gates would significantly disrupt sleep of residents along the railroad tracks. (Direct)			
	Mitigation Measure LU-B.4-1: Prior to approval of a Building Permit which would expose habitable rooms to disruptive railroad noise, an acoustical analysis shall be performed. The analysis shall determine the expected exterior and interior noise levels related to railroad activity. As feasible, noise attenuation measures shall be identified which would reduce noise levels to 45 dB(A) CNEL or less in habitable rooms. Recommended measures shall be incorporated into building plans before approval of a Building Permit.	Prior to Building Permit (Design) Prior to Certificate of Occupancy (Implementation)	Developer	City
Impact LU-B.5	Ballpark lighting would interrupt sleep in residences and hotels within two blocks of the ballpark. (Direct)			
	Mitigation Measure LU-B.5.1: Prior to approval of a Building Permit which would result in a light sensitive use within a two-block radius of Petco Park, the applicant shall provide a lighting study that demonstrates to the satisfaction of Civic San Diego that habitable rooms would be equipped with light attenuation measures which would allow occupants to reduce night-time light levels to 2.0 foot-candles or less.	Prior to Building Permit (Design) Prior to Certificate of Occupancy (Implementation)	Developer	Civic San Diego/City

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
NOISE (NOI)				
Impact NOI-B.1	Noise generated by I-5 and highly traveled grid streets could cause interior noise levels in noise-sensitive uses (exclusive of residential and hotel uses) to exceed 45 dB(A). (Direct)			
	Mitigation Measure NOI-B.1-1: Prior to approval of a Building Permit for any residential, hospital, or hotel within 475 feet of the centerline of Interstate 5 or adjacent to a roadway carrying more than 7,000 ADT, an acoustical analysis shall be performed to confirm that architectural or other design features are included which would assure that noise levels within habitable rooms would not exceed 45 dB(A) CNEL.	Prior to Building Permit (Design) Prior to Certificate of Occupancy (Implementation)	Developer	Civic San Diego/City
Impact NOI-B.2	Noise generated by major ballpark events could cause interior noise levels in noise-sensitive uses (e.g. residential and hotels) within four blocks of the ballpark to exceed the 45 dB(A) limit mandated by Title 24 of the California Code. (Direct)			
	Mitigation Measure NOI-B.2-1: Prior to approval of a Building Permit for any noise-sensitive land uses within four blocks of Petco Park, an acoustical analysis shall be performed. The analysis shall confirm that architectural or other design features are included in the design which would assure that noise levels within habitable rooms would not exceed 45 dB(A) CNEL.	Prior to Building Permit (Design) Prior to Certificate of Occupancy (Implementation)	Developer	City
Impact NOI-C.1	Exterior required outdoor open space in residential could experience traffic noise levels in excess of 65 dB(A) CNEL. (Direct)			
	Mitigation Measure NOI-C.1-1: Prior to approval of a Development Permit for any residential development within 475 feet of the centerline of Interstate 5 or adjacent to a roadway carrying more than 7,000 ADT, an acoustical analysis shall be performed to determine if any required outdoor open space areas would be exposed to noise levels in excess of 65 dB(A) CNEL. Provided noise attenuation would not interfere with the primary purpose or design intent of the exterior use, measures shall be included in building plan, to the extent feasible.	Prior to Development Permit (Design) Prior to Certificate of Occupancy (Implementation)	Developer	City

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
Impact NOI-D.1	Recreation areas within public parks and plazas may experience traffic noise levels in excess 65 dB(A) CNEL. (Direct)			
	Mitigation Measure NOI-D.1-1: Prior to approval of a Development Permit for any public park or plaza within 475 feet of the centerline of Interstate 5 or adjacent to a roadway carrying more than 7,000 ADT, an acoustical analysis shall be performed to determine if any recreation areas would be exposed to noise levels in excess of 65 dB(A) CNEL. Provided noise attenuation would not interfere with the intended recreational use or park design intent, measures shall be included, to the extent feasible.	Prior to Development Permit (Design) Prior to Certificate of Occupancy (Implementation)	Civic San Diego/ Developer	City
PALEONTOLOGICAL RESOURCES (PAL)				
Impact PAL-A.1	Excavation in geologic formations with a moderate to high potential for paleontological resources could have an significant impact on these resources, if present. (Direct)			
	<p>Mitigation Measure PAL-A.1-1: In the event the Secondary Study indicates the potential for significant paleontological resources, the following measures shall be implemented as determined appropriate by Civic San Diego.</p> <p>I. Prior to Permit Issuance</p> <p>A. Construction Plan Check</p> <ol style="list-style-type: none"> 1. Prior to NTP for any construction permits, including but not limited to, the first Grading Permit, Demolition Permits and Building Permits, but prior to the first preconstruction meeting, whichever is applicable, Centre City Development Corporation Civic San Diego shall verify that the requirements for paleontological monitoring have been noted on the appropriate construction documents. <p>B. Letters of Qualification have been submitted to Civic San Diego</p> <ol style="list-style-type: none"> 1. The applicant shall submit a letter of verification to Civic San Diego identifying the PI for the project and the names of all persons involved in the paleontological monitoring program, as defined in the City of San Diego Paleontology Guidelines. 2. Civic San Diego will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the paleontological monitoring of the project. 3. Prior to the start of work, the applicant shall obtain approval from Civic San Diego for any personnel changes associated with the monitoring program. 			

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<p>II. Prior to Start of Construction</p> <p>A. Verification of Records Search</p> <ol style="list-style-type: none"> 1. The PI shall provide verification to Civic San Diego that a site-specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from San Diego Natural History Museum, other institution or, if the search was in-house, a letter of verification from the PI stating that the search was completed. 2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities. <p>B. PI Shall Attend Precon Meetings</p> <ol style="list-style-type: none"> 1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, CM and/or Grading Contractor, RE, BI, if appropriate, and Civic San Diego. The qualified paleontologist shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the paleontological monitoring program with the Construction Manager and/or Grading Contractor. <ol style="list-style-type: none"> a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with Civic San Diego, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring. 2. Identify Areas to be Monitored <ol style="list-style-type: none"> a. Prior to the start of any work that requires monitoring, the PI shall submit a Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11 by 17 inches) to Civic San Diego identifying the areas to be monitored including the delineation of grading/excavation limits. The PME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation). 3. When Monitoring Will Occur <ol style="list-style-type: none"> a. Prior to the start of any work, the PI shall also submit a construction schedule 			

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<p>to Civic San Diego through the RE indicating when and where monitoring will occur.</p> <p>b. The PI may submit a detailed letter to Civic San Diego prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may reduce or increase the potential for resources to be present.</p> <p>III. During Construction</p> <p>A. Monitor Shall be Present During Grading/Excavation/Trenching</p> <ol style="list-style-type: none"> 1. The monitor shall be present full-time during grading/excavation/trenching activities as identified on the PME that could result in impacts to formations with high and moderate resource sensitivity. The Construction Manager is responsible for notifying the RE, PI, and Civic San Diego of changes to any construction activities. 2. The monitor shall document field activity via the CSV. The CSV's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (Notification of Monitoring Completion), and in the case of any discoveries. The RE shall forward copies to Civic San Diego. 3. The PI may submit a detailed letter to Civic San Diego during construction requesting a modification to the monitoring program when a field condition such as trenching activities that do not encounter formational soils as previously assumed, and/or when unique/unusual fossils are encountered, which may reduce or increase the potential for resources to be present. <p>B. Discovery Notification Process</p> <ol style="list-style-type: none"> 1. In the event of a discovery, the Paleontological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate. 			

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<p>2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.</p> <p>3. The PI shall immediately notify Civic San Diego by phone of the discovery, and shall also submit written documentation to Civic San Diego within 24 hours by fax or email with photos of the resource in context, if possible.</p> <p>C. Determination of Significance</p> <p>1. The PI shall evaluate the significance of the resource.</p> <p>a. The PI shall immediately notify Civic San Diego by phone to discuss significance determination and shall also submit a letter to Civic San Diego indicating whether additional mitigation is required. The determination of significance for fossil discoveries shall be at the discretion of the PI.</p> <p>b. If the resource is significant, the PI shall submit a Paleontological Recovery Program and obtain written approval from Civic San Diego. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.</p> <p>c. If resource is not significant (e.g., small pieces of broken common shell fragments or other scattered common fossils) the PI shall notify the RE, or BI as appropriate, that a non-significant discovery has been made. The Paleontologist shall continue to monitor the area without notification to Civic San Diego unless a significant resource is encountered.</p> <p>d. The PI shall submit a letter to Civic San Diego indicating that fossil resources will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that no further work is required.</p> <p>IV. Night Work</p> <p>A. If night work is included in the contract</p> <p>1. When night work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.</p>			

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	<p>2. The following procedures shall be followed.</p> <p>a. No Discoveries</p> <p>(1) In the event that no discoveries were encountered during night work, The PI shall record the information on the CSV and submit to Civic San Diego via fax by 9 a.m. the following morning, if possible.</p> <p>b. Discoveries</p> <p>(1) All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction.</p> <p>c. Potentially Significant Discoveries</p> <p>(1) If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.</p> <p>d. The PI shall immediately contact Civic San Diego, or by 8 a.m. the following morning to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.</p> <p>B. If night work becomes necessary during the course of construction</p> <p>1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.</p> <p>2. The RE, or BI, as appropriate, shall notify Civic San Diego immediately.</p> <p>C. All other procedures described above shall apply, as appropriate.</p> <p>V. Post Construction</p> <p>A. Submittal of Draft Monitoring Report</p> <p>1. The PI shall submit two copies of the Draft Monitoring Report (even if negative) which describes the results, analysis, and conclusions of all phases of the Paleontological Monitoring Program (with appropriate graphics) to Civic San Diego for review and approval within 90 days following the completion of monitoring,</p> <p>a. For significant paleontological resources encountered during monitoring, the</p>			

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<p>Paleontological Recovery Program shall be included in the Draft Monitoring Report.</p> <p>b. Recording Sites with the San Diego Natural History Museum</p> <p>(1) The PI shall be responsible for recording (on the appropriate forms) any significant or potentially significant fossil resources encountered during the Paleontological Monitoring Program in accordance with the City's Paleontological Guidelines, and submittal of such forms to the San Diego Natural History Museum with the Final Monitoring Report.</p> <p>2. Civic San Diego shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.</p> <p>3. The PI shall submit revised Draft Monitoring Report to Civic San Diego for approval.</p> <p>4. Civic San Diego shall provide written verification to the PI of the approved report.</p> <p>5. Civic San Diego shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.</p> <p>B. Handling of Fossil Remains</p> <p>1. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued.</p> <p>2. The PI shall be responsible for ensuring that all fossil remains are analyzed to identify function and chronology as they relate to the geologic history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate</p> <p>C. Curation of fossil remains: Deed of Gift and Acceptance Verification</p> <p>1. The PI shall be responsible for ensuring that all fossil remains associated with the monitoring for this project are permanently curated with an appropriate institution.</p> <p>2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and Civic San Diego.</p>			

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<p>D. Final Monitoring Report(s)</p> <ol style="list-style-type: none"> The PI shall submit two copies of the Final Monitoring Report to Civic San Diego (even if negative), within 90 days after notification from Civic San Diego that the draft report has been approved. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from Civic San Diego which includes the Acceptance Verification from the curation institution. 			
TRAFFIC AND CIRCULATION (TRF)				
Impact TRF-A.1.1	Increased traffic on grid streets from Downtown development would result in unacceptable levels of service on specific roadway intersections and/or segments within downtown. (Direct)			
	<p><i>Mitigation Measure TRF-A.1.1-1:</i> At five-year intervals, commencing upon adoption of the Downtown Community Plan, Civic San Diego shall conduct a downtown-wide evaluation of the ability of the grid street system to accommodate traffic within Downtown. In addition to identifying roadway intersections or segments which may need immediate attention, the evaluation shall identify roadways which may warrant interim observation prior to the next 5-year evaluation. The need for roadway improvements shall be based upon deterioration to LOS F, policies in the Mobility Plan, and/or other standards established by Civic San Diego, in cooperation with the City Engineer. In completing these studies, the potential improvements identified in Section 6.0 of the traffic study for the Downtown San Diego Mobility Plan and Section 4.2.3.3 of the SEIR will be reviewed to determine whether these or other actions are required to improve traffic flow along affected roadway corridors. Specific improvements from Section 4.2.3.3 include:</p> <p><u>Mitigation Measures that Fully Reduces Impact</u></p> <p>I-5 northbound off-ramp/Brant Street and Hawthorn Street – Signalization would be required at this intersection to mitigate direct project impacts. A traffic signal warrant was conducted. Based upon the MUTCD, this intersection would meet the “Peak Hour” warrant.</p> <p>Second Avenue and Cedar Street – Signalization would be required at this intersection to mitigate direct project impacts. A traffic signal warrant was conducted. Based upon the MUTCD, this intersection would meet the “Peak Hour” warrant.</p> <p>Fourth Avenue and Beech Street – Convert on-street parking to a travel lane on Fourth Avenue between Cedar Street and Ash Street during the AM peak hour.</p>	Every five years	Civic San Diego/City	Civic San Diego/City

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	<p>First Avenue and A Street – Remove on-street parking <u>on the north side of A Street between First and Front avenues as necessary to provide an east bound left turn lane.</u></p> <p>17th Street and B Street – Signalization would be required at this intersection to mitigate direct project impacts. A traffic signal warrant was conducted. Based upon the MUTCD, this intersection would meet the “Peak Hour” warrant.</p> <p>16th Street and E Street – Remove on-street parking on the east side of 16th Street south of E Street as necessary to provide a northbound right-turn lane.</p> <p>Eleventh Avenue and G Street – Convert on-street parking to a travel lane on G Street between 11th Avenue and 17th Street during the PM peak hour.</p> <p>Park Boulevard and G Street – Convert on-street parking to a travel lane on G Street between 11th Avenue and 17th Street during the PM peak hour.</p> <p>16th Street and Island Avenue – Signalization would be required at this intersection to mitigate direct project impacts. A traffic signal warrant was conducted. Based upon the MUTCD, this intersection would meet the “Peak Hour” warrant.</p> <p>19th Street and J Street – Restripe the northbound left-turn lane into a northbound left-turn and through shared lane.</p> <p>Logan Avenue and I-5 southbound off-ramp – Signalization would be required at this intersection to mitigate direct project impacts. A traffic signal warrant was conducted. Based upon the MUTCD, this intersection would meet the “Peak Hour” warrant.</p> <p><u>Mitigation Measures that Partially Reduces Impact</u></p> <p>Front Street and Beech Street - Convert on-street parking to a travel lane on Front Street between Cedar Street and Ash Street during the PM peak hour.</p> <p>15th Street and F Street - Signalization would be required at this intersection to mitigate direct project impacts. A traffic signal warrant was conducted. Based upon the MUTCD, this intersection would meet the “Peak Hour” warrant.</p> <p>13th Street and G Street - Convert on-street parking to a travel lane on G Street between 11th Avenue and 17th Street during the PM peak hour.</p> <p>14th Street and G Street - Convert on-street parking to a travel lane on G Street between 11th Avenue and 17th Street during the PM peak hour.</p> <p>16th Street and G Street - Convert on-street parking to a travel lane on G Street between 11th</p>			

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<p>Avenue and 17th Street during the PM peak hour.</p> <p>17th Street and G Street - Signalization and convert on-street parking to a travel lane on G Street between 11th Avenue and 17th Street during the PM peak hour. A traffic signal warrant was conducted. Based upon the MUTCD, this intersection would meet the “Peak Hour” warrant.</p> <p>Following the completion of each five-year monitoring event, Civic San Diego shall incorporate needed roadway improvements into the City of San Diego CIP or identify another implementation strategy.</p> <p>In order to determine if the roadway improvements included in the current five-year CIP, or the equivalent, are sufficient to accommodate developments, a traffic study would be required for large projects. The threshold to be used for determining the need for a traffic study shall reflect the traffic volume threshold used in the Congestion Management Program. The Congestion Management Program stipulates that any activity forecasted to generate 2,400 or more daily trips (200 or more equivalent peak hour trips).</p>			
	<p>Mitigation Measure TRF-A.1.1-2: Prior to approval of any development which would generate a sufficient number of trips to qualify as a large project under the Congestion Management Program (i.e. more than 2,400 daily trips, or 200 trips during a peak hour period), a traffic study shall be completed. The traffic study shall be prepared in accordance with City’s Traffic Impact Study Manual. If the traffic study indicates that roadways substantially affected by the project would operate at LOS F with the addition of project traffic, the traffic study shall identify improvements to grid street segments and/or intersections consistent with the Downtown San Diego Mobility Plan which would be required within the next five years to achieve an acceptable LOS or reduce congestion, to the extent feasible. If the needed improvements are already included in the City of San Diego’s CIP, or the equivalent, no further action shall be required. If any of the required improvements are not included in the CIP, or not expected within five years of project completion, the City of San Diego shall amend the CIP, within one year of project approval, to include the required improvements and assure that they will be implemented within five years of project completion. At Civic San Diego’s discretion, the developer may be assessed a pro-rated share of the cost of improvements as a condition of project approval.</p>	Prior to Development Permit (Design)	Developer	Civic San Diego/City
Impact TRF-A.1.2	Increased traffic from Downtown development on certain streets surrounding Downtown would result in an unacceptable level of service. (Direct and Cumulative)			
	Implementation of Mitigation Measure TRF-A.1.1-1 would also reduce impacts on surrounding	Every five years	Civic San	Civic San

Downtown FEIR/SEIR Mitigation Monitoring and Reporting Program				
Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	roadways but not necessarily below a level of significance.		Diego/City	Diego/City
Impact TRF- A.2.1-1	Elimination of Cedar St. off-ramp would impact other freeway ramps by redirecting traffic to other off ramps serving downtown. (Direct)			
	Mitigation Measure TRF A.2.2-1: Prior to elimination of the Cedar Street off-ramp from I-5, a traffic study shall be done by Civic San Diego in consultation with the City of San Diego and Caltrans to determine the potential effects associated with elimination of the off-ramp and the conversion of Cedar Street from one- to two-way. The report shall also identify roadway modifications that would minimize potential impacts on local surface streets and I-5.	Prior to elimination of Cedar Street off-ramp (Design/Implementation)	Civic San Diego/City	Civic San Diego/City



Attachment 6

Attachment 6 contains a hard copy of the Applicant's Response to Comments Letter dated October 18, 2016.

A CD has been attached that contains all referenced attachments in the Applicant's letter (Attachments A-L). Due to the volume of the Attachments, these materials have been provided electronically.

Hard copies of the attachments are available at the Civic San Diego Offices located at 401 B Street, Suite 400, San Diego, CA 92101.

Copies of the attachments can be provided electronically by contacting Aaron Hollister of Civic San Diego at hollister@civicsd.com or via phone at 619-533-7170.



October 18, 2016

Councilmembers
City of San Diego
City Administration Building
202 C Street
San Diego, CA 92101

Planning Commissioners
City of San Diego
122 First Avenue, 5th Floor
San Diego, California 92101

Re: Third Party Review and Response to Comments Received July 25, 2016 and September 23, 2016 regarding the 7th and Market Project in connection with (i) City Council Hearing, October 18, 2016, ITEM-337 and (ii) Appeal to Planning Commission of Civic San Diego September 28, 2016 approval of CCDP/CCPDP/NUP No. 2015-73

Dear Councilmembers and Planning Commissioners:

On behalf of our client and applicant of the above-reference project, Cisterra 7th and Market, LLC, (the "Applicant" or "Cisterra"), Rincon Consultants Inc. ("Rincon") and Sheppard, Mullin, Richter and Hampton LLP ("Sheppard Mullin") respectfully submit our response to comments to City Council for the City of San Diego ("City Council") and the Planning Commission for the City of San Diego in conjunction with our third party review of the comment letters from the Law Office of Gideon Kracov on behalf of Unite Here Local 30 and Sergio Gonzalez (collectively, "Local 30"), received on July 25, 2016 and September 23, 2016 ("Comment Letters"). The Comment Letters, attached hereto as Attachment B-1, were submitted for the Civic San Diego ("CivicSD" or "CSD") Board of Directors' ("Board") consideration in advance of a July 27, 2016 hearing on the 7th and Market project ("Project").

Local 30's litigation support specialist submitted follow-up letters on September 12, 2016 for the City Council's consideration of the Project ("Follow Up Letters"). The content of the Follow Up Letters, which are attached hereto as Attachment B-2, Attachment B-3 and Attachment B-5, is largely duplicative of the content of the original Comment Letter. Community Budget Alliance also submitted a letter on September 12, 2016 ("CBA Letter"). However, this CBA Letter, which is attached hereto as Attachment B-4, does not raise environmental concerns related to the Project.

CivicSD considered and approved the development approvals for the Project on September 28, 2016. Local 30 appealed CivicSD's approval of the development approvals to the Planning Commission on October 8, 2016 ("Appeal"). The issues raised in the Planning Commission appeal generally challenge the Project on the grounds set forth in the Comment Letter, thus responses to address the environmental concerns raised by the Appeal have been prepared below. A copy of the Appeal is attached hereto as Attachment L.



The City Council October 18, 2016 hearing will consider the Project's development and disposition agreement ("DDA") and the adequacy of the Downtown 15168 Consistency Evaluation for 7th and Market ("Consistency Evaluation"), and the Project's water supply agreement ("WSA"). The Consistency Evaluation, dated August 26, 2016, is attached as Attachment C hereto.

Third party review of the Comment Letter has been completed by environmental experts at Rincon, including: Richard Daulton, AICP; Joe Power, AICP CEP; Erik Feldman, LEED AP; Lexi Journey, MESM; Smadar Levy, MESM; Matthew Long, MESM; Lindsey Sarquilla, MESM; Sally Schiffman. Third party review has also been completed by Phuong Nguyen, PE of Chen Ryan Associates, and Daniel A. Weis, R.E.H.S. of Advantage Environmental Consultants, LLC_ ("AEC"), as well as land use attorneys at Sheppard Mullin. Professional resumes for the Rincon consultants, Phuong Nguyen and Daniel A. Weis are attached hereto as Attachment A. Consistent with the respective areas of expertise, the environmental and planning substantial evidence responses were prepared by the Rincon consultants, the traffic substantial evidence responses were prepared by Chen Ryan Associates, and the hazardous materials substantial evidence responses were prepared by AEC, all of which informed the legal analysis prepared by Sheppard Mullin.

Specific responses to the Comment Letter are detailed below. Each paragraph of the Comment Letter has been numbered sequentially and each separate issue raised by the commenter, if more than one, has been assigned a number. As the Follow Up Letters are duplicative of the Comment Letter, to avoid redundancy and unnecessary repetition, should a specific response address comments in the Follow Up Letters said response will indicate such at the end of the applicable response. Because the CBA Letter does not raise any environmental concerns related to the Project, the CBA Letter is noted but does require specific responses to its general policy issues.



Paragraph 1

Comment 1.1

On behalf of UNITE HERE Local 30 ("Local 30") and Sergio Gonzalez (collectively "Commentors"), this Office respectfully provides comments to Civic San Diego ("CivicSD" or "Agency") and the CivicSD Board ("Board") regarding the proposed July 27, 2016 approvals for the 7th and Market Project - Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit No. 2015-73 - East Village Neighborhood of the Downtown Community Plan Area [consolidated as CCDP/CCPDP/NUP/NDP No. 2015-73] ("Project").

Response 1.1

This comment is noted. The comment does not raise any specific issues concerning the Project.

Paragraph 2

Comment 2.1

Commentors are concerned that incomes for workers in service industries - hotels, restaurants and retail - at projects like 7th and Market are insufficient for them to be able to afford to live in San Diego and that they are therefore forced into long commutes or overcrowding to afford housing near their jobs. They therefore value this opportunity to provide these comments, and look forward to working with and its Directors, Cisterra 7th and Market, LLC ("Developer"), and all stakeholders to ensure an equitable and sustainable future for workers in the City of San Diego ("City").

Response 2.1

The project will increase the supply of available housing in the City of San Diego's ("City" or "San Diego") downtown by 218-units (59 studios and 159 apartment units), with at least 34 of those units set aside as affordable housing. The project also indirectly supports affordable housing in that the net proceeds of the \$20,000,000.00 purchase price the Applicant pays for the Property will be deposited into the City's Low/Moderate Income Housing Asset fund for the benefit of future affordable housing projects. Local 30's speculation that the Project will somehow adversely impact housing opportunities for future employees of the Project is baseless. Accordingly, Local 30's continued opposition only further delays the City and Cisterra's effort to expand the supply of affordable housing within the City. Further, social impacts such as service worker salaries does not require evaluation under CEQA, though it is a factor that decision-makers may consider in connection with their decision to approve the Project. It should also be recognized that the Project's 156,000 square feet ("SF") of office uses will generate employment that will likely create some jobs that pay higher wages than the service worker wages that Local 30 mentions, thus contributing to a diverse workforce in downtown San Diego.

Under Public Resources Code sections 21100 and 21151, which require an environmental impact report ("EIR") for projects that "may have a significant effect on the environment," the phrase



“significant effect on the environment” is limited to substantial, or potentially substantial, adverse changes in physical conditions within the area as defined in Public Resources Code section 21060.5. In Section 21060.5, “environment” is defined as “the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance (CEQA Guidelines § 15360).”

As a result of this statutory mandate, effects that are subject to review under California Environmental Quality Act (“CEQA”) must be related to a change to the physical environment. (CEQA Guidelines § 15358(b).) Only changes to the physical environment will trigger the need for an EIR. Social or economic impacts do not constitute significant environmental effects. This principle is reflected in CEQA Guidelines¹ sections 15064(e) and 15382, which provide that economic and social changes may not be treated as significant effects on the environment. This is also reflected in Public Resources Code section 21080(e) and CEQA Guidelines section 15064(f)(6), which provide that social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment are not substantial evidence of a significant effect on the environment. (Pub. Res. Code § 21082.2(c); *City of Hayward v. Bd. of Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 843 [increase in demand for fire protection and emergency medical services is a socioeconomic impact, not an environmental impact]².)

Paragraph 3

Comment 3.1

This Project is discretionary, not by right. The Applicant seeks discretionary approvals under the San Diego Municipal Code (“SDMC”), including design review and Plan deviations relating to tower separation, tower width, lack of required tower setbacks and excess tower signage. As such,

¹ Reference to the “CEQA Guidelines” herein shall mean the CEQA Guidelines codified at 14 C.C.R. § 15000 *et seq.*

² See, e.g., *Porterville Citizens for Responsible Hillside Dev. v. City of Porterville* (2007) 157 Cal.App.4th 885, 903 [claimed impact of new homes on existing home values is economic impact]; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170 [impact of dogs using a beach on the enjoyment of visitors to the beach is a social impact]; *Goleta Union Sch. Dist. v. Regents of Univ. of Cal.* (1995) 37 Cal.App.4th 1025, 1031 [school overcrowding without link to a physical environmental change is not a significant effect on the environment]; *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, 1469 n2 [claim that expansion of residential addiction treatment facility will increase crime is not subject to CEQA review]; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 757 [social effect of school closure on disadvantaged students was not significant effect on environment under CEQA]; *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 200 [city’s refusal to approve negative declaration was abuse of discretion because evidence that construction of residence would affect character of neighborhood is not evidence of environmental impact that would require EIR]; *Hecton v. People ex rel Dept. of Transp.* (1976) 58 Cal.App.3d 653, 656 [CEQA not designed to protect against decline in commercial value of property adjacent to public project]; *City of Orange v. Valenti* (1974) 37 Cal.App.3d 240, 249 [social characteristics of visitors to proposed state unemployment insurance office not a factor to consider in determining whether EIR is necessary]



CivicSD and its decision-makers must make express findings that the Project "will not adversely affect the applicable land use plan," and "will not be detrimental to the public health, safety and welfare." The Board has leverage to ensure the Project actually benefits the City and persons who live and work there like Local 30's members. Please use it.

Response 3.1

The question of whether the Project appropriately benefits Local 30 members is not within CEQA's purview as CEQA's purpose is to disclose and, when feasible, mitigate the significant *environmental* impacts of proposed actions. Nevertheless, it is acknowledged that the Project requests discretionary approvals and that the decision-makers must make certain findings in connection with approving the Project. In making those findings, decision-makers may balance a number of competing interests, including Cisterra's commitment to pay prevailing wage employ union labor for Project construction. In exercising their discretion to approve or deny the Project, decision-makers may also consider the community's interest in redevelopment of an underutilized parcel with a 5-star hotel, employment generating Class A Office space, a gourmet grocer, market-rate and affordable housing units, the rehabilitation of a historic Clermont Hotel, the creation of 800 construction jobs, 700 permanent jobs, and the significant deposit into the City's Low/Moderate Income Housing Asset fund as a result of the Project. As discussed herein, the administrative record contains more than adequate substantial evidence to support all required Centre City Planned Development Permit ("CCPDP") deviation findings for Project approval, including that the Project will not adversely affect the applicable land use plan and that the Project will not be detrimental to the public health, safety and welfare. To ensure that decision-making is informed, the public has been, and continues to be, given multiple opportunities to provide constructive input and views before the City Council or Board takes any action that commits it to a definite course of action on the Project. CivicSD and the City have also made, and will continue to make, all documentation relevant to its proposed decisions on the Project available for public review. There is more than enough substantial evidence in the record to make the findings necessary for a Neighborhood Use Permit ("NUP"), Centre City Development Permit ("CCDP"), CCPDP, and all other necessary permits and approvals, should the relevant decision-makers decide to approve the Project, which follows the requirements for the City's Request for Proposals.

The Applicant has been responsive to community concerns regarding the Project's design. On July 13, 2016, the CivicSD Design Review Committee ("Committee") voted 4-0 to recommend that CivicSD grant Design Review approval and approve CCDP/ CCPDP/NUP No. 2015-73 for the Project with all requested deviations pursuant to providing design enhancements to blank wall areas utilized for parking screening on the Seventh Avenue elevation and on the south elevation above the Clermont Hotel. Some Committee comments also encouraged greater vertical integration of the affordable dwelling units so that the units are spread across more floors, while other Committee comments encouraged greater integration of the Clermont Hotel into the overall Project. The Committee also required additional perspectives that clearly demonstrate how the bottom of architectural elements will be viewed from the street, as well as demonstrating how the Project will be illuminated at night. The recommended changes were incorporated into the Project design and presented to the Board on July 27, 2016.



On July 20, 2016, the Downtown Community Planning Council ("DCPC") voted 20-0 to support staff's recommendation.

On July 27, 2016, the Board considered issuance of development permits and discussed the environmental analysis for the Project. The July 27th Civic SD staff report included recommended findings of approval for the permits, including the proposed deviations that Local 30 has incorrectly identified in Comment 3.1. The Project would include the following deviations from applicable development regulations:

1. Centre City Planned District Ordinance ("CCPDO") section 156.0310(d)(3)(C) Tower Separation: Within a single development, towers shall be separated by a minimum of 60 feet for sites of 50,000 SF or more.
2. CCPDO section 156.03(d)(1)(D) Streetwall Height: A minimum street wall height of 45 feet must be provided within five feet of a property line adjoining any street.
3. CCPDO section 156.0313(k)/San Diego Municipal Code ("SDMC") section 142.0555(b): Permitting valet tandem parking to meet the minimum required parking for commercial uses other than for employee parking, valet parking associated with restaurant use, and for bed and breakfast establishments.

As described in the Findings section of the July 27, 2016 staff report (pages 13 through 16), adequate findings are available to the Board to support Project approval, if the Board decides to approve the Project on September 28, 2016 (Attachment D). The Project will be brought before the Board for a new hearing on the Project approvals after the City Council hearing on September 20, 2016. In connection with the upcoming hearings for the Project, the City Council and Board will consider information provided by Local 30 or any other source.

Paragraph 4

Comment 4.1

Along these lines, Commentors write to inform you that the July 12, 2016 Downtown FEIR Consistency Evaluation ("Evaluation") prepared for the Project, along with previously completed environmental documents on which the Board is asked to rely in assessing the Project's specific impacts, fail to comply with the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 et seq, and the State CEQA Guidelines, Cal. Code Regs. § 15000 et seq. ("Guidelines").

Response 4.1

The Consistency Evaluation complies with CEQA. In accordance with CEQA Guidelines sections 15168, 15180, and 15162, the potential impacts associated with future development in the Downtown Community Plan ("DCP") area, including the Project, are within the scope of the final EIR ("FEIR") prepared for the DCP, CCPDO, and the six subsequent addenda to the EIR, as well as the Supplemental EIR ("SEIR") for the Downtown San Diego Mobility Plan and the Climate Action Plan ("CAP") FEIR, identified in the Consistency Evaluation. These documents address the potential environmental effects of future development within the Centre City



Redevelopment Plan Project area based on build-out forecasts projected from the land use designations, density bonus, and other policies and regulations governing development intensity and density. Despite Local 30's claims of CEQA violations, when previously tested in court, the courts affirmed this process as complying with CEQA.

A comprehensive CEQA Consistency Evaluation between the Project and the existing DCP FEIR and the CAP FEIR has been completed for the Project through the Consistency Evaluation for the Project. The proposed activity detailed and analyzed in the Consistency Evaluation was adequately addressed in the environmental documents noted above and there is no change in circumstance, substantial additional information, or substantial Project changes to warrant additional environmental review.

Therefore, in accordance with Public Resources Code section 21166, CEQA Guidelines sections 15168, 15180 and 15162, and as set forth in the Consistency Evaluation, the Project would not have effects that were not examined in the DCP FEIR or CAP FEIR because:

- No substantial changes are proposed in the Project, or with respect to the circumstance under which the Project is to be undertaken as a result of the development of the proposed Project, which will require important or major revisions in the DCP FEIR and the six subsequent addenda, the San Diego Mobility Plan SEIR or with the CAP FEIR.
- No new information of substantial importance to the Project has become available showing that the Project will have any significant effects not discussed previously in the DCP FEIR and the six subsequent addenda, the San Diego Mobility Plan SEIR, or the CAP FEIR; or that any significant effects previously examined will be substantially more severe than shown in the CAP FEIR, the San Diego Mobility Plan SEIR, the DCP FEIR or subsequent addenda to the FEIR; or that any mitigation measures or alternatives previously found not to be feasible or not previously considered would substantially reduce or lessen any significant effects of the project on the environment.
- The Project proponent is required to comply with the applicable mitigation measures and regulatory programs identified in the DCP FEIR, the Downtown Mobility Plan SEIR and the CAP FEIR, as modified by the addenda, which would be necessary to substantially reduce project-level environmental impacts.

Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation and the entire administrative record, the City can find that the Project is an activity covered by and within the scope of the program approved by the DCP FEIR, the San Diego Mobility Plan SEIR and the CAP FEIR,³ the EIRs adequately describe and evaluate the Project for purposes of CEQA, and no further environmental documentation is required.

³ The DCP FEIR, CAP FEIR and Mobility Plan SEIR will be collectively referred to herein as the "EIRs."



Comment 4.2

Commentors herein raise specific concerns with respect to:

- *abbreviated CEQA Consistency Evaluation for the Project, made public only two weeks before the Board hearing after months of this Office's prior, respectful requests, and its reliance on an outdated and too general 10-year old+ Program CEQA review;*

Response 4.2

A detailed response regarding the timing of public review is provided in Response 36.1. Detailed responses regarding the validity of the CEQA review are provided in Responses 4.1, 22.1, 26.1, 26.2, 27.1, 28.1, and 31.1.

Comment 4.3

- *a faulty, stale 2006 baseline from which to compare the traffic and other impacts from Developer's huge, over 1 million sq. ft. Project;*

Response 4.3

Detailed responses regarding the baseline used to compare traffic and other impacts are provided in Response 22.1, 29.1, 30.1. Responses related to specific environmental impacts regarding greenhouse gas ("GHG") emissions, hazardous materials, land use consistency, air quality, traffic, historic resources, and noise are provided in Paragraphs 58 through 134.

Comment 4.4

- *improper piecemealing of the land use entitlements from the Disposition and Development Agreement ("DDA");*

Response 4.4

Detailed responses regarding land use entitlements from the DDA are provided in Responses 55.1.

Comment 4.5

- *inadequate and sloppy study of greenhouse gas ("GHG") emissions and whether the Project is consistent with the City's Climate Action Plan ("CAP");*



Response 4.5

Detailed responses regarding the analysis of GHG emissions and the Project's consistency with the City's CAP are provided in Responses 59.1 through 75.1.

Comment 4.6

- *the almost completely ignored presence of hazardous materials on site;*

Response 4.6

Detailed responses regarding the presence of hazardous materials are provided in Responses 76.1 through 88.1.

Comment 4.7

- *inadequate review of land use inconsistency and long term cumulative impacts;*

Response 4.7

Detailed responses regarding review of land use inconsistency and long-term cumulative impacts are provided in Responses 95.1 through 109.1.

Comment 4.8

- *outdated and afterthought air quality mitigation for all the Project's car trips;*

Response 4.8

Detailed responses regarding air quality mitigation are provided in Responses 89.1 through 94.1.

Comment 4.9

- *sloppy study of traffic impacts including omission of key intersections and all freeway impacts;*

Response 4.9

Detailed responses regarding review of traffic impacts are provided in Responses 110.1 through 129.1.



Comment 4.10

- *deferred review of historic resource impacts on the Clermont Hotel and cultural resources;*

Response 4.10

Detailed responses regarding impacts to the Clermont Hotel and cultural resources are provided in Responses 130.1 and 131.1.

Comment 4.11

- *a patently defective noise study;*

Response 4.11

Detailed responses regarding noise impact studies are provided in Responses 132.1 through 134.1.

Comment 4.12

- *faulty, old CEQA statement of overriding considerations that do not consider job quality which is so important to Commentors; and*

Response 4.12

The degree of job quality created by the Project does not have any effect on the environment and therefore, is not a concern under CEQA. Local 30's dissatisfaction with the Statement Overriding Considerations adopted in 2006 should have been raised in 2006. The City is entitled to its previously adopted Statement of Overriding Considerations.

Detailed responses regarding overriding considerations are provided in Responses 138.1 and 139.1.

Comment 4.13

- *the inability of the Agency to make the required findings under governing CivicSD rules and the SDMC.*

CivicSD can do better than this.

Response 4.13

Detailed responses regarding making the required finding under governing CivicSD rules and the SDMC are provided in Responses 3.1 and 141.1.



Paragraph 5

Comment 5.1

This Office prepared these comments with the assistance of three experts, including environmental scientist Matt Hagemann, P.G., C.Hg., QSD, QSP, urban planner Terrell Watt, AICP and traffic engineer Neal Liddicoat, P.E. Their comments are attached hereto as Attachments 1, 2 and 3 and are incorporated herein in their entirety.

Response 5.1

This comment and the attachments identifying the litigation support specialists are noted.

Detailed responses to Mr. Hagemann's referenced analysis are provided in Responses 60.1 through 63.1, 65.1, 68.1, 69.1, 73.1 through 75.1, 77.1 through 87.1, 90.1 through 94.1 and 132.1 through 134.1. Detailed responses to Ms. Watt's referenced analysis are provided in Responses 29.1, 38.1, 39.1, 97.1, 98.1, 101.1 through 109.1, and 131.1. Detailed responses to Mr. Liddicoat's analysis are provided in Responses 40.1 through 54.1 and 110.1 through 129.1.

Paragraph 6

Comment 6.1

The Project is proposed for a City-owned property that is known to contain hazardous wastes released by previous occupants. The property is an approximately 60,000 square-foot full-block site bounded by Market Street and Island, Seventh and Eighth avenues in the East Village neighborhood of the Downtown Community Plan ("DCP") area ("Downtown"). The Project will purportedly incorporate the existing Clermont Hotel, which is a designated local historical resource. The Project would be a 1.16 million square feet high-density, high-rise mixed-use residential development comprised of a 39-story and a 19-story tower, and would include 218 dwelling units, (59 hotel braded condominiums, 125 market rate apartments, 34 affordable housing units (located only on the parking garage levels), approximately 156,000 square feet of office space, a proposed 153-room Ritz-Carlton hotel, an estimated 40,000 square foot retail space for a grocer, and 887 automobile parking spaces (100+ more than required) on five levels of subterranean parking and three levels of above-grade parking. The land use district for the site, as designated in the Centre City Planned District Ordinance ("CCPDO") is Employment/Residential Mixed-Use ("ER"), with a Commercial Street ("CS") and a Limited Vehicle Access overlay along Market Street.

Response 6.1

This comment summarizes components of the Applicant's potential development for the site. The comment does not raise any specific issues concerning the Project.



Paragraph 7

Comment 7.1

The four permits required for the Project ("Approvals") are:

- 1. Centre City Development Permit ("CCDP") with Design Review approval by the CSD for construction of more than 50 DU, 100,000 SF of gross floor area, and 85 feet in height;*
- 2. Centre City Planned Development Permit ("PDP") required for deviations from the Centre City Planned District Ordinance ("CCPDO"). The deviations being requested for this Project are: less than required tower separation; exceeding the maximum East/West tower dimension; less than minimum streetwall height; and allowing valet parking for hotel tandem parking spaces;*
- 3. Neighborhood Use Permit ("NUP") required for the proposed Comprehensive Sign Plan which far exceeds Code signage sizing; and*
- 4. Neighborhood Development Permit ("NDP") required for consideration of subterranean encroachments into the public right-of-way ("ROW") dedicated for a street or an alley where the Applicant is the record owner of the underlying fee title.*

Response 7.1

This comment is noted. The comment does not raise any specific environmental issues concerning the Project.

Paragraph 8

Comment 8.1

The four permits are consolidated as CCDP/PDP/NUP/NDP No. 2015-73 pursuant to SDMC § 112.0103. Under SDMC § 112.0103(a), when an Applicant applies for more than one permit for a single development, the applications shall be consolidated for processing and shall be reviewed by a single decision maker. The decision maker shall act on the consolidated application at the highest level of authority for that development, and the findings required for approval of each permit shall be considered individually.

Response 8.1

This comment is noted. The comment does not raise any specific environmental issues concerning the Project.



Paragraph 9

Comment 9.1

CSD did not complete meaningful CEQA analysis specific to the Project. Instead it intends to rely entirely on planning documents completed for other projects. The hodgepodge of CEQA documents on which CSD intends to rely to discharge its duties under CEQA include nine (9) various planning documents prepared over the course of the last decade: 1) the Final Environmental Impact Report ("2006 FEIR") for the San Diego Downtown Community Plan ("DCP"), Centre City Planned District Ordinance ("CCPDO"), and 10th Amendment to the Centre City Redevelopment Plan (March 14, 2006); 2) the Addendum to the 2006 FEIR for the 11th Amendment to the DCP, CCPDO, Marina Planned District Ordinance, and Mitigation, Monitoring and Reporting Program ("MMRP") for the 2006 FEIR (July 31, 2007); 3) the Second Addendum to the 2006 FEIR for the proposed amendments to the DCP, CCPDO, Marina Planned District Ordinance, and MMRP (April 21, 2010); 4) the Third Addendum to the 2006 FEIR for the RE District Amendments to the CCPDO (April 21, 2010); 5) the Fourth Addendum to the 2006 FEIR for the San Diego Civic Center Complex Project (August 3, 2010); 6) the Fifth Addendum to the 2006 FEIR for the Industrial Buffer Overlay Zone Amendments to the CCPDO (February 12, 2014); 7) the Sixth Addendum to the 2006 FEIR for the India and Date Project (July 14, 2014); 8) the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan ("Mobility Plan") (June 21, 2016); and 9) the City of San Diego FEIR for the Climate Action Plan ("CAP FEIR") (July 12, 2016).

Response 9.1

What Local 30 impolitely refers to as a “hodgepodge” is really the body of CEQA and planning documents that make up the development rules for downtown San Diego. It demonstrates that the City is thoughtful and adept at knowing when a project is within the scope of the DCP Program FEIR and when a project (such as an amendment to the CCPDO) requires an addendum or SEIR. Just because Local 30’s Los Angeles-based attorney is learning the development rules for downtown San Diego for the first time, does not make the documents a “hodgepodge.” The Board and City Council understand it very well because they adopted the rules.

Consistent with the purposes of CEQA, which are to complete CEQA review efficiently and expeditiously so that resources can be devoted to environmental mitigation (Pub. Res. Code § 21003(f)), CivicSD has streamlined environmental review of development within the DCP area through use of a Program EIR. The DCP FEIR, San Diego Mobility Plan SEIR, and CAP FEIR provided a comprehensive analysis of the environmental impacts associated with development of the DCP area. As that analysis has been completed, implementation of development consistent with the DCP FEIR can be processed pursuant to the Consistency Evaluation in accordance with CEQA Guidelines section 15168, rather than requiring a new (and duplicative) EIR. (CEQA Guidelines § 15168(b)(3), (c)(5) [a public agency may use a program EIR to avoid preparation of multiple EIRs on a series of actions and dispense with preparation of EIRs for later activities within the program if the EIR contains a specific and comprehensive evaluation of the effects of the program].) Under the consistency evaluation process, no additional CEQA documentation is required for subsequently proposed actions if the consistency evaluation



determines that the potential impacts have been adequately addressed in the EIR and subsequently proposed actions incorporate appropriate mitigation measures identified in the Mitigation, Monitoring and Reporting Program ("MMRP") that accompanies the EIR.

In short, the development of the Project was analyzed extensively in numerous environmental documents, including, but not limited to: (i) FEIR for the DCP, CCPDO and 10th Amendment to the Redevelopment Plan for the Centre City Project; (ii) Mobility Plan SEIR; (iii) six addenda to the DCP FEIR; and (v) the CAP FEIR. The Project's Consistency Evaluation demonstrates that the Project is within the scope of the DCP FEIR and CAP FEIR because: (i) there are no substantial changes to the Project requiring major revisions to the DCP FEIR, Mobility Plan SEIR or CAP FEIR; (ii) no substantial changes have occurred with respect to the circumstances under which the Project will be undertaken requiring major revisions to the DCP FEIR, Mobility Plan SEIR or CAP FEIR; and (iii) there is no new information of substantial importance; that: (a) the Project will have significant effects not discussed in the DCP FEIR, Mobility Plan SEIR or the CAP FEIR; (b) more severe environmental effects than the DCP FEIR, Mobility Plan SEIR and CAP FEIR discussed will occur; or (c) that the Applicant declines to adopt mitigation measures or alternatives that would substantially reduce a significant environmental effect. Therefore, no new environmental document is required. (CEQA Guidelines §§ 15168(c)(2), 15162.)

Refer also to Responses 4.1, 22.1, 26.1, 27.1, 28.1, 31.1 and 33.1.

Paragraph 10

Comment 10.1

Thus, the abbreviated Downtown FEIR Consistency Evaluation for the project dated July 12, 2016 incorporates by reference each of the nine prior planning documents. In spite of the massive size of the Project, and substantial changes in the character and intensity of development in the DCP area over the last 10 years, the Evaluation summarily concludes that the Project had been anticipated in prior documents, and determines that the Project's impacts had been "adequately addressed."

Response 10.1

The DCP FEIR analyzed the environmental impacts associated with buildout of the entire DCP area in accordance with the CCPDO, including the Project site and other developments that have occurred downtown San Diego since certification of the DCP FEIR. The changes in character and intensity of development are the changes that were planned for, analyzed by the DCP FEIR, which is only about 50% buildout. The City has not exceeded the SF of development or number of units for any use contemplated as part of the DCP buildout. Because the Project is within the scope of the prior environmental review, no new environmental impact report is required for the Project.

Refer to Responses 4.1, 9.1, 11.1, 22.1, 26.1, 27.1, 28.1, 31.1 and 33.1. See Responses to Paragraph 58 through Paragraph 134 for individual responses related to specific environmental concerns



regarding GHG emissions, hazardous materials, land use consistency, air quality, traffic, historic resources, and noise.

Paragraph 11

Comment 11.1

This "consistency" conclusion for the Project, as discussed in great detail below, is wholly unsupported by substantial evidence. As explained by traffic engineer Neal Liddecoat in Attachment 3 hereto:

"Unfortunately, no evidence is provided to support this statement. We are unable to find any documentation of the specific land uses assumed on the project site in the Downtown Community Plan. The FEIR for the Downtown Community Plan sheds no light on this issue, as it presents only gross projections of land use in the study area and, even then, only four land uses are represented: residential, office, retail, and hotel. Because no site-specific information is presented it is simply impossible to determine whether the current development proposal is, in fact, consistent with the previous vague assumptions . . ."

Response 11.1

The fact that Local 30's traffic litigation support specialist disagrees with the City's methodology for analyzing the Project's consistency does not mean there is no substantial evidence to support the consistency conclusion for the Project. The DCP, DCP FEIR and CCPDO analyzed the site because it established the allowable uses within the zoning applicable to the Project site. They also established the land use intensity of development was established for the site with floor area ratio ("FAR") limitations of a minimum of 3.5 and a base maximum FAR of 6.0, with additional FAR available through intensity bonuses. (See DCP FEIR, Figure 4.5-5, p. 4-19, 4-20, 4-39). In addition, Table 4.1-2 of the DCP FEIR specifically identified the types of land uses contemplated for East Village as follows:

EAST VILLAGE DISTRICT

Land UseType	Existing	Proposed Buildout
Residential	4,531 units	28,182 units
Office	852,087 SF	6,236,566 SF
Civic Office	158,000 SF	158,000 SF
Culture and Education	1,483,384 SF	1,716,185 SF
Retail	930,250 SF	1,579,979 SF
Hotel Rooms	1,288 rooms	4,164 rooms
Other	420,000 SF	420,000 SF



Even beyond the East Village Area where the Project is located, DCP area is generally at about half the buildout conditions analyzed in the DCP FEIR, the Project clearly does fall within the scope of the DCP FEIR. CivicSD tracks development levels in this manner precisely so it knows when development would exceed the buildout levels and know when projects could no longer be within the scope of the DCP EIR.

Land Use	DCP Base Conditions	2016 Conditions*	Proposed Project	DCP Build-Out
Residential Units	14,600	23,939	218	53,100 (45%)
Office (1,000 SF)	9,473	10,628	1,560	22,028 (48%)
Retail (1,000 SF)	2,658	3,340	400	6,070 (55%)
Hotel Rooms	8,800	13,175	153	20,000 (66%)
*DCP Baseline plus all project constructed from August 2004 to January 1, 2016. (See Attachment E)				

The Consistency Analysis prepared for the Project analyzes the project-specific and site specific impacts of the Project, including as related to traffic, hazardous materials and other environmental impacts to further support the within the scope determination pursuant to CEQA Guidelines section 15168 and 15162.

Please also refer to Responses 4.1, 12.1, 22.1, and 26.1 through 31.1. See Responses to Paragraph 58 through Paragraph 134 for individual responses related to specific environmental concerns regarding GHG emissions, hazardous materials, land use consistency, air quality, traffic, historic resources, and noise.

Paragraph 12

Comment 12.1

In other words, only the gross land use totals in the Community Plan area have been forecasted. No information was developed with regard to any particular site within the Community Plan area. Moreover, it was not considered possible to identify, with any reasonable level of accuracy, what might be developed on a site-specific basis.

Response 12.1

The comment incorrectly states that the DCP does not provide any specific information with regard to the site. See Response 12.1. Furthermore, as noted above, the DCP identifies the range of uses allowed on the Project site (DCP FEIR, Figure 4.5-1, p. 4.5-3), the intensity of development on the Project site (Figure 4.5-5), and identifies other information as well, such as the existence of transit near the Project site (DCP FEIR, Figure 4.5-2) and that the historic Clermont Hotel exists onsite (DCP FEIR, Table 5.3-2). To ensure adequate environmental analysis of specific development proposals, CivicSD performs a project specific consistency



evaluation pursuant to CEQA Guidelines sections 15168 and 15162 to analyze impacts at the “granular” level that the commenter states is required. Accordingly, as demonstrated in the Consistency Evaluation *Land Use and Planning* Section (b), the Land Use District for the site is Employment/Residential Mixed-Use (“ER”), which provides synergies between educational institutions and residential neighborhoods, or transition between the “Core” district and residential neighborhoods. A variety of uses are permitted in the ER district, including office, residential, hotel, research and development, educational, and medical facilities. Refer to Responses 4.1, 22.1, and 26.1 through 31.1. See Responses to 101.1 through 108.1 for responses related to land use consistency.

Paragraph 13

Comment 13.1

Therefore, with respect to the current 7th & Market development proposal, it is impossible to state, with any reasonable degree of certainty, that the project is consistent with the Community Plan land use projections. Any such statement simply lacks credibility." See Attachment 3.

Response 13.1

Refer to Responses 4.1, 11.1, 12.1, 22.1, 26.1 through 31.1, and 33.1. See Responses to Paragraph 102 through Paragraph 108 for responses related to land use consistency.

Paragraph 14

Comment 14.1

Local 30 is a member-driven hotel and hospitality workers' union representing 4,500 hotel, gaming, and food service workers throughout San Diego County. Local 30 seeks to raise standards in the hospitality and tourism industry in San Diego, and to transform San Diego service jobs into good middle class jobs.

Response 14.1

This comment and the core mission of Local 30 to pursue socio-economic benefits for its members are noted. The comment does not raise any specific Project issues.

Paragraph 15

Comment 15.1

Local 30's members have an interest in and are directly impacted by both the disposition of publicly owned property in the downtown area, the specific impacts associated with the project - including traffic, air quality, hazardous substances, climate and others. Local 30 therefore is a stakeholder in this Project, and worker and labor organizations have a long history of engaging in the CEQA process to secure safe working conditions, reduce environmental impacts, and maximize community benefits. The courts have



held that "unions have standing to litigate environmental claims." Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1198. So too, individuals such as Sergio Gonzalez have standing under CEQA. Id. at 1199 ("[o]ne of BCLC's members is a homeowner residing near Gosford and he spoke in opposition to the projects . . . This is sufficient to satisfy CEQA's liberal standing requirement).

Response 15.1

These comments and union interest in CEQA litigation are noted and have been documented. As discussed during the July 27, 2016 CivicSD meeting, the Board noted Local 30 and its litigation support specialists' arguments lacked credibility and merit, even assuming Local 30 has legal standing to raise its arguments. The decision-maker has the authority and right to make judgments about socio-economic driven bias behind and lack of credibility of any evidence of environmental impacts brought before them, even if the party bringing the evidence meets the minimum standing requirements.

Paragraph 16

Comment 16.1

This comment letter is made to exhaust remedies under Pub. Res. Code § 21177 concerning the Project, and incorporates by this reference all written and oral comments submitted on the Project by any commenting party or agency. It is well-established that any party, as Local 30 is here, who participates in the administrative process can assert all factual and legal issues raised by any commenting party or agency. Citizens for Open Government v. City of Lodi (2006) 144 Cal.App.4th 865, 875

Response 16.1

These comments are noted. See Response 15.1.

Paragraph 17

Comment 17.1

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. Guidelines § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government." Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal. 3d 553, 564. The EIR been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs. (2001) 91 Cal.App.4th 1344, 1354; County of Inyo v. Yorty (1973) 32Cal.App.3d 795, 810.



Response 17.1

This comment states one purpose of environmental review under CEQA. Comprehensive environmental review through the DCP FEIR, Mobility Plan SEIR and CAP FEIR has provided adequate disclosure of the environmental consequences of development in downtown San Diego. The public has had extensive opportunities to comment on that environmental review and continues to have such opportunities, as evidenced by Local 30's participation in the environmental review for the Project. While the informational purpose of CEQA is important, it is also important to recognize that where a project has already been subjected to environmental review, CEQA flips the usual presumption that an EIR is required for any project that "may have a significant effect on the environment" to a presumption that no further environmental review is needed. (*Fund for Env'tl. Def. v. County of Orange* (1988) 204 Cal.App.3d 1538, 1544 [quoting, Pub. Res. Code § 21151].) In fact, Public Resources Code section 21166 prohibits agencies from preparing a SEIR unless "circumstances have changed enough to justify repeating a substantial portion of the process," (*Fund for Env'tl. Def.*, 204 Cal.3d at 1544) stating:

"When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." (Pub. Res. Code § 21166; CEQA Guidelines § 15162.)

This provision "comes into play precisely because in-depth review has already occurred" and "the time for challenging the sufficiency of the original EIR has long since expired." (*Fund for Env'tl. Def.*, 204 Cal.App.3d at 1544.) Under this provision, the requirement for additional environmental review only arises if there is a need to evaluate new or more severe significant impacts resulting from changes to the project. (*Id.*) Testimony and/or reports by experts supporting a finding that a project will not result in a significant new, unmitigated impact, thereby not triggering an SEIR, constitute substantial evidence supporting the agency's conclusions. (CEQA Guidelines §15063(a)(3); *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413 [city's reliance on statements of its staff was proper because city planning staff were qualified as experts to provide analysis].) The City may also rely on this letter as the environmental impact and planning analysis herein was performed by Rincon, Chen Ryan Associates and AEC's experts who, in addition to being familiar with this Project, its vicinity, and the City's development rules and regulations, also have years of education, training, and



work experience in assessing a development project's environmental impacts and compliance with planning rules and regulations.

Furthermore, Local 30 fails to mention other important CEQA policies identified in CEQA Guidelines section 15003, which state the following:

- (g) The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind...
- (j) CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement.

(See also, *Bozung v. LAFCO* (1975) 13 Cal.3d 263; *Laurel Heights Improvement Ass'n. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112; *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553.)

It should also be acknowledged that the public was afforded the opportunity to review and comment upon the Consistency Evaluation. The Consistency Evaluation was posted on July 22, 2016 as an attachment to the Civic SD staff report for the July 27, 2016 Board hearing. The City Council and Board will continue to consider comments on the Consistency Evaluation until it takes final action on the Project.

Paragraph 18

Comment 18.1

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring implementation of "environmentally superior" alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); See also, Berkeley Jets, 91 Cal.App.4th 1344, 1354; Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564. If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." Pub. Res. Code § 21081; Guidelines § 15092(b)(2)(A) and (B). Mitigation measures should be capable of "avoiding the impact altogether," "minimizing impacts," "rectifying the impact," or "reducing the impact." CEQA Guidelines § 15370. Importantly, mitigation measures must be "fully enforceable through permit conditions, agreements, or other measures" so "that feasible mitigation measures will actually be implemented as a condition of development." Federation of Hillside & Canyon Ass'ns v. City of Los Angeles (2000) 83 Cal.App.4th 1252, 1261.

Response 18.1

Many of the policies and findings partially quoted above were applicable and fulfilled at the time the DCP FEIR and CAP FEIR were certified. As discussed in Response 17.1, the policies



and findings are different after the EIR has been certified and subsequent discretionary approvals related to the DCP are at issue.

This comment states that CEQA requires the significant environmental impacts of a project be avoided to the extent feasible. The Project will not have any significant impacts that are beyond the scope of the DCP FEIR, the Mobility Plan SEIR and the CAP FEIR. Certifying the DCP FEIR and approving the DCP, CCPDO, and 10th Amendment to the Redevelopment Plan, the City Council and Former Redevelopment Agency ("Former Agency") adopted a Statement of Overriding Considerations which determined that the unmitigated impacts were acceptable in light of economic, legal, social, technological or other factors including the following:

- Develop downtown San Diego as the primary urban center for the region;
- Maximize employment opportunities within the downtown San Diego area;
- Develop full-service, walkable neighborhoods linked to the assets downtown San Diego offers;
- Increase and improve parks and public spaces;
- Relieve growth pressure on outlying communities;
- Maximize the advantages of downtown San Diego's climate and waterfront setting;
- Implement a coordinated, efficient system of vehicular, transit, bicycle, and pedestrian traffic;
- Integrate historical resources into the new downtown San Diego plan;
- Facilitate and improve the development of business and economic opportunities located in the downtown San Diego area;
- Integrate health and human services into neighborhoods within downtown San Diego; and
- Encourage a regular process of review to ensure that the DCP and related activities are best meeting the vision and goals of the DCP.

The Consistency Evaluation also requires the Project to implement mitigation measures in the DCP FEIR MMRP, if applicable, to avoid or reduce significant environmental impacts. Project impacts were adequately analyzed by the DCP FEIR as determined by the Consistency Evaluation. The Project could result in potentially significant impacts to air quality, cultural resources, hydrology, and noise, but these impacts were already analyzed in the DCP FEIR and there is no credible evidence that the Project would create impacts beyond those identified in the DCP FEIR. Applicable mitigation measures specified within the DCP FEIR have been made conditions of approval for this Project with regard to those potentially significant impacts.

Paragraph 19

Comment 19.1

While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position.' A 'clearly inadequate or unsupported study is entitled to no judicial deference'." Berkeley Jets, 91 Cal.App.4th 1344, 1355 quoting, Laurel Heights Improvement Assn. v. Regents of University of



California, 47 Cal.3d 376, 391 409, fn. 12 (1988).) As the court stated in Berkeley Jets, 91 Cal.App.4th at 1355:

A prejudicial abuse of discretion occurs 'if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.' (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713, 722]; Galante Vineyards v. Monterey Peninsula Water Management Dist. (1997) 60 Cal.App.4th 1109, 1117; County of Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931, 946.)

Response 19.1

CivicSD's actions in connection with the Project have complied with applicable law. CivicSD has not uncritically relied upon studies or analysis presented by a project proponent and has instead exercised its independent judgment in reviewing the environmental analyses and other information relevant to the Project. In addition, CivicSD and the City have complied with all procedural requirements under CEQA. CivicSD has even allowed public review of the Consistency Evaluation where CEQA does not require such review, and has set aside the CivicSD actions at the July 27, 2016 hearing to make sure water supply impacts are understood prior to consideration and approval of the development permits. In contrast, analysis from Local 30's litigation support specialists is not independently reviewed prior to submission into the record. In fact, those studies demonstrate that Local 30's litigation support specialists are not familiar with all the work the City has done to adopt a CAP.

Paragraph 20

Comment 20.1

Substantial evidence in the record must support any foundational assumptions used for the impacts analyses in the EIR. Citizens of Goleta Valley, 52 Cal.3d at 568 (EIR must contain facts and analysis, not just bare conclusions); Laurel Heights, 47 Cal. 3d at 392-93 (agency's conclusions must be supported with substantial evidence).

Response 20.1

The Consistency Evaluation, supporting technical studies and other materials in the administrative record provide substantial evidence that support a finding that the Project is within the scope of the DCP FEIR, Mobility Plan SEIR and CAP FEIR.

Refer to Responses 4.1, 19.1, 22.1, and 26.1 through 31.1.



Paragraph 21

Comment 21.1

CEQA's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. Id. Indeed, the fundamental goals of environmental review under CEQA are information, participation, mitigation, and accountability. Lincoln Place Tenants Ass'n. v. City of Los Angeles (2007) 155 Cal.App.4th 425, 443-444.

Response 21.1

Refer to Responses 4.1, 17.1, 19.1, 22.1, 26.1 through 31.1, 34.1, and 36.1.

As the courts have explained, the principles of environmental analysis, public participation, and disclosure are of greater importance prior to adoption of the DCP FEIR and CAP FEIR, but the principle of finality plays a prominent role after those EIRs were certified and subsequent discretionary approvals are at issue, as is the case here.

Paragraph 22

Comment 22.1

The outdated 2006 FEIR is a program EIR that is not legally adequate for the approval of the 7th & Market Project in 2016 that was not specifically identified or analyzed a decade earlier. Moreover, the Mobility Plan cited in the Evaluation - which in turn relies on the outdated 2006 FEIR - suffers the same deficiencies.

Response 22.1

Refer to Responses 4.1, 17.1, 26.1 through 31.1, 34.1, and 36.1.

The Project's intensity and density is addressed, included, analyzed and mitigated in the DCP FEIR and Mobility Plan. The Mobility Plan replaces the Transportation Chapter in the DCP and assumed the same buildout condition as the DCP FEIR. As set forth in the Mobility Plan SEIR, updated environmental analysis was performed for traffic and other subject areas in connection with its approval earlier this year (2016). This comprehensive evaluation of the proposed Project has been documented in the City's Consistency Evaluation and elsewhere in the Project's administrative record. The time to challenge the analysis contained in these DCP EIR, Mobility Plan and Mobility Plan SEIR has passed.

A program EIR is an EIR prepared for a series of actions that are related geographically, as logical parts in a chain of contemplated actions, as general criteria to govern an ongoing program, or as individual activities carried out under the same authorizing statute or regulations with similar environmental effects. (CEQA Guidelines § 15168.) CEQA specifically provides for the use of program EIRs as they "provide for a more exhaustive consideration of



effects and alternatives than would be practical in an EIR on an individual project” and ensure consideration of cumulative impacts that might be overlooked in a case-by-case analysis. (CEQA Guidelines § 15168(b)(1), (2).) A program EIR does not need to prescribe a specific development project or use on each individual site, but provides for the program to be evaluated within a defined geographic area. (CEQA Guidelines § 15168(a).)

If a program EIR contains sufficient detail and analysis so that no significant impacts are omitted or additional mitigation measures are required, subsequent actions may be approved as within the scope of the program EIR when an initial study shows the later project would have no new significant effects and would require no new mitigation measures under CEQA Guidelines section 15162. (CEQA Guidelines § 15168(c)(2).)

As discussed in Response 11.1 above, the DCP FEIR provided sufficient information about development of the Project site to conclude that the proposed Project is within the scope of the DCP FEIR and the Mobility Plan SEIR. As demonstrated in the chart below, currently existing development in the DCP area is well within the overall program project boundaries and development projections identified in the DCP.

Land Use	DCP Base Conditions	2016 Conditions*	Proposed Project	DCP Build-Out
Residential Units	14,600	23,939	218	53,100
Office (1,000 SF)	9,473	10,628	1,560	22,028
Retail (1,000 SF)	2,658	3,340	400	6,070
Hotel Rooms	8,800	13,175	153	20,000
*DCP Baseline plus all project constructed from August 2004 to January 1, 2016. (See Attachment E)				

Local 30's allegation that circumstances have changed and/or new information has become available in the ensuing decade since approval of the DCP FEIR ignores when CEQA permits a lead agency to require an SEIR under CEQA Guidelines section 15162 due to changes in circumstances or new information. The Consistency Evaluation and related technical reports demonstrate that the Project is in conformity with the applicable environmental documents and will not result in a new or more severe impact due to changes inherent in the Project, changes in circumstances, or new information.

Additionally, many of the things Local 30 alleges have changed are the result of development permitted under the DCP FEIR. To argue that a new EIR is required for a project analyzed in and within the scope of a program EIR just because other authorized development in the program EIR was constructed first is nonsensical and contrary to the purpose of CEQA and the intent of program EIRs. (CEQA Guidelines § 15168(c)(2).)

The Project's Consistency Evaluation demonstrates that the Project is within the scope of the project covered by the DCP FEIR and CAP FEIR because: (i) there are no substantial changes to the Project requiring major revisions to the DCP FEIR or CAP FEIR; (ii) no substantial changes



have occurred with respect to the circumstances under which the Project will be undertaken requiring major revisions to the DCP FEIR or CAP FEIR; and (iii) there is no new information of substantial importance; that: (a) the Project will have significant effects not discussed in the DCP FEIR or the CAP FEIR; (b) more severe environmental effects than the DCP FEIR and CAP FEIR discussed; or (c) that the Applicant declines to adopt mitigation measures or alternatives that would substantially reduce a significant environmental effect.

Paragraph 23

Comment 23.1

A Program EIR is to be used for "general criteria to govern the conduct of an ongoing program." Guidelines § 15168(a)(3). "A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis . . . no further environmental documents would be required." Id. section (c)(5). In determining whether additional, project-specific CEQA review is required, the agency must determine whether the "effects were fully analyzed in the program EIR." Id. at discussion. If changes in the later project or new information show any new significant environmental effects or increase the severity of environmental effects identified in the program EIR, the agency must prepare an additional CEQA analysis. Pub. Res. Code §21166; Guidelines § 15162.

Response 23.1

Refer to Responses 4.1, 22.1, and 26.1 through 31.1.

Paragraph 24

Comment 24.1

"An EIR is required for a site specific project within the larger program if the project may cause significant effects." American Canyon Community v. City of American Canyon (2006) 145 Cal.App.4th 1062, 1073. Thus, numerous courts require supplemental CEQA review where a prior EIR fails to analyze significant changes in a future project or where there are previously unanalyzed or increased significant impacts. Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association (1986) 42 Cal.3d 929, 934 (public entity violated CEQA when it failed to prepare a Supplemental EIR for significant project changes and new information); American Canyon, 145 Cal.App.4th at 1073 (increase in size and project changes is substantial change triggering subsequent environmental review).

Response 24.1

This comment purports to reference legal standards for when a SEIR is required. Local 30 inappropriately relies on *American Canyon County United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062 ("American Canyon") to support its contention that



the Project requires a SEIR. In *American Canyon*, the court specifically noted that the change in the project from a shopping center to a supercenter was not a specific application of a larger management plan that was evaluated in a program EIR, but instead was a proposed change in the multiuse development that was evaluated in an earlier mitigated negative declaration (“MND”). (*Id.* at 1073.) The court specifically found that the 24-hour supercenter consisting of a big-box discount store was a unique type of retail operation that resulted in an increased square footage of approximately 6.5 percent. (*Id.* at 1075 [“In the retail context, Superstores are...unique. Unlike the vast majority of stores, many Superstores operate 24 hours per day seven days a week. Such extended operational hours raise questions concerning increased or additional adverse impacts relating to lights, noise, traffic and crime.”].) Moreover, the court did not order the city to prepare a SEIR, but instead concluded there was no substantial evidence to support the position that an SEIR was not required. The city was then given the option to provide that evidence on a return to writ. (*Id.* at 1083.) Interestingly, the *American Canyon* court also noted CEQA’s emphasis on finality as it determined the time limitations for challenging the MND had expired and the City’s compliance with CEQA at that stage in the proceedings is conclusively presumed. (*Id.* at 1071.)

The fact pattern in *American Canyon* is not analogous to the Project. First, development of the Project site was analyzed extensively in numerous environmental documents, including, but not limited to: (i) FEIR for the DCP, CCPDO and 10th Amendment to the Redevelopment Plan for the Centre City Project; (ii) six addenda to the EIR; (iii) the CAP FEIR; and (iv) Mobility Plan SEIR. These documents contain much more breadth and depth to the analysis than the MND in *American Canyon*. In fact, here, there exist Program EIRs that the *American Canyon* court intimated could have made a difference in its determination. Second, the Project does not represent a unique use that would result in increased square footage beyond the buildout levels planned for in the DCP. The environmental documents, identified above, address the potential environmental effects of future development within the Centre City Redevelopment Project based on build-out forecasts projected from land use designations, density bonus, and other policies and regulations governing development intensity and density. The Project fits within the boundaries of applicable policies and regulations, including use density and intensity, as analyzed in the environmental documents. The Project does not include a change that is not anticipated in the environmental documents. Third, there is substantial evidence in the form of expert reports and the Consistency Evaluation that demonstrate this Project does not trigger an SEIR and is not within the purview of the *American Canyon* holding.

Reliance on *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agric. Ass’n* (1986) 42 Cal.3d 929 (“*Concerned Citizens*”) is equally unpersuasive. In *Concerned Citizens*, the changes in the amphitheater project analyzed in the EIR included an increase from six to ten acres in the size of the project, a 200 percent increase in seating capacity, and repositioning of the stage to face the single-family residences north of the fairgrounds. (*Id.* at 934.) Additionally, noise mitigation measures contemplated in the EIR were not taken and the noise level exceeded that allowed by county law, thereby triggering Public Resources Code section 21166. (*Id.*) Again, these changes are a substantial increase in size and impact that is not present in the current Project since the current Project is well within the buildout assumptions for the DCP. Moreover, as documented in the Consistency Evaluation, the Applicant will be responsible for implementing the



mitigation measures and other prescriptive measures identified in the applicable environmental documentation.

Paragraph 25

Comment 25.1

That is the case here. The proposed Project's impacts were not specifically analyzed in the Program-level 2006 FEIR, the Addenda, the Mobility Plan or the CAP FEIR. A great deal has significantly changed that would necessitate, at the very least, a focused EIR for new impacts, including land use, population growth, GHG and traffic impacts, as set forth below and in the attached expert letters.

Response 25.1

Refer to Responses 4.1, 17.1, 19.1, 22.1, 26.1 through 31.1, 34.1, 36.1 and Responses to Paragraph 58 through Paragraph 134.

Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation for the Project and the entire administrative record, it has been determined that the Project is covered by and within the scope of the program approved by the DCP FEIR and the CAP FEIR. Project-specific environmental analyses is set forth in the Consistency Evaluation and the supporting Project-specific technical studies. The changes that have occurred the DCP area since 2006 is all consistent with what was analyzed in the DCP FEIR and does not provide a basis for requiring new environmental review. It is merely evidence that the buildout occurred as planned. The EIRs adequately describe the Project for purposes of CEQA. Moreover, none of the circumstances requiring a SEIR under CEQA Guidelines sections 15162 and 15163 exist. Accordingly, further environmental documentation is not required.

Paragraph 26

Comment 26.1

The 2006 FEIR is outdated. The document was prepared based on assumptions about development trends and underlying legal requirements that are no longer valid. Indeed the economic and legal baseline has shifted.

Response 26.1

Refer to Responses 4.1, 22.1, and 28.1 to 31.1.

Local 30's allegation that the DCP FEIR is outdated, and thereby void, is an inaccurate statement of law and fact. CEQA does not assign a shelf-life to certified EIRs. CEQA emphasizes finality. (*River Valley Pres. Project v. Metro. Transit Dev. Bd.* (1995) 37 Cal.App.4th 154, 178.) If Local 30 has issues with the review contained in the DCP FEIR or the subsequent



addenda, the time to challenge those approvals has long since passed. (Pub. Res. Code § 21167(e); *Comm. for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 56.)

Contrary to Local 30's allegations, the DCP and DCP FEIR did disclose the level of development permitted by the DCP. The documents discussed, in great detail, the density, intensity and mix of land uses that would collectively be permitted under the DCP. The DCP and CCPDO assign zoning, development and design rights to certain neighbors within the CCPDO/DCP area. The impacts related to development that complied with all applicable regulations were analyzed and mitigated for, to the extent feasible, in the DCP FEIR. The documents speak for themselves.

Finally economic and legal baselines are not what CEQA analyzes. It analyzes environmental impacts from an environmental baseline.

Comment 26.2

Furthermore, the 2006 FEIR fails to disclose impacts in sufficient detail to allow the Board to comply with the disclosure and informational requirements that are the very foundation of CEQA. CEQA is designed "to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences, and, equally important, that the public is assured those consequences have been taken into account." Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova I (2007) 40 Cal.4th 412, 449-450 (emphasis added). By necessity and design, a program-level EIR prepared in 2006 provides the public and decision makers with only a high-level analysis of general environmental impacts that were likely to result from the overall development of the DCP. The 2006 EIR simply cannot provide the level of granular, project-level impacts analysis that CEQA demands.

Response 26.2

The DCP FEIR provides an adequate level of environmental analysis. Refer to Responses 4.1, 17.1, 19.1, 22.1, 26.1 through 31.1, 34.1, and 36.1. See Responses to Paragraph 58 through Paragraph 134 for individual responses related to GHG emissions, hazardous materials, land use consistency, air quality, traffic, historic resources, and noise.

Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation for the Project and the entire administrative record, it has been determined that the Project is covered by and within the scope of the program approved by the DCP FEIR and the CAP FEIR. The EIRs adequately describe the Project for purposes of CEQA and further environmental documentation is not required.

Courts have previously upheld the level of detail provided in the DCP and CivicSD's methodology for analyzing whether a project is within the scope. Local 30 is promoting a legal interpretation that, by definition, no program EIR can detailed enough because it is a program EIR. That is not what the CEQA Guidelines say.



Paragraph 27

Comment 27.1

With regard to the Addenda relied on in the Evaluation, each was prepared for a specific purpose having little to no bearing on the environmental impacts of the Project. By CSD's own admission, the Addenda "largely consist of minor, administrative changes" to the prior documents, and do not contain the type of disclosure or substantive analysis required by law. See e.g. Addendum to the Downtown FEIR (July 31, 2007) at 9. The Addenda concern changes to allowable land uses that are entirely irrelevant to an analysis of impacts from this Project. For example, the Third Addendum to the Downtown FEIR (April 21, 2010) amends the CCPDO Use Regulations to allow churches, places of religious assembly, cultural institutions and educational institutions in Residential Emphasis (RE) zones.

Response 27.1

Local 30's assessment the relevant addenda is misinformed, particularly when the CCPDO is amended because the proposed project much comply with the CCPDO rules, where applicable.

An addendum to a previously certified EIR or adopted negative declaration must be prepared if minor technical changes or additions are necessary, but no SEIR or subsequent negative declaration is required. (CEQA Guidelines § 15164; *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788 [8th addendum to 1997 airport master plan EIR upheld]; *Citizens for Responsible Equitable Envtl. Dev. v. City of San Diego* (2011) 196 Cal.App.4th 515 [2008 addendum based on 1994 EIR upheld; GHG effects were not significant new information requiring SEIR].) The addendum is considered together with the prior EIR or negative declaration but need not be circulated for public review. Therefore, while the addenda do not relate directly to the development proposed by the Project, the addenda, and the analysis contained therein, are collectively considered part of the body of CEQA documents applicable to the buildout of the DCP through the CCPDO, as amended from time to time. When the CCPDO is amended it can be relevant to the Project when the findings for consistency with the CCPDO are made and when CivicSD evaluates whether a project complies with the CCPDO. Not all CCPDO amendments are relevant to this Project, but it is wise for CivicSD to cite to and consider the entire body of CEQA documentation for DCP buildout when evaluating whether a project falls within the scope of the DCP.

Paragraph 28

Comment 28.1

The Mobility Plan identified in the Evaluation, along with the EIR on which its approval depends, suffers from significant infirmities. It relies on the land use assumptions from the outdated 2006 FEIR and fails to adequately analyze whether the transportation projects contemplated in the Plan could effectively handle the increase in traffic that would accompany Downtown's building boom.



Response 28.1

Refer to Responses 4.1, 11.1, 22.1, and 26.1 through 31.1. See Responses to Paragraph 110 through Paragraph 129 for individual responses related to traffic.

The Mobility Plan was adopted in June 2016, and, therefore is not “outdated” or ill-equipped to analyze whether transportation projects can handle the “building boom” contemplated pursuant to buildout of the DCP. The Mobility Plan amends the Transportation Chapter in the DCP, but is consistent with all other elements of the DCP and serves “to accommodate build out of the planned land uses” set forth in the DCP. (Mobility Plan SEIR, p. 3-5.) In evaluating build out traffic conditions, the Mobility Plan SEIR developed future year traffic volumes using current trip generation rates and San Diego Association of Governments (“SANDAG”) data and compared that against existing traffic volumes. (Mobility Plan SEIR, p. 4.2-8.) While not all significant transportation impacts are avoided through implementation of the Mobility Plan, the plan does increase multi-modal transportation opportunities intended to provide a balanced circulation system that facilitates walking, biking, and transit use. (Mobility Plan SEIR, p. 3-5.)

The City adopted the Downtown Public Facilities Financing Plan (“PFFP”) to provide a funding source towards implementation of the transportation projects described in the Mobility Plan to serve the DCP buildout condition. (See Mobility Plan, p. 96; Downtown PFFP [attached hereto as Attachment F] [Project T-1 funding bike and pedestrian improvements, Project T-2 funding local transit facilities, Project T-3 funding alternative transportation modalities, Project T-4 funding downtown promenades to establish pedestrian friendly linkages].) As discussed in the Mobility Plan, the City will continue to coordinate with other transportation authorities to implement the planned traffic improvements. The Project pays impact fees to the City to help implement the Mobility Plan.

The time to challenge the analysis contained in DCP FEIR and the Mobility Plan SEIR has passed and the City is entitled to rely on it and implement it. Note that the Project was required to prepare a Traffic Impact Study (“TIS”) pursuant to the applicable MMRP for the program EIR. This is one of the ways the DCP EIR determines if there is an impact from a project different from what was contemplated from the buildout of the DCP. The TIS took into consideration the traffic generated by the current level of development and demonstrated that the traffic generated by the Project would not result in more severe or new traffic impacts, and therefore, is within the scope of the analysis contained in the relevant, applicable documents. Local 30’s consultant is assuming a program EIR requires project-specific information for *all* future development, and ignoring CEQA Guidelines section 15168(c)(2). Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation and the entire administrative record, it has been determined that the project is an activity covered by and within the scope of the program approved by the DCP FEIR, Mobility Plan SEIR and the CAP FEIR, the EIRs adequately describe the Project for purposes of CEQA, and no further environmental documentation is required.



Paragraph 29

Comment 29.1

Expert planner Terrell Watt explains all this in Attachment 2 hereto:

"Reliance on the prior 2006, and only a programmatic, high level and top down and forecast-based approach to environmental analysis fails to comply with CEQA's requirements for project level review and overlooks potentially significant impacts of individual projects as well as full development. Such significant impacts likely include but are not limited to:

- 1. increasing rather than decreasing vehicle miles traveled ("VMT") and associated greenhouse gas and air quality emissions associated with construction, occupancy and operation of the Project;*
- 2. transportation gridlock in the Downtown and insufficient mitigation, planning and funding to meet transit demand;*
- 3. lack of consistency with adopted plans and policies and ordinances at a more granular level (e.g., shading and light, visual, wind tunnel, vibrancy of the street, etc.);*
- 4. impacts associated with inadequate housing affordable to the workforce, among other impacts; and*
- 5. inadequate essential infrastructure including water-related, transportation and transit, parks, open space and recreation, and policing, among other services and infrastructure necessary to serve new and planned development.*

Response 29.1

Refer to Responses 4.1, 11.1, 17.1, 19.1, 22.1, 26.1 through 31.1, 34.1, and 36.1. See Responses to Paragraph 58 through Paragraph 134 for individual responses related to GHG emissions, hazardous materials, land use consistency, air quality, traffic, historic resources, and noise.

The DCP FEIR, Mobility Plan SEIR and CAP FEIR, coupled with the Consistency Evaluation and project-level technical studies prepared for the Project satisfy the requirements of CEQA and provide the project level environmental review that CEQA requires.

Local 30's planning expert incorrectly claims that the DCP FEIR is out of date and fails to identify, analyze and address the potentially significant impacts of the Project and other planned development within the DCP Area. The DCP FEIR analyzes environmental impacts of development within the entire DCP area (1,455 acres), which includes the Project site, over the DCP buildout period of 2030 at the development intensities contemplated in the DCP. (DCP FEIR, Figure 3.1-2, Figure 4.5-5, p. 4-19.)

Table 4.1-1 of the DCP FEIR (shown below) describes then-existing baseline and 2030 buildout conditions for the DCP. The Project's environmental analysis goes on to provide an evaluation of Project impacts against baseline conditions existing when the technical studies were prepared, and against 2030 buildout contemplated in the DCP. (*Benton*, 226 Cal.App.3d at 1484; see also, *Temecula Band of Luiseño Mission Indians v. Rancho Cal. Water Dist.* (1996) 43 Cal.App.4th 425, 478 [review of the project's potential environmental effects should be limited to the



incremental effects of the project compared to the previously-adopted EIR and approved versions of the development[.]

Downtown Land Use and Demographics under Existing Conditions, the 1992 Centre City Community Plan, and the Proposed Downtown Community Plan

Land Use/ Demographic Category	Existing	1992 Community Plan Buildout	2030 Proposed Update
Population	27,500	48,000	89,100
Employment	74,500	117,000	167,000
Residential (units)	14,600	30,700	53,100
Office (SF)	9,473,000	20,700,000	22,028,000
Office (Civic) (SF)	3,671,000	NA	7,793,000
Culture and Education (SF)	1,508,000	NA	2,560,000
Retail (SF)	2,658,000	4,300,000	6,070,000
Hotel Rooms	8,800	15,600	20,000
Other	2,180,000	NA	2,780,000
Source: Downtown Community Plan 2005 and, SANDAG, www.sandag.org			

CivicSD has advised that current development conditions, with the Project figures are as follows:

Land Use	DCP Base Conditions	2016 Conditions*	Proposed Project	DCP Build- Out
Residential Units	14,600	23,939	218	53,100
Office (1,000 SF)	9,473	10,628	1,560	22,028
Retail (1,000 SF)	2,658	3,340	400	6,070
Hotel Rooms	8,800	13,175	153	20,000
*DCP Baseline plus all project constructed from August 2004 to January 1, 2016. (See Attachment E)				

The tables above illustrate that the Project is within the scope of the DCP FEIR. In addition, the lead agency prepared a Consistency Evaluation, backed by technical reports. The technical reports completed as part of the Project review process provide an evaluation of the Project against existing conditions.

A CEQA determination must be supported by substantial evidence. (Pub. Res. Code § 21168.) “Substantial evidence” means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other



conclusions might also be reached.” (CEQA Guidelines §15384(a); *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 393 [“*Laurel Heights*”].) Substantial evidence includes facts, reasonable assumptions based on facts, and expert opinion supported by facts. Substantial evidence does not include argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, evidence that is not credible, or evidence of economic or social impacts that do not contribute to or are not caused by physical environmental impacts. (Pub. Res. Code §§ 21080(e), 21082.2(c).) This highly deferential standard of review applies because the agency has the discretion to resolve questions of fact and to make policy decisions. (*Cal. Native Plant Soc’y v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 984.)

For example, Local 30’s planner fails to provide facts to support that Project vehicle miles traveled (“VMT”) would cause an increase in VMT, traffic gridlock, or inadequate funding for transit compared to what had been contemplated in the 2006 DCP FEIR. Indeed, the analysis above demonstrates that the City has not reached development levels anywhere near those that were contemplated in the DCP buildout conditions. In addition, there are multiple regional transit stations located within walking distance of the Project, including the Park & Market trolley station (within 1,000 feet).

The San Diego Forward Regional Plan (“Regional Plan”)⁴ has identified public transit as one of the sustainable strategies to reduce VMT throughout the region. Researchers have shown that projects located near high quality transit would generate less VMTs when compare to similar projects located farther away from high quality transit. Implementation of the multi-modal mobility options throughout downtown San Diego will further reduce reliance on vehicles in the vicinity of the Project. Local 30’s expert fails to recognize that transportation-related impact fees required by law are being provided or explain why the fees are insufficient. As required by Mitigation Measure A.1.1-3, the Applicant will be required to pay a fair share towards street, transit, bicycle, and pedestrian improvements as set forth in the DCP PFFP (attached hereto as Attachment F) to fund improvements identified in the City’s Capital Improvement Program (“CIP”) as being necessary to avoid significant traffic impacts pursuant to periodic traffic analyses as required by the DCP MMRP. Further, the Regional Plan identified multiple funding sources and strategies to fund transit throughout County of San Diego (the “County”), including funding for multiple trolley and Bus Rapid Transit (“BRT”) projects in downtown San Diego. (Regional Plan Table A.1 Transit Facilities – Revenue Constrained Project.) The Project will also contribute towards funding for regional freeway improvements through the payment of City of San Diego Regional Transportation Congestion Improvements Program (“RTCIP”) Funding) Fees in connection with the issuance of building permits.⁵ The Project’s Consistency Evaluation and TIS, which follows the DCP FEIR and Mobility Plan SEIR mitigation measure

⁴ <http://www.sdforward.com/>

⁵ For Citywide development impact fees, including RTCIP Fees, see https://www.sandiego.gov/sites/default/files/development_impact_fees_annual_report_-_fiscal_year_2015.pdf. For the City of San Diego Regional Transportation Congestion Improvement Program (RTCIP) Funding Program, see <https://www.sandiego.gov/sites/default/files/legacy/facilitiesfinancing/pdf/plans/rtcipfunding1204.pdf>.



for traffic generating projects, demonstrate that the Project will not have adverse impacts on traffic or transportation.

Local 30's expert also fails to recognize that CivicSD's Design Review process focuses on consistency with adopted plans and policies and ordinances at a granular level, including as it relates to visual impacts, shading and vibrancy of the street. Finally, Local 30's planner fails to define how the Project's provision of affordable housing onsite, in accordance with City ordinances, is inadequate, which is also a socio-economic issue.

The lack of understanding of the basic development rules and procedures for downtown San Diego development exposes Local 30's litigation support specialist as lacking credibility in their opinions, which is why they should be rejected in favor of the informed opinions of City and CivicSD staff who independently reviewed the Project's technical studies in accordance with San Diego's development rules and procedures.

In accordance with CEQA Guidelines sections 15168, 15180, and 15162, the potential impacts associated with future development in the DCP area, including the subject Project, are within the scope of the DCP FEIR, and the six subsequent addenda, as well as the Mobility Plan SEIR and the CAP FEIR, as listed in the introduction above. Project-specific technical studies support the conclusions of the Consistency Evaluation. These documents demonstrate that the Project will not result in significant increases in VMTs, GHG or air quality emissions, transportation gridlock and insufficient mitigation, planning and funding to meet transportation demand, lack of overall consistency with applicable land use plans and ordinances, or impacts associated with inadequate affordable housing.

Project impacts were adequately analyzed by the DCP FEIR as determined by the Consistency Evaluation and staff. Applicable mitigation measures specified within the DCP FEIR have been made conditions of approval for this Project with regard to those potentially significant impacts. Therefore, the Project is consistent with the DCP. Further, the DCP FEIR adequately anticipated and described the impacts of the Project and identified applicable mitigation measures necessary to reduce Project-specific impacts, and the Project implements these mitigation measures.

Paragraph 30

Comment 30.1

Urban infill in theory is beneficial. However, in order for the promise of urban infill to be realized, full and transparent analysis and disclosure of the Project's potentially significant impacts and identification of feasible mitigation are only possible with Project-level environmental based on a current baseline (total existing development downtown in 2016) and cumulative "foreseeable" development Downtown. Otherwise, even urban infill projects may result in unintended and significant impacts.



Response 30.1

Refer to Responses 4.1, 11.1, 17.1, 19.1, 22.1, 26.1 through 31.1, 34.1, and 36.1. See Responses to Paragraph 58 through Paragraph 134 for individual responses related to GHG emissions, hazardous materials, land use consistency, air quality, traffic, historic resources, and noise.

Local 30's suggestion that the DCP FEIR has to be updated to reflect a baseline that is reflective of current existing conditions is wholly inconsistent with the purpose of a program EIR and seeks to eviscerate the purpose of the program EIR altogether.

The DCP FEIR provides a detailed analysis of the environmental impacts of development/redevelopment pursuant to the DCP covering an approximately 1,455 acres in downtown San Diego, generally bounded by Laurel Street and Interstate 5 ("I-5") on the north; I-5, Commercial Street, 16th Street, Sigsbee Street, Newton Avenue, Harbor Drive, and the extension of Beardsley Street on the east; and San Diego Bay on the south and west. (DCP FEIR, p.1-1, 4-5.) The geographic project area covered by the DCP FEIR is depicted on Figure 3.1-2 of the DCP FEIR and includes the Project site.

The Project is within the scope of the DCP FEIR. To date, only 23,939 of the planned 53,100 residential units, 13,175 of the planned 20,000 hotel rooms, and approximately half of the planned office and retail development analyzed in the DCP FEIR have been constructed. The addition of the Project's 218 residential units, 156,000 SF of office, 153 hotel rooms, and approximately 40,000 SF of retail will be well within the scope of the DCP FEIR.

In addition, the lead agency prepared a Consistency Evaluation backed by technical reports. The technical reports provide an evaluation of the Project against existing conditions. (See, Exterior Envelope Acoustical Design Study, Traffic Impact Study, Cultural Resources Survey and Architectural Test Plan, WSA, CAP Consistency Checklist and Geotechnical Investigation analyzed the Project against the existing development.) The Consistency Evaluation and staff report also analyze the Project's impacts as compared to the development contemplated by the DCP and the CCPDO, which, as noted above, establish land use regulations and design and development criteria to implement the DCP. (SDMC § 156.0301(a).) The chart on page five of the staff report dated July 22, 2016 (for the July 27, 2016 Board hearing) identified that: (i) the Project's proposed development intensity of 11.43 FAR is within the scope of the maximum 12.1 FAR allowed; (ii) the 475 foot building is within the scope of the 500 foot maximum building height requirement; (iii) the Project meets or exceeds all the applicable parking requirements; (iv) and the Project exceeds all indoor and outdoor open space minimum requirements. Local 30's argument that the analysis needs to be updated for current existing conditions is unsupportable, ignores the Project's technical reports, and ignores the fact that the DCP has not achieved the densities anywhere close to any of the buildout assumptions made in the DCP FEIR's project description.

In accordance with CEQA Guidelines sections 15168, 15180, and 15162 o, the potential impacts associated with future development in the DCP area, including the subject Project, are within the scope of the FEIR prepared for the DCP, CCPDO, and the six subsequent addenda to the EIR, as well as the Mobility Plan SEIR and the CAP FEIR, as listed in the introduction above.



These documents address the potential environmental effects of future development within the Centre City Redevelopment Project area based on buildout forecasts projected from the land use designations, density bonus, and other policies and regulations governing development intensity and density. Based on this analysis, the DCP FEIR, its subsequent addenda and the CAP FEIR concluded that development would result in significant impacts related to the following issues (mitigation and type of impact shown in parentheses):

Significant but Mitigated Impacts

- Air Quality: Construction Emissions (AQ-B.1) (D – Direct)
- Paleontology: Impacts to Significant Paleontological Resources (PAL-A.1) (D/C – Cumulative)
- Noise: Interior Traffic Level Increase on Grid Street (NOI-B.1) (D/C)

Significant and Not Mitigated Impacts

- Air Quality: Mobile Source Emissions (AQ-A.1) (C)
- Historical Resources: Archeological (HIST-B.1) (D/C)
- Water Quality: Urban Runoff (WQ-A.1) (C)
- Land Use: Physical Changes Related to Transient Activity (LU-B.6) (C)
- Noise: Exterior Traffic Level Increase on Grid Streets (NOI-A.1) (C)
- Noise: Exterior Traffic Noise in Residential Development (NOI-C.1) (D/C)
- Traffic: Impact on Surrounding Streets (TRF-A.1) (C)
- Traffic: Impact on Freeway Ramps and Segments (TRF-A.2) (C)
- Parking: Excessive Parking Demand (TRF-D.1) (C)

In certifying the DCP FEIR and approving the DCP, CCPDO, and 10th Amendment to the Redevelopment Plan, the City Council and Former Agency adopted a Statement of Overriding Considerations which determined that the unmitigated impacts were acceptable in light of economic, legal, social, technological or other factors including the following overriding considerations:

- Develop downtown San Diego as the primary urban center for the region;
- Maximize employment opportunities within the downtown San Diego area;
- Develop full-service, walkable neighborhoods linked to the assets downtown San Diego offers;
- Increase and improve parks and public spaces;
- Relieve growth pressure on outlying communities;
- Maximize the advantages of downtown San Diego's climate and waterfront setting;
- Implement a coordinated, efficient system of vehicular, transit, bicycle, and pedestrian traffic;
- Integrate historical resources into the new downtown San Diego plan;
- Facilitate and improve the development of business and economic opportunities located in the downtown San Diego area;
- Integrate health and human services into neighborhoods within downtown San Diego; and



- Encourage a regular process of review to ensure that the DCP and related activities are best meeting the vision and goals of the DCP.

Project impacts were adequately analyzed by the DCP FEIR as determined by the Consistency Evaluation. Further, the DCP FEIR adequately anticipated and described the impacts of the Project as part of the cumulative foreseeable development in the downtown San Diego area, identified applicable mitigation measures necessary to reduce project specific impacts, and the project implements these mitigation measures.

Paragraph 31

Comment 31.1

Consistency Evaluation findings repeatedly rely on the assertion that the Project/proposed action is within the scope of the program approved in the CAP and Downtown FEIRs and subsequent addenda, and therefore will have no additional impacts. Evidence to support these findings (pages 5-6 of the Consistency Evaluation) are non-existent. Most telling, the conclusory Consistency Evaluation fails to include any evidence to support the assertion that the Project, plus development that has occurred since 2006 and cumulative development, are within the scope of the prior program and prior environmental review. This is huge omission since the core evidence to support consistency findings would be a detailed analysis that demonstrates the Project, plus new development since 2006, plus foreseeable development in fact remain within the scope of the City's planning program and were fully analyzed in the prior environmental documents.

Response 31.1

As demonstrated in the chart below, existing development in the DCP area is well within the overall development permitted in the DCP FEIR. The Project would not exceed the development boundaries established by the DCP, therefore, there is no denying the Project was fully evaluated in the DCP FEIR and CAP FEIR, and is within the scope. Therefore, a project level EIR is not required as there are not new circumstances or a different development than previously evaluated.

Also see Responses 4.1, 11.1, 22.1, and 26.1 through 31.1.

Land Use	DCP Base Conditions	2016 Conditions*	Proposed Project	DCP Build-Out
Residential Units	14,600	23,939	218	53,100
Office (1,000 SF)	9,473	10,628	1,560	22,028
Retail (1,000 SF)	2,658	3,340	400	6,070
Hotel Rooms	8,800	13,175	153	20,000
*DCP Baseline plus all project constructed from August 2004 to January 1, 2016. (See Attachment E)				



Paragraph 32

Comment 32.1

Evidence based on development logs and data on the CSD website (<http://www.civicsd.com/>) suggests that the prior environmental documents referenced in the Consistency Evaluation underestimated the impacts of the proposed Project and cumulative development...

Response 32.1

There is no substantive evidence to support this assertion. Refer to Responses 4.1, 11.1, 12.1, 22.1, 26.1 through 31.1. Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation for the Project and the entire administrative record, it has been determined that the Project is an activity covered by and within the scope of the program approved by the DCP FEIR and the CAP FEIR, the EIRs adequately describe the Project for purposes of CEQA, and no further environmental documentation is required.

Paragraph 33

Comment 33.1

Impacts differ significantly by specific project and granular and specific mix of land uses and land use types within a project. In contrast to the granular analysis of specific projects possible now, the general projections of future land use by general land use designation (e.g., housing, office, retail) and impact analysis in the prior environmental documents referenced in the Consistency Evaluation (e.g., including in the 2006 Downtown FEIR) likely grossly underestimate both project-related and cumulative impacts (including impacts of population and housing, transportation and transit, infrastructure and services, as well as VMT related impacts that can cause declining air quality and increasing GHG). The prior environmental documents referenced in the Consistency Evaluation rely on only gross, plan-wide totals by generalized land use (e.g., residential, office, hotel) noting impact analysis was constrained by the lack of detail concerning actual projects. What was not possible then, is possible now - preparation of a new environmental analysis that evaluates the Project, actual development since 2006 and foreseeable development . . ." See Attachment 2 hereto.

Response 33.1

Refer to Responses 4.1, 11.1, 12.1, 22.1, 26.1 through 31.1. See Responses to Paragraph 58 through Paragraph 134 for individual responses related to GHG emissions, hazardous materials, land use consistency, air quality, traffic, historic resources, and noise.

Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation for and the entire administrative record, it has been determined that the Project is an activity covered by and within the scope of



the program approved by the DCP FEIR and the CAP FEIR, the EIRs adequately describe the Project for purposes of CEQA, and no further environmental documentation is required.

Paragraph 34

Comment 34.1

CSD's Hodgepodge Approach Violates the Single Document Rule

Moreover, as a general matter, an EIR must be a single document that informs the public of the impacts of a project and feasible mitigation measures and alternatives to reduce those impacts. Russian Hill Improvement Assoc. v. Bd. of Permit Appeals (1974) 44 Cal.App.3d 158. The EIR should constitute a single document that is "meaningful and useful to decision-makers and to the public." Pub. Res. Code § 21003(b). The EIR reader should not be required to "painstakingly ferret out the information" from multiple reports. Planning & Conservation League v. Department of Water Resources (2000) 83 Cal.App. 4th 892, 911. The public should not be required to sift through thousands of pages contained in multiple documents to detect a project's environmental impacts. San Joaquin Raptor II, 149 Cal.App.4th at 659.

Response 34.1

Local 30 misstates the "single document rule." While CEQA does require the analysis of an EIR to be contained in a single document, it would be contrary to the express purpose of CEQA to require subsequent addendums, SEIRs and Consistency Evaluations to contain the same analysis included in the previously certified EIR. CEQA provides mechanisms to prevent duplicative and time-consuming, unnecessary procedures. (CEQA Guidelines section 15003(g).) A requirement that each subsequent phase of a tiered EIR, phased-development or program EIR reiterate the analysis included in the original environmental document would eviscerate the purpose of these options. Moreover, the legislature has expressed its intention that CEQA should not be interpreted in a manner that imposes new procedural requirements beyond those stated in the statute and in the Guidelines. (Pub. Res. Code § 21083.1.) In short, if all environmental analysis had to be in one new EIR, than why would CEQA authorize addendums and SEIRs for subsequent discretionary approvals? (CEQA Guidelines §§ 15163, 15164.) Local 30's lack of understanding about basic CEQA rules and procedures exposes the lack of credibility in their arguments.

San Diego Navy Broadway Complex Coalition v. City of San Diego (2010) 185 Cal.App.4th 924 specifically allowed a Consistency Evaluation to rely on the analysis in two EIRs, including the DCP FEIR.

Here, the Consistency Evaluation includes all the required information to inform the public and allow the decision-makers to meaningfully consider the Project.



Paragraph 35

Comment 35.1

The Consistency Evaluation and CEQA review for the Project incorporating a hodgepodge of past EIRs, Addenda and Plans violate this principle because they utterly and completely fail to "enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." Laurel Heights Improvement Ass'n. v. Regents of the University of California (1988) 47 Cal.3d 376, 405.

Response 35.1

Refer to Responses 4.1, 17.1, 22.1, 26.1 through 31.1, 34.1, 36.1, and Responses to Paragraph 58 through Paragraph 134.

CivicSD does not incorporate a "hodgepodge of past EIRs," but instead incorporates by reference relevant CEQA analyses performed for the DCP area. Indeed, the addenda to the DCP FEIR are part of the DCP FEIR and should not be viewed as "separate documents." In performing project-specific analysis under a program EIR, CEQA permits, even encourages, incorporation of information from other EIRs and documents by reference. (CEQA Guidelines §§ 15150, 15168(d)(2).) The documents incorporated were all clearly identified and are all available on CivicSD's website and therefore fully available to the public. The fact that Local 30 fails to read and understand the EIRs and addenda exposes the lack of credibility in its arguments, not the presence of a CEQA violation.

Paragraph 36

Comment 36.1

In addition to serious concerns regarding the complexity and volume of material created by CSD's decision to essential "tier" off of nine other documents, Commentors feel compelled to challenge the timing of document release in relation to Committee/Board consideration. The Evaluation was not available to Commentors until after the Board's special meeting at which it considered and approved the Project's Community Benefits Agreement ("CBA"), and made its final recommendation on the Project's DDA. Finally, release of the Evaluation – and the revelation that CSD would rely entirely on nine other planning documents for CEQA compliance – preceded meetings by the Design Review Committee ("DRC"), Downtown Community Planning Council ("DCPC"), and Board by 1, 6 and eleven working days, respectively. This extremely tight schedule of releasing documents only days before formal Committee/Board consideration is a clear violation of the spirit of CEQA. Furthermore, by moving the Project forward on this expedited timeline, CSD has obstructed Commentors' careful consideration of Project's impacts, and prevented the Board from receiving this Office's comment letter in a timeframe that would allow it to meaningful consider the comments.

Response 36.1

Refer to Responses 17.1 and 34.1.



The scheduling of meetings and release of documents complied with legal requirements and does not violate the spirit of CEQA. CEQA does not require public review of Consistency Evaluations. (CEQA Guidelines § 15168(e).) The record demonstrates that CivicSD has performed a thoughtful and careful consideration of the Project's environmental impacts, including through the comments provided by Local 30 and others.

Although public review is not required under CEQA, CivicSD afforded the public the opportunity to review and comment on the Consistency Evaluation before the Project was approved. The Consistency Evaluation was posted on July 22, 2016 as an attachment to the staff report for the July 27, 2016 Board hearing to consider development permits for the Project. Additionally, the public had the opportunity to deliver comments to the City Council prior to its action on the DDA during the September 20, 2016 hearing, and before the Project's development permits are reconsidered by CivicSD (currently scheduled for September 28, 2016). The public was also afforded the opportunity to review and comment upon development of the Project site in connection with the City's past approval of the DCP FEIR, the Mobility Plan SEIR and the CAP FEIR. As the DCP FEIR and CAP FEIR are program EIRs prepared in compliance with CEQA Guidelines section 15168, environmental review for subsequently proposed actions is accomplished using the consistency evaluation process, as allowed by CEQA Guidelines sections 15168, 15180, and 15162. The Consistency Evaluation includes the evaluation criteria as defined in CEQA Guidelines section 15063. Under this process, an evaluation is prepared for each subsequently proposed action to determine whether the potential impacts were anticipated in the EIR. No additional documentation is required for subsequently proposed actions if the consistency evaluation determines that the potential impacts have been adequately addressed in the EIR and subsequently proposed actions implement appropriate mitigation measures identified in the MMRP that accompanies the EIR.

While CEQA policies favoring robust environmental analysis and opportunities for formal extra notice and comment periods are paramount prior to the issuance of an EIR, once an EIR has been certified, Courts have repeatedly affirmed that policies in favor of *finality* are more important, precisely because the robust environmental analysis has already occurred and society's limited resources are better spent on actual mitigation of environmental impacts rather than repeating environmental analysis.

The environmental impact evaluation for the Project site and broader downtown San Diego area was completed, including comprehensive public review, as part of the DCP adoption process. Subsequent review of the impacts associated with full buildout of the entire City in accordance with the CAP strategy was contained in the recent CAP FEIR. The Consistency Evaluation between the Project and the existing DCP FEIR and the CAP FEIR has been completed and was specifically discussed at the July 13, 2016 meeting.

The staff report for the Special Meeting of the CivicSD Board regarding the DDA and associated Community Benefits Agreement ("CBA"), stated that development within the DCP is covered under the FEIR for the San Diego DCP, CCPDO, and 10th Amendment to the Centre City Redevelopment Plan, certified by the Former Agency and City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively) and subsequent addenda to the EIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010



(Former Agency Resolutions R-04510), August 3, 2010 (Former Agency Resolution R-04544) and certified by City Council on February 12, 2014 (Resolution R-308724) and July 14, 2014 (Resolution R-309115), and the City of San Diego CAP FEIR certified by the City Council on December 15, 2015, (Resolution R-310176) which includes the Addendum to the CAP FEIR ("CAP Consistency Checklist") certified by the City Council on July 12, 2016 (Resolution R-310596). The EIRs are program EIRs prepared in compliance with CEQA Guidelines section 15168. The Consistency Evaluation between the Project and the existing program EIRs has been completed. The proposed activities detailed and analyzed in the Consistency Evaluation were determined to be adequately addressed in the environmental documents noted above, and there has been no change in circumstance, substantial additional information, or substantial Project changes to warrant additional environmental review. No further environmental documentation is required.

The City and CivicSD have complied with CCPDO, SDMC, CEQA and other all applicable regulations for noticing and circulating the Project. Like an addendum, a CEQA Guidelines section 15168 Consistency Evaluation is not required to be publicly circulated prior to consideration of a Project. The technical reports have been available for weeks prior the Board meeting as part of the Project application. There is no CEQA violation or "spirit of CEQA" violation.

Paragraph 37

Comment 37.1

V. The Current Baseline Needs to be Calculated To Assess "Consistency"

Every CEQA document must start from a "baseline" assumption - which means the existing conditions on the ground. The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. CBE v. SCAQMD (2010) 48 Cal.4th 310, 321. Section 15125(a) of the CEQA Guidelines states in pertinent part that a lead agency's environmental review under CEQA:

[m]ust include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

Response 37.1

The baseline information requested by the commenter has been provided. Refer to Responses 4.1, 11.1, 22.1, and 26.1 through 31.1.

Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation and the entire administrative record, it has been determined that the Project is an activity covered by and within the scope of the program approved by the DCP FEIR, Mobility Plan SEIR and the CAP FEIR, the EIRs



adequately describe the Project for purposes of CEQA. No further environmental documentation is required.

Paragraph 38

Comment 38.1

Here, the baseline calculation for the land use impacts of the Project and cumulative Projects is not supported by substantial evidence. As expert planner Terrell Watt explains in Attachment 2:

"The 2006 FEIR for the San Diego DCP, CCPDO and 10th Amendment to the CCRP is an out of date, high level programmatic document that fails to identify, analyze and mitigate the potentially significant impacts of the Project and the impacts of pending and foreseeable development Downtown San Diego. Neither the 2006 FEIR, nor the other environmental documents referenced in the Consistency Evaluation, contain a current "baseline" of existing 2016 development, or a complete description of planned development and current and projected demographics ; essential information required for an adequate and current analysis of Project-related and cumulative impacts. Prior environmental documents referenced in the Consistency Evaluation repeatedly state that a more rigorous analysis of impacts was not possible because information about specific projects was not known, concluding that such analysis would be speculative. That information now exists about specific projects and actual development since 2006, and must be the basis for a new more robust environmental review. See CSD website: <http://www.CSD.com/>.

Response 38.1

Refer to Responses 4.1, 11.1, 22.1, and 26.1 through 31.1.

The baseline information requested by Local 30 has been provided. In addition, project-level environmental analysis has occurred through preparation of the Consistency Evaluation and its supporting technical studies.

Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation and the entire administrative record, it has been determined that the Project is an activity covered by and within the scope of the program approved by the DCP FEIR, Mobility Plan SEIR and the CAP FEIR, the EIRs adequately describe the Project for purposes of CEQA. No further environmental documentation is required.

Paragraph 39

Comment 39.1

The 2006 DCP FEIR identifies the extent of population growth and land use development expected in 2030 and compares it with the 1992 Community Plan Buildout and Existing conditions. See table 4.1-1 of DCP FEIR. It is noteworthy that the 2006 FEIR and other environmental documents cited in the



Consistency Evaluation do not identify specific, current 2016 impacts of this growth and land use development on the environmental baseline; rather the analysis is against 1992 buildout." See Attachment 2.

Response 39.1

Refer to Responses 4.1, 11.1, 22.1, and 26.1 through 31.1. See Responses to Paragraph 58 through Paragraph 134 for individual responses related to land use consistency.

Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation and the entire administrative record, it has been determined that the Project is an activity covered by and within the scope of the program approved by the DCP FEIR, Mobility Plan SEIR and the CAP FEIR, the EIRs adequately describe the Project for purposes of CEQA. No further environmental documentation is required.

Paragraph 40

Comment 40.1

The same is true for traffic - the Consistency Evaluation's finding of "consistency" with the baseline traffic conditions permitted and studied in the 2006 DCP and FEIR is utterly unsupported by substantial evidence. As expert traffic engineer Liddecoat explains in Attachment 3:

"Long-Term Traffic Analysis is Required - The Consistency Evaluation (p. 38) states:

Traffic generated by the proposed project in combination with traffic generated by other downtown development would contribute to the significant cumulative impacts projected in the DCP FEIR to occur on a number of downtown roadway segments and intersections, and streets within neighborhoods surrounding the DCP area at buildout of the downtown. However, the project's direct impacts on downtown roadway segments or intersections would not be significant.

Response 40.1

Refer to Responses 30.1 and 41.1.

The Project-specific TIS prepared by Chen Ryan Associates provided an analysis of traffic impacts against existing conditions generally based on traffic counts taken in November, 2015. (See TIS, p. 15, App. A.) Because the Project is consistent with and within the scope of the DCP FEIR, the Project's cumulative impacts were found to be adequately analyzed through the DCP FEIR and does not require a further project-specific analysis. (TIS, p. ES-1.)



Paragraph 41

Comment 41.1

There appears to be no basis for this conclusion, however, as the Chen Ryan traffic impact analysis that was incorporated into the Consistency Evaluation included no assessment of the long-term impacts of the proposed project. We believe that an analysis of long-term conditions is required, for the following reasons.

Response 41.1

Refer to Responses 40.1 and 30.1.

The Downtown San Diego Traffic Impact Assessment (TIA) Methodology for Evaluation of New Projects, which is an addendum to the Downtown San Diego Near-term Traffic Assessment, attached hereto as Attachment G, specifies that all new projects generating over 2,400 average daily traffic ("ADT") must conduct a traffic study to address AM and PM peak hour traffic conditions at downtown intersections under the Existing and Near-term condition. The methodology does not require long-term/horizon year analysis as these impacts are already evaluated under the DCP FEIR. (See TIA, p. ES-1 [land use is consistent with the DCP FEIR assumptions so no further analysis of 2030 is required].) The Project properly followed the mitigation measure, which was not challenged at the time the mitigation was adopted in 2006. Accordingly, the statute of limitations has expired and the City may not rely on it. The fact that Local 30 wishes the mitigation measure required more or wishes it had timely opposed the mitigation measure does not mean there is a CEQA violation. .

These responses also address Mr. Liddicoat's Follow Up Letter, Section 5.

Paragraph 42

Comment 42.1

Page 1 of the Chen Ryan traffic study includes the following statement:

The proposed Cisterra 7th & Market project land uses are consistent with those assumed in the 2006 Downtown Community Plan and therefore will not require analysis of the Year 2030 cumulative project impacts.

Response 42.1

Refer to Responses 30.1, 40.1 and 41.1.



Paragraph 43

Comment 43.1

Unfortunately, no evidence is provided to support this statement. We are unable to find any documentation of the specific land uses assumed on the project site in the Downtown Community Plan. The FEIR for the Downtown Community Plan sheds no light on this issue, as it presents only gross projections of land use in the study area and, even then, only four land uses are represented: residential, office, retail, and hotel. Because no site-specific information is presented it is simply impossible to determine whether the current development proposal is, in fact, consistent with the previous vague assumptions.

Response 43.1

Refer to Responses 11.1, 30.1 and 41.1.

As discussed further in Response 11.1, the DCP FEIR assumed a level of development intensity for the Project site and a range of land uses within the overall DCP Area. Combined, and through implementation of the CCPDO, these controls enable the City to regulate and insure development proceeds in a manner that is consistent with traffic assumptions underlying the traffic analysis in DCP FEIR and the Mobility Plan SEIR. The Project's FAR is consistent with the CCPDO limitations and CivicSD has provided data showing that the DCP area is approximately 50% buildout. Under these conditions, substantial evidence supports CivicSD's conclusion that the Project is consistent with and within the scope of the DCP FEIR, even if Local 30 wishes there was additional information or a different methodology. The fact that there might be disagreement amongst experts over methodology does not mean the City Council, Planning Commission and CivicSD lack substantial evidence to support it is within the scope determination.

Paragraph 44

Comment 44.1

This fact is further reinforced by the following statement from the 2006 Community Plan FEIR addressing the volume of traffic to be generated by the projected Downtown Community Plan land uses (p. 5.2-23 - 5.2-24):

This trip generation is based on the general land use designations of the Proposed Community Plan and does not assume any specific trip generation from any specific property due to the uncertainty associated with the ultimate type and intensity of use which might occur.

Response 44.1

Refer to Responses 4.1, 11.1, 22.1, 26.1 through 31.1, 43.1 and 52.1.



Note that trip generation assumptions were updated in connection with the Mobility Plan SEIR and that the DCP FEIR/Mobility Plan SEIR further require a project-specific traffic analysis to evaluate whether a project's actual traffic impacts are adequately analyzed and within the scope of the DCP FEIR and Mobility Plan SEIR. The Project's TIS confirmed that the trips associated with the Project are within the scope of the DCP FEIR and the Mobility Plan SEIR. Moreover, the fact that the DCP area is only approximately 50% buildout also supports that the Project will not have traffic impacts beyond the scope covered in the DCP FEIR and Mobility Plan SEIR.

Paragraph 45

Comment 45.1

In other words, only the gross land use totals in the Community Plan area have been forecasted. No information was developed with regard to any particular site within the Community Plan area. Moreover, it was not considered possible to identify, with any reasonable level of accuracy, what might be developed on a site-specific basis.

Response 45.1

Refer to Responses 4.1, 11.1, 22.1, 26.1 through 31.1, and 52.1. As discussed in Response 11.1 above, the range of land uses for the site was not when the DCP FEIR was certified, the level of intensity was known. That, coupled with the fact that the DCP FEIR is less than half-built out, provides substantial evidence supporting the Consistency Evaluation conclusion that the Project will not have traffic impacts that are beyond the scope of what is covered in the DCP FEIR and the Mobility Plan SEIR.

Paragraph 46

Comment 46.1

Therefore, with respect to the current 7th & Market development proposal, it is impossible to state, with any reasonable degree of certainty, that the project is consistent with the Community Plan land use projections. Any such statement simply lacks credibility.

Response 46.1

Refer to Responses 4.1, 11.1, 22.1, 26.1 through 31.1, 43.1, 44.1 and 52.1. See Responses to Paragraph 58 through Paragraph 134 for individual responses related to land use consistency.

As the Project is consistent with the DCP FEIR, Mobility Plan SEIR and the CCPDO, substantial evidence supports CivicSD's determination that the Project is consistent with the DCP projections. Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation and the entire administrative record, it has been determined that the Project is an activity covered by and



within the scope of the program approved by the DCP FEIR, Mobility Plan SEIR and the CAP FEIR, and the EIRs adequately describe the Project for purposes of CEQA. No further environmental documentation is required.

Local 30 ignores the fact that Project's uses are within the range of use permitted by the DCP, within the intensity permitted by the DCP and follows the CCPDO rules for development with findings supported by evidence.

Paragraph 47

Comment 47.1

Although the traffic analysis presented in the Downtown Community Plan FEIR ostensibly addresses a "buildout" condition (with no specific horizon year attached), it is clear that the planning horizon year for the traffic analysis is 2030. In particular, the Chen Ryan traffic impact analysis report (p. 1) specifically addresses the need for an "... analysis of the Year 2030 cumulative project impacts." Further, the FEIR "Transportation, Circulation, Access and Parking" section refers to the MOBILITY 2030 version of the Regional Transportation Plan (RTP) (FEIR, p. 5.2-19), as does the FEIR "Cumulative Impacts" section. Various supporting documents with 2030 horizon years are also referenced.

Response 47.1

Refer to Responses 4.1, 22.1, 26.1 through 31.1. The 2006 DCP FEIR analyzed 2030 as the horizon year, but did not assign a year to the full buildout of the DCP. For purposes of providing a conservative analysis, however, the 2006 DCP FEIR and Mobility Plan SEIR forecast a full buildout of downtown San Diego by 2030, even though it was not practical to assume the DCP area would be built out by then. The Year 2030 model was used for the DCP because the Year 2030 was the maximum year stated the SANDAG regional model when the DCP update was conducted.

Accordingly, the buildout traffic volume in the 2006 DCP FEIR can be considered a conservative traffic volume for the following reasons:

- The 2006 DCP utilized the SANDAG Series 10 Regional Model and assumed an aggressive land use plan for downtown San Diego that is less than half-built out at this point in time, as shown above.
- The DCP FEIR analysis unrealistically assumed the DCP area would be built out by 2030, knowing that was an unlikely scenario. For example, the DCP FEIR states for office development, "buildout to maximum intensity within the 2030 timeframe would be economically infeasible as the quantity of office space would exceed the estimated demand for the entire San Diego region." (DCP FEIR, at p. 4-20.)

The 2006 DCP modeled higher vehicular usage by giving much less credit to alternative mode of transportation, in part because the Mobility Plan was not approved at the time.



Paragraph 48

Comment 48.1

The process used to develop the future year traffic volumes employed in the Downtown Community Plan FEIR is described as follows (FEIR, p. 5.2-16):

The SANDAG Regional Transportation Model was utilized to prepare future year buildout traffic forecasts. The following major assumptions were incorporated into the computer modeling process.

Response 48.1

This comment is noted. Local 30 should be aware that, as noted in Response 28.1, the Mobility Plan SEIR provided an updated future year traffic projections. The fact that Local 30's litigation support specialist fails to recognize this basic fact in the environmental analysis is further proof of the lack of credibility in their comments. Because the comment does not raise any specific issues concerning the Project, no further response is needed.

Paragraph 49

Comment 49.1

Growth

Growth factors were derived by comparing modeled "existing" and modeled "future year" peak hour traffic. Growth factors from the modeling were then applied to existing peak hour traffic data to derive future year peak hour volumes.

Response 49.1

This comment is noted. Local 30 should be aware that, as noted in Response 28.1, the Mobility Plan SEIR provided an updated future year traffic projections. Because the comment does not raise any specific issues concerning the Project, no further response is needed.

Paragraph 50

Comment 50.1

According to the FEIR (p. 5.2-2), the "existing" traffic volumes used in that analysis were "based on year 2002 data." Those volumes were then expanded to represent estimates of year 2030 traffic volumes, as described above. Thus, fourteen-year-old data serves as the basis for the long-term traffic impact conclusions for the proposed 7th & Market project.



Response 50.1

Refer to Responses 4.1, 11.1, 22.1, 26.1 through 49.1.

Local 30 should be aware that, as noted in Response 28.1, the Mobility Plan SEIR provided an updated future year traffic projections. Also, the TIS provides a discussion of existing traffic conditions.

These responses also address Mr. Liddicoat's Follow Up Letter, Section 6.

Paragraph 51

Comment 51.1

It strains credibility to suggest that the future year traffic volume forecasts referenced above would bear any similarity to updated forecasts based on:

- 1. Current (year 2015, in this case) traffic volumes,*
- 2. Updated growth factors developed using the current SANDAG travel demand forecasting model, and*
- 3. A more reasonable and up-to-date planning horizon year.*

For example, consider the following Caltrans traffic volume data for State Route 163 (SR 163) where it enters downtown San Diego (i.e., where it meets Interstate 5):

	<i>Daily Traffic Volume</i>		
	<i>2002</i>	<i>2014</i>	<i>Change</i>
<i>North of I-5</i>	<i>107,000</i>	<i>114,000</i>	<i>+6.5%</i>
<i>South of I-5</i>	<i>42,500</i>	<i>56,000</i>	<i>+31.8%</i>

Response 51.1

Refer to Responses 11.1, 28.1, 40.1 through 50.1. The Project-specific TIS and the Mobility Plan SEIR provide updated traffic data and forecasts. Local 30 is speculating that the percentage growth reflected in California Department of Transportation ("Caltrans") data for the State Route 163 ("SR-163")/I-5 intersection will carry forward at the same pace into 2030. Substantial evidence supports the Consistency Determination's conclusion that the Project is within the scope of the DCP FEIR/Mobility Plan SEIR, and that those EIRs adequately analyze the Project's traffic impacts. To illustrate that the DCP FEIR traffic projections did not understate traffic conditions, the table below provides a comparison of the peak hour traffic volumes at two key intersections for traffic entering and exiting Downtown San Diego: 10th Avenue/A Street and 11th Avenue/A Street. As demonstrated, the 2006 DCP traffic volume forecasts are much higher in comparison to both the 2002 and 2015 traffic volumes. Traffic volumes will continue to decline with implementation of the Mobility Plan which will encourage use of



walking, biking and transit, rather than reliance on the automobile in the DCP area. Based on this, it can reasonably be concluded that the DCP buildout traffic volumes adequately accounted for any growth that may have happen between 2002 and 2015.

	Existing DCP ¹		2015 ²		DCP Buildout Forecast ¹		Growth 2002 vs. 2015		Growth 2002 vs. Buildout	
	AM	PM	AM	PM	AM	PM	AM	PM	AM	PM
10 th /A	2,187	3,822	2,525	3,536	5,176	6,853	15.5%	-7.5%	136.7%	79.3%
11 th /A	1,195	2,422	1,751	2,597	5,626	6,648	46.5%	7.2%	370.8%	174.5%
¹ Traffic volumes for the Year 2002 and Buildout of the Downtown Community Plan were obtained from the Downtown Community Plan Appendices.										
² Year 2015 traffic volumes were obtained from the Cisterra 7 th and Market Traffic Impact Study.										

With regard to Local 30's reference to Caltrans traffic volume data for the SR-163/I-5 intersection in 2002 and 2014 in particular, we note that, according to the SANDAG Transportation Forecast Information Center⁶ Series 13 Model, the SR-163 segment south of I-5 is projected to carry 38,800 average daily vehicles (21,400 northbound + 17,400 southbound) by the buildout of the San Diego region (Year 2050). This model concludes that there will be less traffic in downtown San Diego in the future as a result of an increase in smart growth projects (such as this Project), increased transit investment, and an increase in alternative transportation such as biking and walking. Through implementation of the Mobility Plan, the City will encourage growth in these non-car dependent transportation options. Therefore, it can be reasonably concluded that future year traffic forecast would not exceed those considered in the DCP FEIR, and that the Project would not cause any new or additional significant traffic impacts. Mr. Liddecoat suggests otherwise through commentary and speculation, but provides no credible data to support the assertion that the Project's traffic impacts will have significant or more severe impacts than the FEIR disclosed.

These responses also address Mr. Liddicoat's Follow Up Letter, Section 5 and Section 6.

Paragraph 52

Comment 52.1

Clearly, significant traffic growth has occurred on SR 163, particularly in downtown San Diego. It is reasonable to expect that application of an appropriate growth factor to today's higher downtown traffic volumes will yield future year traffic forecasts that substantially exceed those considered in the 2006 Downtown Community Plan FEIR. Associated with those higher traffic volumes will be degraded traffic operations, which could translate into additional significant project-related traffic impacts.

⁶ <http://tfic.sandag.org>



Response 52.1

Refer to Responses 4.1, 11.1, 22.1, and 26.1 through 31.1, 40.1 through 51.1.

There is no credible data to support Local 30's argument that traffic volumes will exceed what is projected for buildout of the DCP. Traffic volumes are projected to increase over time. Evidence that traffic volumes did include is not evidence that they will exceed traffic volumes forecasted for the buildout of the DCP. Rather, it is more likely traffic volumes at buildout will be less than forecasted. (See Response 47.1) Furthermore, the City has recently implemented the Mobility Plan which will further reduce traffic impacts by encouraging multi-modal transportation throughout downtown San Diego. Through implementation of the Mobility Plan, the community will provide enhanced pedestrian, bicycle and transit options, thus reducing reliance on automobiles. The DCP PFFP provides a funding source towards implementation of such facilities. (See Mobility Plan, p. 96; Downtown PFFP [Project T-1 funding bike and pedestrian improvements, Project T-2 funding local transit facilities, Project T-3 funding alternative transportation modalities, Project T-4 funding downtown promenades to establish pedestrian friendly linkages].) As more mixed use projects are developed downtown, bringing residential opportunities in close proximity to employment and entertainment options that exist and will continue to grow downtown San Diego (restaurants, nightclubs, Petco Park, etc.), the downtown San Diego community will become less reliant upon cars. The result will be a decrease in projected future traffic volumes, not an increase compared to the projected future traffic volumes in the DCP FEIR as Local 30 speculates.

It is expected that Project residents and visitors, in particular, will utilize non-auto modes of transportation. Due to the in-fill mixed use nature of the Project, its close proximity to nearby transit services (minutes' walk from bus and trolley), employment centers, restaurants, Petco Park and other attractions, many will travel to the Project by walking, bus, bike and trolley. Indeed, Chen Ryan Associates prepared a memorandum demonstrating if the SANDAG approved Mix-Use Development ("MDX") Trip Generation rates were applied to the Project, it would generate only approximately 4,081 average daily trips. (See Chen Ryan Associates letter report dated September 9, 2016 regarding Mixed Use Development Trip Generation Rates ["MDX Memo"] [Attachment H hereto].) In order to provide a conservative analysis, the Consistency Evaluation did not rely upon the substantially lower mixed use trip generation rates that it could have applied to the Property using currently accepted methodologies and instead assumed the Project would generate 7,305 average daily using non-mixed use trip rates.

These responses also address Mr. Liddicoat's Follow Up Letter, Section 5 and Section 6.

Paragraph 53

Comment 53.1

The Downtown Community Plan FEIR identified 62 intersections that would have significant impacts upon buildout of that plan, 12 of which would be unmitigable. We believe it is reasonable to expect that



updated traffic forecasts based on current traffic data would result in even greater impacts, some of which would be directly attributable to the proposed 7th & Market project.

Response 53.1

Refer to Responses 4.1, 22.1, 26.1 through 31.1, 47.1-53.1.

The Project-specific TIS demonstrates that the Project will not have any direct significant impacts on downtown San Diego intersections. (See TIS, p. 24, 33.) If one considers the Project's traffic impacts utilizing mixed use trip generation rates, traffic impacts would be even further reduced from what the TIA provides. Accordingly, there is substantial evidence to support the Consistency Evaluation.

Paragraph 54

Comment 54.1

Therefore, it is essential that the long-term impacts of the proposed project be addressed in detail and reported in a project-specific environmental impact report." See Attachment 3.

Response 54.1

Refer to Responses 4.1, 22.1, 26.1 through 31.1, and 52.1.

These responses also address Mr. Liddicoat's Follow Up Letter, Section 6.

Paragraph 55

Comment 55.1

As noted above, on July 13, 2016, the CSD Board considered and approved the CBA, and recommended that the City Council approve the DDA - both of which are integral components of the Project. In separating and segmenting these two elements from the land use entitlements for the Project, CSD's conduct constitutes improper piecemealing and violates CEQA's informational and disclosure mandates.

Response 55.1

Consideration of the CBA and DDA separately from the development approvals does not constitute unlawful piecemealing in violation of CEQA. CEQA applies when a public agency has proposed to "approve" a project. (Pub. Res. Code § 21080(a); CEQA Guidelines §§ 15004, 15352(a); *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 567; *RiverWatch v. Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186.) Under this standard, an agency cannot formally approve a project, or commit itself to approve it, without first complying with CEQA.



On July 13, 2016, the Board approved the CBA. However, since a CBA is not considered a “project” under CEQA, this action does not violate CEQA. A “project” for CEQA purposes is an activity that “may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (Pub. Res. Code § 21065.)

“Approval” of a project occurs when a public agency’s action “commits the agency to a definite course of action.” (CEQA Guidelines § 15352(a).) Such a commitment occurs if, before complying with CEQA, an agency takes actions that would limit the choice of alternatives or mitigation measure that would ordinarily be considered as part of the future CEQA process. (CEQA Guidelines § 15004(b)(2); *Saltonstall*, 234 Cal.App.4th at 567, 570.) That did not occur on July 13, 2016 because the Board’s approval of the CBA and recommendation that the City Council approve the DDA did not commit CivicSD to a course of action that could result in a change to the environment.

The term “project” refers to the whole of an action and to the underlying activity being approved, not to each governmental approval. (CEQA Guidelines § 15378(a), (c)-(d); *RiverWatch*, 170 Cal.App.4th 1186; *Ass’n for a Cleaner Env’t v. Yosemite Cmty. College Dist.* (2004) 116 Cal.App.4th at 637.) This definition ensures that the action reviewed under CEQA is not the approval itself, but the development or other activities that will result from the approval. By referring to the underlying activity, CEQA Guidelines section 15378(c) “focuses attention on that which has impact on the environment.” (*Bozung*, 13 Cal.3d at 283; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1188.)

The CBA identified socio-economic benefits that the public would receive if, and only if, Cisterra acquires a Former Agency asset through the DDA and if it develops the Project on the described site. The CBA did not authorize acquisition of the Project site or the construction of the Project. Therefore, the Board’s approval of the CBA and recommendation that the City Council approve the DDA did not commit CivicSD to a course of action that could result in a change to the environment and did not violate CEQA. Additionally, the CBA was approved with language expressly reserving the exercise of discretion in connection with CEQA compliance before any action could be taken to authorize an activity that could affect the environment.

Actual development permits will be considered by the Board on September 28, 2016 with the benefit of a final WSA and Consistency Evaluation. At this time, the Board has the ability to require Project modifications, impose mitigation measures or even deny the Project, all in accordance with CEQA. Similarly, the Board’s recommendation that the City Council approve the DDA, after conducting appropriate CEQA review, does not commit the Board or the City Council to a definite course of action. In fact, the recommendation proves that the Board did not have any jurisdiction to approve the DDA. Prior to approving the DDA, the City Council will also determine CEQA compliance and will have the discretion to require Project modifications, impose mitigation measures or even deny the Project. Finally, as discussed in Response 56.1, it should be noted that the DDA and other Project approvals cannot be heard concurrently because the City Council has authority to approve the DDA and CivicSD has jurisdiction to approve the other Project approvals (subject to the pending appeal to the Planning Commission.)



Paragraph 56

Comment 56.1

It was never explained why the CBA and DDA are on a different track, and not considered at the same time. It is the same Project with the same environmental impacts. CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment - which cumulatively may have disastrous consequences." Bozung v. LAFCO (1975) 13 Cal.3d 263, 283-84 (1975); City of Santee v. County of San Diego (1989) 214 Cal.App.3d 1438, 1452. Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences.

Response 56.1

Refer to Responses 3.1, 4.1, 17.1, 22.1, 26.1 through 31.1, 34.1, 36.1, and 55.1.

The CBA is not considered a project under CEQA as it is not an activity that may cause either a direct or indirect physical change in the environment. It should be noted, nevertheless, that the Consistency Evaluation was prepared on July 12, 2016, a day before the CBA was approved and was a topic of discussion at the July 13, 2016 Board hearing on the CBA, evidencing that the decisionmakers were knowledgeable about the environmental impacts of the Project prior to approving the CBA.

The CBA was properly approved by CivicSD before the City Council considered before the DDA because CivicSD, not the City Council, has jurisdiction to approve the CBA. The CBA is required by CivicSD Board Policy 7.0 ("Policy 7.0"), requiring that projects receiving public funds must provide community benefits that promote diverse communities and priorities, foster economic development, and create quality of life improvements. The Project site is an asset of the City, which the City can dispose of in its capacity as the successor to the Former Agency, which was dissolved pursuant to Assembly Bill x 126 in 2011. Such disposition necessarily involves the use of public funds and is accomplished pursuant to a DDA entered into between the Applicant and the City, as approved by the City Council. Accordingly, CivicSD approved the CBA on July 13, 2016, with a recommendation that the City Council approve the DDA. CivicSD's approval of the CBA was reliant upon receipt of the public benefits that will be realized only through implementation of the DDA. (See, e.g., CBA, Recital G ["The Developer acknowledges that CSD's recommendation to the City to approve the DDA is subject to CSD Board Policy 7.0 Community Benefits Policy, effective April 29, 2015."]; see also, CBA, Recital H ["CSD and Developer desire to enter into this Agreement to ensure that the expected benefits from the DDA will be achieved."].) The fact that Local 30 did not understand which agency had the authority to approve a CBA and development approvals and which agency had authority to approve the DDA further demonstrates the lack of credibility of Local 30's arguments.



Paragraph 57

Comment 57.1

In sum, all Project Approvals should proceed together in order to fulfill the basic Legislative goals for CEQA, and comply with the statute. In approving CBA and taking final action on the DDA, the Board was legally approving a Project without prior CEQA review in a manner that has been consistently condemned by the California Supreme Court as a violation of State law. See e.g. Save Tara v City of West Hollywood (2008) 45 Cal.4th 116 (holding that "conditional agreement to sell land for private development, coupled with financial support, public statements, and other actions by its officials committing the city to the development, was, for CEQA purposes, an approval of the project that was required... to have been preceded by preparation of an EIR."). CEQA is constructed around an inclusive definition of "project" for the purpose of preventing public agencies from pre-committing to an approval and from segmenting projects in a way that diminishes apparent environmental impacts.

Response 57.1

Refer to Responses 55.1 and 56.1.

The CBA is not considered a project under CEQA as it is not an activity that may cause either a direct or indirect physical change in the environment. In addition, the DDA and development approvals cannot be consolidated for approval because the City Council has jurisdiction to approve the DDA and CivicSD, not the City Council, has jurisdiction to approve the Project's development permits (subject to the pending appeal to the Planning Commission). (SDMC § 156.0304(f)(1) [development permits pursuant to the Centre City Planned Development Ordinance are issued by CivicSD, and appealable to the City Planning Commission].)

Paragraph 58

Comment 58.1

The abbreviated Project CEQA Evaluation needs to be discarded, and replaced with a CEQA compliant review.

Response 58.1

The Consistency Evaluation complies with the requirements of CEQA.

Refer to Responses 422.1, 26.1 to 29.1, 31.1 and 36.1.

No further environmental document is required per the CEQA Guidelines.

Comment 58.2

Legally defective shortcomings include:



- *inadequate and sloppy study of GHG emissions and whether the Project is consistent with the City's Climate Action Plan;*

Response 58.2

Further detailed responses regarding the analysis of GHG emissions and the Project's consistency with the City's CAP are provided below in Responses 59.1 through 75.1.

Information on the effect of GHG on climate was known long before the City approved the DCP FEIR. (*Citizens for Responsible Equitable Envtl. Dev. v. City of San Diego* (2011) 196 Cal.App.4th 515, 531 ("CREED").) For instance, in *Massachusetts v. EPA* (2007) 549 U.S. 497, 507 [167 L.Ed.2d 248, 127 S.Ct. 1438], the United States Supreme Court explained how the issue began garnering governmental attention long before the City certified the DCP FEIR. The opinion states: "In the late 1970's, the Federal Government began devoting serious attention to the possibility that carbon dioxide emissions associated with human activity could provoke climate change. In 1978, Congress enacted the National Climate Program Act, 92 Stat. 601, which required the President to establish a program to 'assist the Nation and the world to understand and respond to natural and man-induced climate processes and their implications,' [citation]. President Carter, in turn, asked the National Research Council, the working arm of the National Academy of Sciences, to investigate the subject. The Council's response was unequivocal: 'If carbon dioxide continues to increase, the study group finds no reason to doubt that climate changes will result and no reason to believe that these changes will be negligible.... A wait-and-see policy may mean waiting until it is too late.'" (549 U.S. at 507-508.)

In *City of Los Angeles v. Nat'l Highway Traffic Safety Admin.* (D.C. Cir. 1990) 286 U.S. App.D.C. 78, overruled on another ground in *Fla. Audubon Soc'y v. Bentsen* (D.C. Cir. 1996) 320 U.S. App.D.C. 324, the Natural Resources Defense Council ("NRDC") argued "increase in fossil fuel combustion...will...lead to a global increase in temperatures, causing a rise in sea level and a decrease in snow cover that would damage the shoreline, forests, and agriculture of California; and these local consequences of such a global warming would injure the NRDC's members who now use those features of California for recreational and economic purposes." The opinion adds, "According to the NRDC, this 'catastrophic and permanent' change in the global climate would reduce yields from agriculture, increase urban smog, kill forests along climatic borders, and cause a two-foot rise in the sea level, thereby destroying 80% of United States coastal wetlands, forcing salt water into coastal drinking water supplies, and severely damaging shorelines and shoreline-related industries."

Accordingly, the effect of GHG emissions on climate caused by human activity and development activity could have been raised in 2006 when the City considered the DCP FEIR. A challenge to an EIR must be brought within 30 days of the lead agency's notice of approval. (Pub. Res. Code § 21167(c).) Under subdivision (c) of Public Resources Code section 21166 and CEQA Guidelines section 15162, an agency may not require an SEIR unless "[n]ew information, which was not known and could not have been known at the time the [EIR] was certified as complete, becomes available." "[A]fter a project has been subjected to environmental review, the statutory presumption flips in favor of the developer and against further review." (*Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1049-1050.)



The impacts of GHG emissions were also addressed in the Sixth Addendum to the DCP FEIR, which identified that GHG analysis would be performed for development projects in the DCP area. As discussed herein, City's new guidelines mandating a new methodology for evaluating GHG impacts was updated through the City's adoption of the CAP and CAP Consistency Checklist, in part in response to the recent California Supreme Court case, *Ctr. for Biological Diversity v. Cal. Dept. Fish & Wildlife* (2015) 62 Cal.4th 204 (commonly referred to as the "*Newhall Ranch*" case after its project applicant). The CAP and CAP Consistency Checklist were vetted with the public and adopted during noticed public hearings following CEQA review. The impacts of implementing the CAP and CAP Consistency Checklist are already understood so there is no need to repeat the process with an SEIR for the DCP to address GHG. As discussed in CEQA Guidelines section 15168(b)(3) and (5), the very purpose of a program EIR, which includes the CAP FEIR, is to "[a]void duplicative reconsideration of basic policy considerations" and "[a]llow reduction in paperwork." *Newhall Ranch*, the CAP, and/or the CAP Consistency Checklist do not constitute substantial new information leading to the conclusion that GHG impacts will be more severe than the DCP FEIR disclosed. (*Citizens Against Airport Pollution*, 227 Cal.App.4th 788 [finding that the environmental impacts associated with GHG emissions are "not new information" even following the formulation of new CEQA guidelines on the evaluation of GHG impacts]⁷.)

The Consistency Evaluation and the administrative record demonstrate that the Project's GHG impacts are not peculiar or cumulatively considerable because the Project conforms to the City's uniformly applied CAP Consistency Checklist, adopted for all new development within in the City to implement the City's CAP, as detailed in the analysis from the CAP FEIR certified on December 15, 2015, Addendum to the CAP FEIR, CAP Consistency Checklist Technical Support Documentation, and the CAP Consistency Checklist for the Project. CSD has mandated the Project comply with the CAP Consistency Checklist in project permit conditions 19 through 26 and includes such measures as:

- * Cool or green roofs;
- * Low water flow faucets, dishwashers, clothes washers, and other plumbing fixtures;
- * Energy-efficient features that exceed California's Green Building Code (Title 24) by 10% through use of renewable energy on-site or by other means;
- * Charging stations for electrical vehicles
- * Bicycle parking stations
- * Shower facilities for employees who bike and walk to work
- * Designated parking spaces for carpool, vanpool, and low emission vehicles;
- * Transportation Demand Management Program to reduce single occupancy vehicle use.

⁷ See also *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301; *CREED*, 196 Cal.App.4th at 531 (finding that environmental impact associated with greenhouse gas emissions are not "new information" within the meaning of CEQA because information about GHG impacts was known and could have been known at the time City certified a 1993 EIR).



Accordingly, the consistency evaluation properly found that the Project is within the scope of both the DCP FEIR and CAP FEIR.

There are no specifically set numeric thresholds used by the City to determine whether a Project interferes with the 2030 or 2050 GHG emissions reduction targets. The Association of Environmental Professionals published a White Paper entitled “Beyond 2020 and Newhall: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California” dated April 3, 2016, which provides the following guidance:

“Since GHG planning has a long horizon, out to 2050 (and beyond), reduction progress will not be a one-step process, but rather a phased set of reductions over time. Thus the best measure of whether an individual project is providing its fair share of GHG reductions, or its fair efficiency level, is whether that project supports “substantial progress” toward the statewide reduction targets over time; not whether the project is meeting a milestone target many years in the future, such as for 2050.” (p. 33)

Although environmental impacts associated with GHG emissions do not constitute “new information” for which a SEIR can be required under CEQA Guidelines section 15162 and the City properly found the Project within the scope of the CAP FEIR, the determination that the Project does not have a significant GHG impact is also supported by the Project’s July 2016 GHG Study (See Attachment K to Rincon and Sheppard Mullin’s joint letter dated July 26, 2016 re *Third Party Review and Response to Comments Received July 12, 2016 regarding the 7th and Market Project*), which establishes that the Project “supports substantial progress” toward the City’s 2035 reduction targets, which are expressly intended to keep the City on track to achieve its share of 2050 GHG reductions. (See CAP, p. 3 [“the 2035 target should be considered an ‘interim’ target towards achieving the City’s 2050 emission reductions target... if the measures in this CAP are implemented, the City would be on the trajectory for meeting its 2050 reduction trajectory target.”]) This analysis demonstrates that each resident, visitor, and employee (termed “service persons”) in the City operates at an efficiency level that allows the City to meet the GHG targets in the CAP when they emit no more than 4.47 metric tons of carbon dioxide equivalents (“MTCO₂e”). (GHG Study, Table 1.) When applied to the Project, its service person GHG efficiency level is only 4.41 MTCO₂e. The GHG Study also demonstrates that the Project is consistent with state programs for reducing GHG emissions after 2020. (GHG Study, Table 9). Accordingly, separate and apart from the CAP Consistency Checklist, this GHG Study demonstrates that the Project does not have a cumulatively considerable impact related to GHG because it being constructed and operated in a manner to provide a fair share contribution toward meeting the City’s CAP GHG targets.

It is noteworthy that Local 30’s litigation support specialist argument in a previous letter in July 2016 about the inadequacy of the Project’s outdated October 2015 GHG study that had used the business as usual (“BAU”) methodology questioned in *Newhall Ranch*. The fact that the litigation support specialist was unaware the City had adopted a CAP in December 2015 and CAP Consistency Checklist through the public hearing process further undermines its credibility as a knowledgeable specialist familiar with the regulatory scheme for GHG in San



Diego. City Council and the Board will weigh the credibility of the evidence prior to casting a vote.

Comment 58.3

- *the almost completely ignored presence of hazardous materials on site;*

Response 58.3

Detailed responses regarding the presence of hazardous materials are provided in Responses 76.1 through 88.1.

Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation and the entire administrative record, including Project-specific technical documents relating to property contaminants (i.e., hazards and hazardous materials), it has been determined that the Project is an activity covered by and within the scope of the program approved by the DCP FEIR and the CAP FEIR; the EIRs adequately describes the Project for purposes of CEQA; and no further environmental documentation is required. The fact that Local 30 wishes there was more analysis in the Consistency Evaluation, instead of the DCP FEIR and technical documents is not a CEQA violation.

Local 30 would like it believed that it discovered new information about the contamination levels at the Project site, but the truth is the information has always been a matter of public record. The City has always understood the past clean-up efforts as the City the landowner responsible for ensuring the Project site was cleaned up. Now, the City is the land-use regulator making sure the remaining portions of the Project site are cleaned-up prior to construction and operation of the Project site through the imposition of Permit Condition 15. This condition requires that: (i) the Project site to be cleaned-up at the Applicant's expense; (ii) a safety plan to be submitted to the appropriate governmental agency; and (iii) the Applicant to obtain the necessary permits and approvals from the appropriate governmental agency. Any condition of the Project is mandatory, and Cisterra must complete these conditions prior to the City's issuance of Certificate of Occupancy. (SDMC § 121.0302.) Any change to a condition subsequent to an issuance of Certificate of Occupancy will be a violation and subject to enforcement action. (SDMC § 121.0313.)

Comment 58.4

- *inadequate review of land use inconsistency and longterm cumulative impacts;*

Response 58.4

Detailed responses regarding review of land use inconsistency and long-term cumulative impacts are provided in Responses 95.1 through 109.1.



Comment 58.5

- *outdated and afterthought air quality mitigation for all the Project's car trips;*

Response 58.5

Detailed responses regarding air quality mitigation are provided in Responses 89.1 through 94.1.

Comment 58.6

- *sloppy study of traffic impacts including omission of key intersections and all freeway impacts;*

Response 58.6

Detailed responses regarding review of traffic impacts are provided in Responses 110.1 through 129.1.

Comment 58.7

- *deferred review of historic resource impacts on the Clermont Hotel and cultural resources; and*

Response 58.7

Detailed responses regarding impacts to the Clermont Hotel and other historical and cultural resources are provided in Response 103.1 and 131.1.

Comment 58.8

- *a defective noise study.*

Response 58.8

Detailed responses regarding noise impact studies are provided in Responses 105.1, 107.1, 132.1 through 134.1.

Paragraph 59

Comment 59.1

CSD must undertake a detailed analysis of the Project's GHG impacts. The Guidelines and recent decisions by the California Supreme Court, including Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife (2015) 62 Cal. 4th 204 (commonly referred to as "Newhall Ranch"), confirm the



importance of undertaking robust GHG analysis for any and all projects. Here, the Project cannot legally proceed without CSD completing an EIR specific to the Project's climate impacts and imposing all required mitigation measures.

Response 59.1

Please see Response 58.1 for the history of GHG analysis in the DCP area.

The City's new guidelines mandating a new methodology for evaluating GHG impacts were updated through the City's adoption of the CAP and CAP Consistency Checklist, in part in response to *Newhall Ranch*. The CAP and CAP Consistency Checklist were vetted with the public and adopted during noticed public hearings following CEQA review. The impacts of implementing the CAP and CAP Consistency Checklist are already understood so there is no need to repeat the process with an SEIR for the DCP to address GHG. As discussed in CEQA Guidelines section 15168(b)(3) and (5), the very purpose of a program EIR, which includes the CAP FEIR, is to "[a]void duplicative reconsideration of basic policy considerations" and "[a]llow reduction in paperwork." *Newhall Ranch*, the CAP, and/or the CAP Consistency Checklist do not constitute substantial new information leading to the conclusion that GHG impacts will be more severe than the DCP FEIR disclosed. (*Citizens Against Airport Pollution*, 227 Cal.App.4th 788 [finding that the environmental impacts associated with GHG emissions are "not new information" even following the formulation of new CEQA guidelines on the evaluation of GHG impacts]⁸.)

As demonstrated in the CAP Consistency Checklist, described in the Consistency Evaluation, and supported by the Project's July 2016 GHG Study, it has been established that the Project's GHG impacts are not peculiar or cumulatively considerable because the Project conforms to the City's uniformly applied CAP Consistency Checklist. The CAP Consistency Checklist was adopted for all new development within in the City to implement the City's CAP, as detailed in the analysis from the CAP FEIR certified on December 15, 2015, Addendum to the CAP FEIR, CAP Consistency Checklist Technical Support Documentation, and the CAP Consistency Checklist for the Project. CSD has mandated the Project comply with the CAP Consistency Checklist in Project permit conditions 19 through 26, which includes such measures as:

- * Cool or green roofs;
- * Low water flow faucets, dishwashers, clothes washers, and other plumbing fixtures;
- * Energy-efficient features that exceed California's Green Building Code (Title 24) by 10% through use of renewable energy on-site or by other means;
- * Charging stations for electrical vehicles
- * Bicycle parking stations
- * Shower facilities for employees who bike and walk to work

⁸ See also *Concerned Dublin Citizens* 214 Cal.App.4th 1301; *CREED*, 196 Cal.App.4th at 531 (finding that environmental impact associated with greenhouse gas emissions are not "new information" within the meaning of CEQA because information about GHG impacts was known and could have been known at the time City certified a 1993 EIR).



- * Designated parking spaces for carpool, vanpool, and low emission vehicles;
- * Transportation Demand Management Program to reduce single occupancy vehicle use.

Any condition of the Project is mandatory, and Cisterra must complete these conditions prior to the City's issuance of Certificate of Occupancy. (SDMC § 121.0302.) Any change to a condition subsequent to an issuance of Certificate of Occupancy will be a violation and subject to enforcement action. (SDMC § 121.0313.)

Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Project's Consistency Evaluation and the entire administrative record, it has been determined that the Project is an activity covered by and within the scope of the DCP FEIR, Mobility SEIR and the CAP FEIR, the EIRs adequately describe the Project for purposes of CEQA. No further environmental documentation is required.

Any development constructed under the DCP FEIR, including the Project, is required to implement the mitigation measures contained in the DCP FEIR and MMRP as a condition of its approval. Additionally, the Project's conditions of approval will require implementation of the strategies and actions identified in Steps 1 through 3 of the CAP Consistency Checklist.

Paragraph 60

Comment 60.1

The attached expert of comments of Matt Hagemann attached as Attachment 1 confirm that:

"According to the Consistency Evaluation, because the Project would comply with the City of San Diego's Climate Action Plan (CAP) Consistency Checklist, the Project would have a less than significant greenhouse gas (GHG) impact (p. 17). The Consistency Evaluation states,

"The CAP Consistency Checklist was adopted on July 12, 2016 to uniformly implement the CAP for project-specific analyses of GHG emission impacts. The Project has been analyzed against the CAP Consistency Checklist and based this analysis, it has been determined that the Project would be consistent with the CAP and would not contribute to cumulative GHG emissions that would be inconsistent with the CAP. As such, the Project would be consistent with the anticipated growth and buildout assumptions of both the Downtown Community Plan and the CAP. Therefore, this impact is considered not significant" (p. 17).

Response 60.1

This comment is noted.

Refer to Responses 58.2, 59.1 and 61.1 through 61.3 for discussion of the Project's GHG emissions impact analysis.



Paragraph 61

Comment 61.1

This justification, as well as the significance of determinations made within the Consistency Evaluation, however, are incorrect for the following reasons:

- *First, the Consistency Evaluation fails to adequately demonstrate that the Project will comply with the reduction strategies set forth by the CAP Consistency Checklist. Review of the CAP Consistency Checklist Submittal Application, supplemental explanation of how the Project will implement the requirements described in the CAP Checklist (Supplemental Explanation), and the Mitigation, Monitoring, and Reporting Plan (MMRP) (Attachment A) indicate that no real commitment has been made to actually implement these required measures once the Project is approved. As a result, the significance determinations made within the Consistency Evaluation are incorrect, as they rely upon an incomplete GHG analysis and unenforceable GHG reduction measures.*

Response 61.1

Refer to Responses 58.2 and 59.1.

CivicSD has mandated the Project comply with the CAP Consistency Checklist in Project permit conditions 19 through 26, which include the following measures:

- * Cool or green roofs;
- * Low water flow faucets, dishwashers, clothes washers, and other plumbing fixtures;
- * Energy-efficient features that exceed California's Green Building Code (Title 24) by 10% through use of renewable energy on-site or by other means;
- * Charging stations for electrical vehicles
- * Bicycle parking stations
- * Shower facilities for employees who bike and walk to work
- * Designated parking spaces for carpool, vanpool, and low emission vehicles;
- * Transportation Demand Management Program to reduce single occupancy vehicle use.

Any condition of the Project is mandatory, and Cisterra must complete these conditions prior to the City's issuance of Certificate of Occupancy. (SDMC § 121.0302.) Any change to a condition subsequent to an issuance of Certificate of Occupancy will be a violation and subject to enforcement action. (SDMC § 121.0313.) The Project's condition of approval will similarly require implementation of the strategies and actions identified in Steps 1 through 3 of the CAP Consistency Checklist. Accordingly, a real commitment has been made to implement the GHG reduction measures.



Comment 61.2

- *Second, the Consistency Evaluation relies solely on the CAP Consistency Checklist to determine whether or not the Project would have a less than significant GHG impact, even though other greenhouse gas analyses were prepared for the proposed Project. Specifically, a Greenhouse Gas Study was prepared in October 2015 for the proposed Project (GHG Study), in which significance determinations were made independent of those discussed in the Consistency Evaluation. The Consistency Evaluation provides no explanation as to why the analyses and significance determinations disclosed in the GHG Study were ignored, nor does it attempt to integrate the findings from the GHG Study with the conclusions made within the Consistency Evaluation. By failing to address this discrepancy, the Consistency Evaluation's GHG impact assessment is incomplete and unreliable.*

Response 61.2

Substantial evidence supports the findings and methodologies in the CAP Consistency Checklist and Consistency Evaluation. (*City of Hayward*, 242 Cal.App.4th 833.) The methodologies used in these documents are owed deference. (*W. States Petroleum Ass'n v. Super. Ct.* (1995) 9 Cal.4th 559, 571.)

When considering the adequacy of environmental documents, the lead agency is entitled to weigh the evidence relating to the accuracy and sufficiency of the information in the document and to decide whether to accept it. The agency may adopt the environmental conclusions reached by the experts that prepared the environmental document even though others may disagree with the underlying data, analysis, or conclusions. (*Laurel Heights*, 47 Cal.3d at 408; *State Water Res. Control Bd. Cases* (2006) 136 Cal.App.4th 674, 795.) The existence of differing opinions arising from the same pool of information is not a basis for finding the document to be inadequate; when approving a document, an agency need not correctly resolve a dispute among experts about the accuracy of the environmental forecasts. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1069.⁹)

Under the CEQA Guidelines, lead agencies have the discretion to determine the appropriate method of evaluating GHG emissions based, to the extent possible, on scientific and factual data. (CEQA Guidelines § 15064.4(a); *Citizens for Responsible Equitable Envtl. Dev. v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 335; *N. Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal.App.4th 614, 653.) Lead agencies may rely on a qualitative analysis and/or prepare a quantitative analysis based on a model or methodology chosen by the agency, so long as that choice is supported by substantial evidence. (CEQA Guidelines § 15064.4(a)(1)–(2).) In accordance with the discretion to determine methodology, CEQA Guidelines establish the regulations on how to analyze the significance of and mitigate the effects of GHG emissions. CEQA Guideline section 15064.4 provides that a lead agency “should make a good-faith effort,

⁹ See also *Eureka Citizens for Responsible Govt. v. City of Eureka* (2007) 147 Cal.App.4th 357; *Cal. Oak Found. v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1243; *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 102; *Greenebaum*, 153 Cal.App.3d at 413; *San Francisco Ecology Ctr. v. City & County of San Francisco* (1975) 48 Cal.App.3d 584, 594.)



based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.” (CEQA Guideline § 15064.4(a), (b)(1).) Per Table 8 of the Rincon GHG Study, the Project emissions calculated through the CalEEMod modeling tool is an increase of 6,973 MTCO_{2e}.

CEQA Guidelines section 15064.4(b)(2) and (3) provided that a lead agency should consider “[w]hether the project emissions exceed a threshold of significance that the lead agency determines applies to the project” and “[t]he extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction of mitigation of greenhouse gas emissions.”

Non-compliance with the City’s CAP Consistency Checklist exceeds the City’s threshold of significance and fails to implement the City’s local plan for the reduction or mitigation of GHG.

Likewise, as demonstrated by the GHG Study, emitting fewer than 4.7 MTCO_{2e} per service person based on Project design features and commitment to the GHG reduction features described in the CAP Consistency Checklist quantitatively demonstrates that the Project’s GHG emissions are not cumulatively considerable because the Project is doing its fair share to assist the City in meeting its GHG targets. Additionally, the GHG demonstrates the Project’s compliance with State programs and plans to reduce GHG emissions.

Under either method, each sufficient and independent from the other, the Project does not have a cumulatively considerable GHG impact. Therefore, the Project is in compliance with the *Newhall Ranch* holding.

Additional documentation demonstrating environmental impacts related to GHG emissions prior to 2006 have been made part of the administrative record. The conclusions of the CAP Consistency Checklist are supported by the administrative record and by analysis contained within the July 2016 GHG Study. Reliance on the thresholds set forth in the original October 2015 GHG Study, as suggested by Local 30, would have required more substantial evidence to support its BAU methodology criticized in *Newhall Ranch*. By using its recently adopted CAP, CivicSD and the City followed an analytical method recommended by the Supreme Court in *Newhall Ranch*.

Comment 61.3

- *Third, the Consistency Evaluation fails to demonstrate consistency with the 2030 reduction goals set forth by Executive Order B-30-15. Because redevelopment of the Project is not anticipated to occur before 2030, compliance with this regulation should also be demonstrated. By failing to account for this executive order, the Consistency Evaluation is incorrect and incomplete.*

Response 61.3

The CAP has been developed in response to State legislation and policies that are aimed at reducing California’s GHG emissions, including Executive Order S-3-05, which established the



2050 statewide GHG target of 80% below 1990 levels, and Executive Order B-30-15, which established the 2030 statewide GHG reduction target of 40% below 1990. The CAP quantifies existing GHG emissions as well as projected emissions for the years 2020, 2030, and 2035 resulting from activities within the City's jurisdiction.

The Project is required to comply with the City CAP, which is target to achieve at least the 2030 reduction goals set forth in Executive Order B-30-15. The CAP Consistency Checklist demonstrates the Project's compliance the City CAP so the Project is also consistent with Executive Order B-30-15. No further analysis is needed. However, Rincon's July 2016 GHG Study provides additional analysis to demonstrate that implementation of the CAP Checklist and the Project design features will allow the Project to operate in such a GHG-efficient manner, that the Project provides its fair share toward meeting the State's post-2020 GHG reduction goals like the one set forth in Executive Order B-30-15 for 2030.

The Project's GHG Study demonstrates that each service persons in the City operates at an efficiency level that allows the City to meet the GHG targets in the CAP when they emit no more than 4.47 (MTCO₂e. (GHG Study, Table 1.) When applied to the Project, its service person GHG efficiency level is 4.41 MTCO₂e. The GHG Study also demonstrates that the Project is consistent with state programs for reducing GHG emissions after 2020. (GHG Study, Table 9). Accordingly, separate and apart from the CAP Consistency Checklist, this GHG Study demonstrates that the Project does not have a cumulatively considerable impact on GHG because it being constructed and operated in a manner to provide a fair share contribution toward meeting the City's CAP GHG targets and not interfering with the State's ability to achieve its 2030 GHG emissions goals.

Comment 61.4

- *Finally, assuming that both the GHG Study and the Consistency Evaluation should be used when evaluating the Project's GHG impact, we found that the GHG Study relies upon incorrect significance thresholds and outdated methodologies to determine Project significance. As a result, the conclusions made within the GHG Study are incorrect, and should not be relied upon to determine Project significance.*

Response 61.4

Refer to Responses 4.1, 22.1, 26.1 through 28.1, 31.1, 58.2, 61.2, and 61.3.

Substantial evidence supports the findings and methodologies in the CAP Consistency Checklist and Consistency Evaluation. (*City of Hayward*, 242 Cal.App.4th 833.) The methodologies used in these documents are owed deference. (*W. States Petroleum Ass'n*, 9 Cal.4th at 571.) The Project complies with *Newhall Ranch*. To be clear, the City is not relying on the thresholds set forth in the October 2015 GHG Study, which came a month before the decision in *Newhall Ranch*. As of July 12, 2016,, the applicable GHG thresholds for development in City is set forth in the CAP Consistency Checklist.



Paragraph 62

Comment 62.1

Due to these reasons, we find the Consistency Evaluation to be inadequate, and urge that a Subsequent or Supplemental Environmental Impact Report (EIR) be prepared that includes an updated, comprehensive greenhouse gas analysis that correctly estimates the Project's GHG impacts." See Attachment 1 hereto.

Response 62.1

Refer to Responses 4.1, 22.1, 26.1 through 31.1, 58.2, 59.1, 61.2, and 61.3.

Where a project has already been subjected to environmental review, CEQA flips the usual presumption that an EIR is required for any project that “may have a significant effect on the environment” to a presumption that no further environmental review is needed. (*Fund for Envtl. Def.*, 204 Cal.App.3d at 1544 [quoting, Pub. Res. Code § 21151].) In fact, Public Resources Code section 21166 prohibits agencies from preparing a SEIR unless “circumstances have changed enough to justify repeating a substantial portion of the process,” (*Fund for Envtl. Def.*, 204 Cal.3d at 1544) stating:

“When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.”

(Pub. Res. Code § 21166; CEQA Guidelines § 15162.) This provision “comes into play precisely because in-depth review has already occurred” and “the time for challenging the sufficiency of the original EIR has long since expired.” (*Fund for Envtl. Def.*, 204 Cal.App.3d at 1544.) Under this provision, the requirement for additional environmental review only arises if there is a need to evaluate new or more severe significant impacts resulting from changes to the project. (*Id.*) Testimony and/or reports by experts supporting a finding that a project will not result in a significant new, unmitigated impact, thereby not triggering an SEIR, constitute substantial evidence supporting the agency’s conclusions. (CEQA Guidelines §15063(a)(3); *Greenebaum*, 153 Cal.App.3d at 413 [city’s reliance on statements of its staff was proper because city planning staff were qualified as experts to provide analysis].) The City may also rely on this letter as the environmental impact and planning analysis herein was performed by Rincon, Chen Ryan



Associates and AEC's experts who, in addition to being familiar with this Project, its vicinity, and City development rules and regulations, also has years of education, training, and work experience in assessing a development project's environmental impacts and compliance with planning rules and regulations. In contrast, Local 30's litigation support specialist did not understand the City's GHG regulatory system, were not even aware of the public hearings on the City's CAP and CAP Consistency Checklist, and still seem confused that the City is somehow relying on a pre-*Newhall Ranch* GHG study, instead of its modern CAP Consistency Checklist, which was not challenged on CEQA grounds and which the City and CivicSD are entitled to rely.

A comprehensive environmental evaluation has been completed for the Project area as part of the Program EIR prepared for the DCP, CCPDO, and the six subsequent addenda to the DCP FEIR, Mobility Plan SEIR, and CAP FEIR. Additionally, the GHG effects of the full buildout of the City have been analyzed in the Citywide CAP. This comprehensive evaluation of the proposed Project has been documented in the City's Consistency Evaluation and elsewhere in the Project's administrative record.

The Project's Consistency Evaluation demonstrates that the Project is within the scope of the project covered by the DCP FEIR and CAP FEIR because: (i) there are no substantial changes to the Project requiring major revisions to the DCP FEIR or CAP FEIR; (ii) no substantial changes have occurred with respect to the circumstances under which the Project will be undertaken requiring major revisions to the DCP FEIR or CAP FEIR; and (iii) there is no new information of substantial importance; that: (a) the Project will have significant effects not discussed in the DCP FEIR or the CAP FEIR; (b) more severe environmental effects than the DCP FEIR and CAP FEIR discussed; or (c) that the Applicant declines to adopt mitigation measures or alternatives that would substantially reduce a significant environmental effect. Therefore, contrary to Local 30's assertion, no new environmental document, such as an SEIR is required. (CEQA Guidelines §§ 15168(c)(2), 15162.)

Paragraph 63

Comment 63.1

Mr. Hagemann explains in Attachment 1 that:

"According to the Consistency Evaluation, the Project would comply with the reduction strategies set forth in the CAP Consistency Checklist (p. 17). Specifically, the Project applicant would be required to comply with one of the three checklist options listed in the CAP Consistency Checklist Submittal Application under Step 1, and would have to fulfill the requirements set forth for each CAP strategy listed under Step 2. Because there is many options the Project applicant can choose from to meet the CAP Consistency Checklist items, the CAP requires that the applicant provide an explanation of how the proposed Project will implement the requirements (CAP Consistency Checklist Submittal Application, p. 1). This required additional information should be included in the Supplemental Explanation dated July 6, 2016 for the proposed Project. Review of this document, however, demonstrates that the Project applicant failed to adequately explain how the Project will implement the requirements described in the



CAP Checklist. As a result, it is unclear how the Project will actually adhere to the design requirements set forth by the CAP Checklist.

Response 63.1

The explanation of implementation of CAP Consistency Checklist Requirements provided by Cisterra was approved by the City because it indicates that the Project has understood the requirements and committed to implementing them in the final Project design, which has been reinforced with Project conditions. The performance standards for the requirements are in the CAP Consistency Checklist so there is full accountability even if the exact location of the cool/green roof and the exact type of efficient plumbing fixtures are not identified. Therefore, there is substantial evidence that the Project is within the scope of the CAP Consistency Checklist performance standards. The minimum parking spaces are provided and the verification of near-by accessory amenities and planned on-site amenities are identified. TDM requirements will be included in tenant leases. See below for a more detailed discussion.

Strategy 1: Energy & Water Efficient Buildings

- *Cool/Green Roofs:* The majority of roof spaces will be used as activated people spaces for the building occupants or general public, and will have thermal mass over the roof membrane as well as areas of vegetated roof. The City has assured implementation of this checklist requirement through its general permit condition requiring the applicant to implement the Cool/Green Roof requirement at the performance standard provided in the CAP Consistency Checklist.
- *Plumbing Fixtures and Fittings:* Implementation of the Plumbing Fixtures and Fittings will be feasible for both the residential components and the non-residential components of the Project because fixtures and fittings meeting the specifications described in the CAP. The City has assured implementation of this checklist requirement through its general permit condition requiring applicant to implement the Plumbing Fixtures and Fittings requirement at the performance standard provided in the CAP Consistency Checklist.

Strategy 2: Clean & Renewable Energy

- *Energy Performance Standard / Renewable Energy:* The Applicant will meet the prescribed energy savings standard in excess of Title 24, Part 6 of the California Code of Regulations (Building Energy Efficiency Standards) for the non-residential components through a combination of on-site renewable energy (including wind turbines at the top of the building) and enhanced efficiency of mechanical equipment and lighting fixtures. The City has assured implementation of this checklist requirement through its general permit condition requiring the Applicant to implement the Energy Performance/Renewable Energy requirement at the performance standards provided in the CAP Consistency Checklist.

Strategy 3: Bicycling, Walking, Transit & Land Use



- *Electric Vehicle Charging:* The applicant's conceptual plan is to provide 3% of the required parking spaces for both the commercial and residential components to be equipped with listed cabinet, box or enclosure connected to a conduit linking such parking spaces with the buildings electrical service and 50% of equipped parking spaces would have the necessary electric vehicle equipment installed for use by residents and customers. The City has assured implementation of this checklist requirement through its general permit condition requiring applicant to implement the Electric Vehicle Charging requirement at the performance standards provided in the CAP Consistency Checklist.
- *Bicycle Parking Spaces:* The City's municipal code requires 71 bicycle parking spaces for the Project. The Applicant's conceptual plan is to provide approximately 116 spaces, well in excess of the minimum required. The City has assured implementation of this checklist requirement through its general permit condition requiring applicant to implement Bicycle Parking Spaces requirement at the performance standards provided in the CAP Consistency Checklist.
- *Shower Facilities:* Changing/shower facilities for the non-residential tenants will be provided within the Project in accordance with the California Green Building Standards Code. The Applicant's conceptual plan is to provide these facilities at various locations within the Grocery Tenant, Hotel Tenant, and common area spaces to optimally service the needs of the non-residential tenants. The City has assured implementation of this checklist requirement through its general permit condition requiring applicant to implement the Changing/Shower Facilities requirement at the performance standards provided in the CAP Consistency Checklist.
- *Designated Parking Spaces:* The Project is located in a Transit Priority Area and includes employment uses within the hotel and grocery components. Accordingly, the Applicant would set aside 10% of the minimum SDMC-required parking spaces for the non-residential uses as designated for some combination of low-emitting and carpool/vanpool vehicles. The City has assured implementation of this checklist requirement through its general permit condition requiring the Applicant to implement the Designated Parking Spaces requirement at the performance standards provided in the CAP Consistency Checklist.
- *Onsite Amenities:* The Project would accommodate over 50 tenant-occupants (employees) within the hotel and residential components and therefore will provide access to accessory use amenities that reduce the need to drive. On site, the project proposes a grocery store with food services and products that will allow hotel tenant occupants, residents, and residential tower employees alike an option to eat and shop without driving to another location. Within a quarter-mile of the site, other accessory uses include pharmacy, cafes, retail stores, bank, cleaners, pet care, market & gym. Prior to issuance of a building permit, the Development Services Director or his designee will verify that there are one or more accessory uses either on-site or within a quarter mile of the Project.
- *Transportation Demand Management Program:* The CAP Consistency Checklist provides a menu of options for how a tenant must comply with the Transportation Demand



Management ("TDM") requirements. Current proposed tenants and future tenants will continue to need flexibility to choose which options within the City's CAP Consistency Checklist they will use to comply with the CAP Consistency Checklist TDM requirements. The City has assured implementation of the TDM requirements through its general permit condition requiring the Applicant to implement the TDM requirement. The Applicant proposes to implement the TDM requirements by including provisions in its lease with proposed and future tenants requiring them to operate in compliance with all mandatory government requirements.

The purpose of the Supplemental Evaluation is so the applicant is fully aware of the requirements and knows what must be included in final design plans submitted at the ministerial permitting stage. However, the City's substantial evidence that the Project is within the scope of the CAP EIR comes through the adoption of mandatory Project conditions requiring the Applicant demonstrate compliance with the CAP Consistency Checklist performance standards prior to receiving its ministerial permits. There is no guessing about whether the Project will meet these standards, because CivicSD has mandated the Project comply with the CAP Consistency Checklist in Project permit conditions 19 through 26, which includes these measures.

Any condition of the Project is mandatory, and Cisterra must complete these conditions prior to the City's issuance of Certificate of Occupancy. (SDMC § 121.0302.) Any change to a condition subsequent to an issuance of Certificate of Occupancy will be a violation and subject to enforcement action. (SDMC § 121.0313.)

Also, refer to Responses 58.2, 59.1, 61.2, and 61.3.

Paragraph 64

Comment 64.1

Until an updated, detailed explanation is provided that adequately describes how the Project will implement the requirements described in the CAP Checklist, the Project should not be approved.

The Supplemental Explanation prepared for the proposed Project fails to include any of the required information needed to demonstrate how the Project will implement the requirements set forth in the CAP Checklist." See Attachment 1 hereto.

Response 64.1

Refer to Responses 58.2, 59.1, 61.2, and 61.3.



Paragraph 65

Comment 65.1

Expert environmental scientist Hagemann explains in Attachment 1 that:

"Not only does the Consistency Evaluation fail to adequately demonstrate consistency with the CAP Checklist, but it also fails to account for other Project- specific greenhouse gas analyses that were prepared for the proposed Project. As a result, the Consistency Evaluation is incomplete and inaccurate and should not be relied upon to determine Project significance.

Response 65.1

Refer to Responses 58.2, 59.1, 61.2, and 61.3.

Paragraph 66

Comment 66.1

The Consistency Evaluation relies solely on the CAP Consistency Checklist to determine whether or not the Project would have a less than significant GHG impact. The Consistency Evaluation makes no mention of any other greenhouse gas analyses, nor does it rely on any alternative significance criteria to demonstrate significance. This oversight is extremely concerning, as a Greenhouse Gas Study was prepared in October 2015 for this specific proposed Project (GHG Study), in which significance determinations were made independent of those discussed in the Consistency Evaluation . . .

Response 66.1

Refer to Responses 58.2, 59.1, 61.2, 61.3 and 65.1.

The City is not relying on the pre-Newhall Ranch October 2015 GHG Study.

Paragraph 67

Comment 67.1

The Consistency Evaluation includes documents that were prepared for the Project in 2006, almost ten years ago, yet fails to include a GHG Study that was prepared in October 2015, less than a year ago. The Consistency Evaluation provides no explanation as to why the analyses and significance determinations disclosed in the GHG Study were ignored, nor does it attempt to integrate the findings from the GHG Study with the conclusions made within the Consistency Evaluation. By failing to address this discrepancy, the Consistency Evaluation's GHG impact assessment is incomplete and unreliable . . .



Response 67.1

The City replaced its BAU methodology with its CAP Consistency Checklist methodology for assessing significance of GHG impacts. This was all explained in the public hearings on the CAP, which Local 30's litigation support specialist did not follow or participate in. There is no reason for the Consistency Evaluation to refer to an outdated GHG study or an outdated methodology. Omitting irrelevant material is not a CEQA violation.

Refer to Responses 58.2, 59.1, 61.2, and 61.3.

Paragraph 68

Comment 68.1

Review of this GHG Study, however, demonstrates that this report relies upon incorrect significance thresholds and outdated methodologies to determine Project significance. As a result, the conclusions made within the GHG Study as well as the conclusions made within the Consistency Evaluation are incorrect, and neither of these documents should be relied upon to determine Project significance. An EIR should be prepared to adequately evaluate the Project's GHG impacts, and additional mitigation measures should be incorporated, where necessary." See Attachment 1 hereto.

Response 68.1

Refer to Responses 58.2, 59.1, 61.2, 62.1, 61.3 and 65.1.

Paragraph 69

Comment 69.1

Expert environmental scientist Hagemann explains in Attachment 1 that:

"Because the method used in the GHG Study to determine whether or not the Project would have a significant GHG impact is flawed, and because the Consistency Evaluation also inadequately demonstrates Project significance, alternative thresholds and methods should be relied upon to adequately determine the Project's GHG impact. Utilizing quantitative thresholds from other agencies, we found that the proposed Project may have a significant GHG impact. This finding constitutes as a "new or substantially more severe significant impact that was not adequately addressed in the Downtown FEIR or CAP FEIR," and as a result, an EIR should be prepared (Consistency Evaluation, p. 3) . . .

Response 69.1

The City did not rely on the October 2015 GHG Study. The CAP Consistency Checklist is adequate and Rincon's July 2016 GHG Study provides further support there is no significant GHG impact. CEQA gives the lead agency the authority to determine significant thresholds, even if other methodologies might exist. (See *Citizens for Responsible Equitable Envtl. Dev. v.*



City of Chula Vista (2011) 197 Cal.App.4th 327.) If Local 30 disagreed with the City's CAP Consistency Checklist methodology, than it should have participated in the City Council public hearings on the CAP Consistency Checklist and convinced the majority to adopt a different threshold. It did not do so, and the City is now entitled to rely on its adopted threshold.

Refer to Responses 58.2, 59.1, 61.2, 62.1, 61.3 and 65.1.

Paragraph 70

Comment 70.1

Although San Diego County has not formally adopted these thresholds, these thresholds are designed for application at the project level and thus, provide a more relevant way of determining the significance of the Project's GHG emissions. Because the proposed Project is a mixed-use project, the most appropriate threshold to apply to the Project would be the 3,000 MT C02e/yr threshold recommended by the SCAQMD for mixed-use developments.

Response 70.1

Refer to Responses 58.2, 59.1, 61.2, 62.1, 61.3 65.1, and 69.1.

Paragraph 71

Comment 71.1

When the emissions estimated in the GHG Study are compared to this threshold, we find that the Project's mitigated GHG emissions would exceed the SCAQMD 3,000 MTC02e/year threshold. The GHG Study's annual mitigated emissions demonstrate that construction of the Project would generate 55 MTC02e per year (when amortized) and operation of the Project would generate 8,303 MTC02e per year (Table 4.7-5, p. 4.7-20) . . .

Response 71.1

Refer to Responses 58.2, 59.1, 61.2, 62.1, 61.3 65.1, 69.1.

Paragraph 72

Comment 72.1

Our analysis demonstrates that there is a fair argument that the proposed Project will result in a significant impact, and therefore, the GHG Study's claim that the Project would result in a less than significant impact is incorrect. Therefore, in order to reduce the Project's GHG emissions to a less than significant level, all available, feasible mitigation should be applied to the Project in an effort to mitigate the Project's GHG emissions to the maximum extent possible. Until all feasible mitigation is implemented by the lead agency and the Project's GHG emissions are effectively reduced to the maximum



extent possible, the Project's GHG impacts cannot be deemed as less than significant." See Attachment 1 hereto.

Response 72.1

Refer to Responses 30.1, 58.2, 59.1, 61.2, 62.1, 61.3 65.1, and 69.1.

The City is entitled to rely on its GHG threshold, even if other thresholds are used by other agencies. Project GHG impacts are not significant and no new measures are required. The Applicant shall comply with its Project Condition.

Paragraph 73

Comment 73.1

Expert environmental scientist Hagemann explains in Attachment 1 that:

"We identified several additional mitigation measures, which would further reduce the Project's operational GHG emissions, potentially to a less-than-significant level. It should be noted that some of the measures suggested below may overlap with requirements set forth by the CAP Consistency Checklist. However, because it is unclear as to what design features are actually going to be applied in order to remain consistent with this checklist, we included all of the mitigation measures that can be feasibly incorporated into the Project design..."

- *Maximize use of solar energy including solar panels; installing the maximum possible number of solar energy arrays on all building roofs and/or on the Project site to generate solar energy for the facility.*
- *Include energy storage where appropriate to optimize renewable energy generation systems and avoid peak energy use...*
- *Install an infiltration basin to provide an opportunity for 100% of the storm water to infiltrate on-site.*

Response 73.1

Refer to Responses 69.1 and 72.1.

Any development constructed under the DCP FEIR, including the Project, is required to implement the mitigation measures contained in the DCP FEIR and MMRP as a condition of its approval. Additionally, CivicSD has mandated the Project comply with the CAP Consistency Checklist in Project permit conditions 19 through 26. Any condition of the Project is mandatory, and Cisterra must complete these conditions prior to the City's issuance of Certificate of Occupancy. (SDMC § 121.0302.)



Paragraph 74

Comment 74.1

In addition to the measures discussed above, the SCAQMD has previously recommended additional mitigation measures for operational NOx emissions that result primarily from truck activity emissions, which would also reduce operational GHG emissions. Since the Project proposes some commercial land uses, such as a shopping center and supermarket, these measures would apply and should be considered...

- *Provide electric vehicle charging stations that are accessible for trucks.*
- *Provide electrical hookups at the onsite loading docks and at the truck stops for truckers to plug in any onboard auxiliary equipment*
- *Provide minimum buffer zone of 300 meters (approximately 1,000 feet) between truck traffic and sensitive receptors.*
- *Limit the daily number of trucks allowed at the facility.*
- *Design the site such that any check-in point for trucks is well inside the facility to ensure that there are no trucks queuing outside of the facility.*
- *On-site equipment should be alternative fueled.*
- *Improve traffic flow by signal synchronization.*
- *Have truck routes clearly marked with trailblazer signs, so that trucks will not enter residential areas.*
- *Should the proposed Project generate significant emissions, the Lead Agency should require mitigation that requires accelerated phase-in for non- diesel powered trucks. For example, natural gas trucks, including Class 8 HHD trucks, are commercially available today. Natural gas trucks can provide a substantial reduction in emissions, and may be more financially feasible today due to reduced fuel costs compared to diesel. In the Final CEQA document, the Lead Agency should require a phase-in schedule for these cleaner operating trucks to reduce project impacts.*

Response 74.1

Refer to Responses 18.1, 72.1 and 73.1.

The Project's GHG emissions are regulated through the City's adopted and final CAP and CAP Consistency Checklist, not the South Coast Air Quality Management District ("SCAQMD"). No further mitigation is necessary because there is no significant GHG impact. Furthermore, the Project is subject to San Diego Air Pollution Control District's rules and regulations because the project is in the San Diego Air Basin ("SDAB"), not the air basin regulated by SCAQMD.

Paragraph 75

Comment 75.1

When combined together, these measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduces GHG emissions released during Project operation. A project-specific EIR must be prepared to include additional mitigation measures, as well as include an updated greenhouse gas analysis to ensure that the necessary mitigation measures are implemented to reduce operational emissions to below thresholds. Furthermore, the Project Applicant



needs to demonstrate commitment to the implementation of these measures prior to Project approval, to ensure that the Project's operational emissions are reduced to the maximum extent possible." See Attachment 1 hereto.

Response 75.1

Refer to Responses 58.2, 59.1, 61.2, 62.1, 63.1, 65.1 69.1,, 72.1 and 73.1.

Project conditions are enforceable. The CAP and the CAP Consistency Checklist are final. The administrative record already shows the GHG impacts are below a level of significance. No further mitigation is legally required even if it were feasible to incorporate more GHG-reducing measures.

Paragraph 76

Comment 76.1

Here, the existence of toxic contamination on a Project site is a significant impact requiring CEQA review. McQueen v. Board of Directors (1988) 202 Cal.App.3d 1136. When toxic contamination is identified on a project site, the CEQA document must propose a feasible clean-up plan to safeguard public health and the environment.

Response 76.1

An analysis of hazardous materials impacts associated with the Project was performed through the Consistency Evaluation. The Consistency Evaluation concluded that environmental impacts due to potential hazards on site were less than significant. As discussed in Consistency Evaluation Section 7 Hazards and Hazardous, a Phase I Environmental Site Assessment ("Phase I ESA") was completed for the Project site in 2015. Federal and State environmental databases were compiled pursuant to Government Code section 65962.5, for information pertaining to releases of regulated hazardous substances on and around the Project site. The Phase I ESA identified four references to the Project site but all cases had regulatory statuses of "closed" as of March 11, 2014. Due to several factors (the nature of the regulatory database listings, distance of the off-site listed properties from the site, orientation of the listed properties relative to the site, interpreted direction of groundwater flow, and/or regulatory case status information for the various properties as described in the databases) the Project site and the surrounding properties were not considered to be of significant environmental impact and the environmental conditions did not represent a significant threat to public health or the environment. Furthermore, the DCP FEIR states that significant impacts to human health and the environment regarding hazardous waste sites would be avoided through compliance with mandatory federal, state, and local regulations as described in Consistency Evaluation Section 8(a).

Local 30's reliance on *McQueen v. Bd. of Dirs.* (1988) 202 Cal.App.3d 1136 is misplaced. *McQueen* determined the lead agency violated CEQA because it incorrectly determined the project was



categorically exempt from CEQA under the principles of statutory construction. The *McQueen* court also stated that federal and state regulations required the lead agency to store, use or dispose of hazardous wastes in particular ways in order to minimize environmental danger. Contrary to Local 30's comment, the court did not determine that toxic contamination was a significant impact triggering in-depth CEQA review, nor did it require a feasible clean-up plan triggered by CEQA. Furthermore, unlike the public agency in the *McQueen* case, CivicSD is not proposing to demonstrate the Project's CEQA compliance with a categorical exemption. Rather, CivicSD is demonstrating that the Project is within the scope of a program EIR pursuant to CEQA Guidelines sections 15168 and 15162. The *McQueen* case did not attempt to interpret these CEQA guidelines sections. Based on the facts and holdings of this case, *McQueen* is inapplicable here.

Local 30 would like it believed that it discovered new information about the contamination levels at the Project site, but the truth is the information has always been a matter of public record. The City has always understood the past clean-up efforts as the City the landowner responsible for ensuring the Project site was cleaned up. The 2006 DCP EIR accurately disclosed that build-out of the DCP created risks of exposure of hazardous materials to constructions workers or future users of the land if it was not first cleaned up in accordance with all the local, state, and federal laws regulating the clean-up of hazardous materials to safe levels. The 2006 DCP EIR made the simple observation that since landowners are subject to these local, state and federal laws, there was not a significant environmental impact from build-out of the DCP.

The Project site presents hazardous materials exposure risks that are no different than what the DCP EIR already explained and because the Project must follow the local, state and federal clean-up rules (and also has specific permit conditions requiring the clean-up) there is no significant risk of hazardous materials exposure from construction and operation of the Project. Now, the City is the land-use regulator making sure the remaining portions of the Project site are cleaned-up prior to construction and operation of the Project site through the imposition of Permit Condition 15. This condition requires that: (i) the Project site to be cleaned-up at the Applicant's expense; (ii) a safety plan to be submitted to the appropriate governmental agency; and (iii) the Applicant to obtain the necessary permits and approvals from the appropriate governmental agency. Any condition of the Project is mandatory, and Cisterra must complete these conditions prior to the City's issuance of Certificate of Occupancy. (SDMC § 121.0302.) Any change to a condition subsequent to an issuance of Certificate of Occupancy will be a violation and subject to enforcement action. (SDMC § 121.0313.)

There are three agencies that potentially regulate the clean-up are: (i) County of San Diego Department of Environmental Health ("DEH"); (ii) San Diego Regional Water Quality Control Board ("SD-RWQCB"); and (iii) California Department of Toxic Substances Control ("DTSC"). The typical protocol for site clean-up under these three agencies will require the Applicant to submit the clean-up plan to DEH. DEH will then sends out a notice to the SD-RWQCB and DTSC indicating that DEH intends to oversee the clean-up of the Project site to meet public health and safety standards. If SD-RWQCB and DTSC decide the Project site needs special



handling, the agencies will tell DEH that they are assuming jurisdiction over the clean-up of the site.

Cisterra's hazardous material expert, who has particular knowledge about the Project site, opined the Project site is a routine brownfield clean-up, not an intensely contaminated Superfund Site. Therefore, DEH will probably oversee the clean-up. However, whichever regulator ultimately decides to oversee the clean-up, at the end of the process, the laws will be followed and the Project site will be cleaned-up to meet public health and safety standards.

Not only is it disturbing that Local 30's legal counsel is writing a letter to the DTSC urging them to assert jurisdiction over the clean-up when DTSC-supervision is contrary to traditional practice, but also that he is asking DTSC not to follow the normal regulatory process. The first step in the process is to submit the clean-up plan to DEH and let DEH send out the notification to DTSC. Local 30 has already pre-judged the situation and is lobbying DTSC staff to assert jurisdiction. Moreover, Local 30's counsel, Mr. Kracov, is a member of DTSC's Independent Review Panel. His role is to independently analyze DTSC's regulatory systems and recommend what he believes are good policy improvements to DTSC's operations. It is imperative to ask how can Mr. Kracov be an independent advisor to DTSC while getting paid to represent project opponents on matters that may come before the DTSC? It is not good, equitable policy to be urging DTSC staff, who knows Mr. Kracov is on the Independent Review Board, to pre-judge the clean-up of this Project site and assert jurisdiction before an application has been filed and DEH has sent out a notice under the normal regulatory process.

It is Cisterra's position that the City and the Board has been doing brownfield clean-ups correctly since the 2006 DCP EIR. Condition the project to follow the hazardous materials clean-up laws, and let the Applicant, DEH, SD-RWQCB, and DTSC implement the laws, without putting ones finger on the scale.

Paragraph 77

Comment 77.1

According to environmental scientist Matt Hagemann, P.G., C.Hg., QSD, QSP, the Agency has data in its possession, but which was not disclosed, that unequivocally demonstrates "the Project site is currently highly contaminated." Attachment 1 at page 23. Furthermore, Mr. Hagemann concludes:

"Two sites known as the Smith Family Trust site and the 745 Market Street site are located within the Project boundary. Both sites have had partial cleanups that left significant lead and petroleum-related contamination in soil and groundwater. According to the County of San Diego, at the Smith site an estimated 9,000 cubic yards of contaminated soil remain (equivalent to 900 dump trucks) and at the 745 Market site, a "significant amount" remains. Groundwater, found at a depth of 30 feet, is highly contaminated with petroleum related compounds and will likely be exposed by construction of a five-level underground parking garage. A Project-specific EIR is necessary to disclose levels of soil and groundwater contamination and to include a site investigation report that will consider potential health



effects that may result from construction and operation of the Project, including exposure of public to dust, construction worker exposure to contaminated groundwater and soil, resident exposure to soil vapor, and dewatering issues.

Response 77.1

Refer to Responses 22.1, 24.1, and 76.1.

The Project-specific Phase I ESA concludes, contrary to Mr. Hagemann's claim, that the presence of residual petroleum hydrocarbons in soil and groundwater beneath the site and the presence of artificial/undocumented fill material remaining beneath portions of the site "do not represent a significant threat to public health or the environment in its current state." (Phase I ESA.) The Phase I ESA included a discussion of the history and status of contamination at 745 Market Street and the Smith site, concluding that no further soil removal work was required to address soil contamination at 745 Market Street, and that no further action is required for petroleum releases at 701 Market Street. (Phase I ESA, p. 8-10). Local 30 also alleges that the public is unaware of the specific types of and amounts of contaminants at the Project site; however, that is not true as several environmental analyses have been performed for the Project site and provide a detailed description of site impacts, including the following:

- AEC, LLC, November 26, 2007, Site Characterization Report, Seventh Avenue and Market Street Property, San Diego, California 92101
- AEC, September 20, 2010, Site Closure Report, Seventh Avenue and Market Street Property, San Diego, California 92101
- AEC, October 9, 2013, Report of Supplemental Groundwater Sampling and Site Conceptual Model, Former Smith Family Trust Property, 701 Market Street, San Diego California 92110, APN 535-112-01-00

These reports were prepared on behalf of CivicSD, or its predecessor, are part of the Project's administrative record. In addition, there are several additional environmental documents that present detailed information pertaining to site impacts at the 701 Market Street portion of the property via the California State Water Resources Control Board Geotracker database:

http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0608102657

Further, there are numerous additional environmental documents that present detailed information pertaining to site impacts throughout the property within DEH regulatory case files associated with the following case numbers:

- H10709-001
- H10709-002
- H38275-001
- H38358-001

The County of San Diego DEH issued "no further action" letters dated July 15, 2011 and March 10, 2014, respectively, under its Local Oversight Program ("LOP") for both the Smith Family Trust and the 745 Market Street portions of the overall development site. In addition, the DEH



issued a “no further action” letter for the partial site cleanup completed at the overall property under its Voluntary Assistance Program (“VAP”). (Copies of the July 15, 2011 and the March 10, 2014 Closure Letters are attached hereto as Attachment J.) The LOP case closures required the DEH to be notified in the event there is a future change in land use so that they may oversee contaminated media management associated with the future development project. The VAP case closure states that when additional known impacted soil is removed from the site during a development project, that the DEH should be notified so that a new VAP case can be opened for the project and their oversight will be reinstated. In accordance with the conditions of closure of the prior LOP and VAP cases and guidance presented in the County of San Diego DEH Site Assessment and Mitigation (“SAM”) Manual dated 2004 and ongoing revisions, the developer of 7th and Market will enroll the Project site in the DEH VAP and a Site Mitigation Plan (“SMP”) will be prepared and submitted to the DEH. The DEH SAM Manual, available on the County’s website,¹⁰ describes in detail the governing standards and procedures that will be applied to remediation of the remaining contamination on the Project site. For example, the DEH SAM Manual describes the ministerial permits that must be obtained to conduct the clean-up work, the work plan that must be prepared and approved by DEH to ensure community protection, the minimum requirements and certifications that any contractor performing remediation must possess, inspection procedures, sampling protocols, security measures that must be implemented, standards that will be applied to removal of hazardous materials and management of excavated soil and waste. As further described in Section 1 of the DEH SAM Manual, through preparation and oversight of the Project SMP, DEH will oversee implementation of California Health Code provision relating to Hazardous Waste Control, Underground Storage of Hazards Substances, Petroleum Underground Storage Tank Clean Up; Water Code provisions on Water Quality; California Code of Regulations on Hazardous Waste and Underground Storage Tanks and County Codes on hazardous substances, as appropriate. DEH’s oversight activities are conducted in coordination with the Regional Water Quality Control Board, Department of Toxic Substances and other state and federal regulatory agencies.

For the Project specifically, the SMP will include, but not be limited to the following key components as required by the DEH SAM Manual:

- The means and methods to be employed for contaminated soil and groundwater management, including provisions for worker and community health and safety related monitoring and protection.
- Methods to comply with SD-RWQCB Resolution R9-2014-0104 (Conditional Waiver No. 10) and specific waiver conditions for the discharge/reuse of inert (clean) soils from the site.
- Provision of a Community Health and Safety Plan (“HSP”) which will outline measures that will be taken to minimize public exposure to hazards which may arise during site construction activities.
- Contingency related protocols in the event that underground storage tanks (“USTs”) or unexpected discoveries are encountered during site construction work

¹⁰ http://www.sandiegocounty.gov/content/sdc/deh/lwqd/sam_manual.html



- Discussion of any required proposed shoring, water-proofing and vapor intrusion related controls.
- Other items needed to adequately complete the Site remediation at a standard of care that is acceptable to DEH.

The DEH SAM Manual provides detailed guidance and performance measures for safe remediation of any contaminated soil or groundwater at the Project site. Consistent with the foregoing, CivicSD has also imposed requirements via permit condition 15 (CivicSD Staff Report dated July 22, 2016, Attachment E [Draft Permit CCDP/PDP/NUP No. 2015-73]), which states:

15. Removal and/or Remedy of Soil and/or Water Contamination

The Owner/Permittee shall (at its own cost and expense) remove and/or otherwise remedy as provided by law and implementing rules and regulations, and as required by appropriate governmental authorities, any contaminated or hazardous soil and/or water conditions on the Site. Such work may include without limitation the following:

- a. Remove (and dispose of) and/or treat any contaminated soil and/or water on the site (and encountered during installation of improvements in the adjacent public rights-of-way which the Owner/Permittee is to install) as necessary to comply with applicable governmental standards and requirements.
- b. Design and construct all improvements on the site in a manner which will assure protection of occupants and all improvements from any contamination, whether in vapor or other form, and/or from the direct and indirect effects thereof.
- c. Prepare a site safety plan and submit it to the appropriate governmental agency, CivicSD, and other authorities for approval in connection with obtaining a building permit for the construction of improvements on the site. Such site safety plan shall assure workers and other visitors to the site of protection from any health and safety hazards during development and construction of the improvements. Such site safety plan shall include monitoring and appropriate protective action against vapors and/or the effect thereof.
- d. Obtain from the County of San Diego and/or California Regional Water Quality Control Board and/or any other authorities required by law any permits or other approvals required in connection with the removal and/or remedy of soil and/or water contamination, in connection with the development and construction on the site.\
- e. If required due to the presence of contamination, an impermeable membrane or other acceptable construction alternative shall be installed beneath the



foundation of the building. Drawings and specifications for such vapor barrier system shall be submitted for review and approval by the appropriate governmental authorities.

The SMP will inform implementation and compliance with Condition 15 to ensure that the contaminated media at the Project site does not expose project workers or the public generally to significant environmental impacts relating to the existence of hazardous materials.

DEH routinely oversees the management and remediation of contaminated media during construction in downtown San Diego and the Project is no different than any other of the hundreds of projects in downtown San Diego that have had similar subsurface impacts that were managed concurrent with the development and construction process through DEH oversight. Such soil and groundwater management work will be completed in accordance with the DEH SAM Manual, SD-RWQCB Resolution R9-2014-0104 (Conditional Waiver No. 10) and SD-RWQCB Order R9-2015-0013 / NPDES No. CAG919003 pertaining to the discharge of treated groundwater to San Diego Bay during construction dewatering.

The Phase I ESA found that the site's recognized environmental conditions do not represent a significant threat to public health or the environment in its current state. Compliance with applicable local, state and federal regulations described above relating to hazardous materials in connection with construction activities for the project ensures that the public will continue to be unharmed by hazardous materials existing within the Project site. This is within the scope of DCP FEIR which likewise identified the environmental impacts related to hazardous materials throughout downtown San Diego that could be exposed during buildout of the DCP. The DCP FEIR properly concluded there is no significant impact with the implementation of state, local and federal hazardous materials clean-up laws, which this Project is conditioned to follow

Paragraph 78

Comment 78.1

Despite more than six years of regulatory oversight and a two separate removal actions, the soil at the Project site is contaminated with lead, petroleum related compounds and petroleum compounds at concentrations in excess of health-based screening levels and cleanup goals. The cleanup efforts that have been made have been limited and have not been effective in removing contaminants that would pose a risk to construction workers and future residents of the Project . . .

Response 78.1

Refer to Responses 76.1 and 77.1.

The past remedial work was very effective in removing contamination sources, but was targeted in specific areas. With regard to any remaining contaminated media, the DCP FEIR explains that "the potential health risks during and after construction of individual redevelopment activities located on a site with hazardous materials remediation needs would



be reduced through the mandatory controls imposed by State and Federal regulations described in [DCP EIR section] 5.10.1.1, 5.10.3.1, 5.10.3.2. In accordance with these laws and regulations, all hazardous material/wastes and petroleum products will have to be removed and remediated prior to, or during construction, to the standards set by the various federal, state, and local regulations.” (DCP FEIR, p.5.10-4.) The DEH approved SMP will ensure compliance with applicable standards and regulations, and will require, for example removal of contaminated soil. Development of the Project will include removal of approximately 120,000 cubic yards of soil during excavation for the five level subterranean parking garage. Much of such soil will be not impacted (i.e., clean material). However, this will also result in complete source removal of all remaining lead/metal and petroleum hydrocarbon impacts at the property, resulting in a safe development site for future users/occupants and improvement of the environmental quality of land areas surrounding the site. As discussed above, this work will be performed in accordance with a SMP and DEH oversight. Workers involved in any management of contaminated media will be properly licensed/trained and well versed in such activities and worker and community health and safety monitoring and program implementation will also be implemented pursuant to the SMP. The DCP EIR properly concluded “[a]dherence to federal, state and local regulations controlling hazardous materials would be sufficient to avoid significant impacts from hazardous materials. No mitigation measures are required.” (DCP FEIR, p. 5. 10-7.) To the extent Local 30 disagrees with this conclusion, the opportunity to challenge the adequacy of the DCP FEIR’s analysis expired long ago, 30 days after the DCP FEIR Notice of Determination was filed in 2006. (Pub. Res. Code § 21167.)

Paragraph 79

Comment 79.1

Site conditions have not been reviewed by the County following the change to residential land use, as proposed by the Project. Contaminants remain at the Project site, including lead at concentrations well above health-protective cleanup goals.

Response 79.1

Refer to Responses 76.1, 77.1, and 78.1.

The County of San Diego DEH (lead environmental regulatory agency for the Project) is well aware that the Project site is a proposed mixed-use development and that when a developer was selected and ready to proceed with County DEH oversight for the new development, they would be contacted and a new VAP case would be opened. This was agreed upon during the closure process of the 2010 VAP case for the Project site and the developer will comply with the July 15, 2011 closure letter that states that future development of the property will require further DEH evaluation to ensure that the proposed use is protective of human health and the environment. In addition, it should be noted that the first residential units to be constructed within the new proposed site structure will be approximately 100 feet above the bottom of the



subterranean parking garage. There is no residential aspect of the Project that will be in direct contact with site soils and underlying groundwater. In addition, as stated previously, the excavation of soil in connection with the five level subterranean parking garage will result in complete source removal of all lead/metal and petroleum hydrocarbon impacts at the Project site, resulting in a safe development site for future users/occupants and improvement of the environmental quality of land areas surrounding the site. These measures ensure that there will be no contaminants remaining at the property that exceed lead or other contaminants above health-protective cleanup goals. Please refer to the responses to Comments 77.1 and 78.1 above for additional detail.

Paragraph 80

Comment 80.1

Contaminants that remain at the Smith Family Trust site include:

- *Total petroleum hydrocarbons as gas and diesel, benzene, toluene, ethylbenzene, xylenes, MTBE, and naphthalene in soil; and*
- *Total petroleum hydrocarbons as gas and diesel, benzene, toluene, ethylbenzene, xylenes, MTBE, and naphthalene in groundwater.*

Response 80.1

The presence of remaining contaminants at the Smith Family Trust is known and procedures are in place, as discussed in Responses 76.1, 77.1, 78.1 and 79.1, to ensure safe removal and handling pursuant to a SMP which will require compliance with applicable environmental laws, regulations and guidance including but not limited to the California Health and Safety Code, the California Water Code, California Code of Regulations, the County of San Diego DEH Site Assessment and Mitigation Manual, SD-RWQCB Resolution R9-2014-0104 (Conditional Waiver No. 10) and SD-RWQCB Order R9-2015-0013 / NPDES No. CAG919003 pertaining to the discharge of treated groundwater to San Diego Bay during construction dewatering.

Paragraph 81

Comment 81.1

Using the remaining detection values discussed in the Smith Family Trust closure letter, we found that the total petroleum hydrocarbons from diesel and benzene levels detected within the soil greatly exceed the Environmental Screening Level (ESL) for construction worker exposure...

Response 81.1

The commenting consultant ("SWAPE") has referenced screening levels ("ESLs") that are not applicable to the subject property. The ESLs referenced in the comment letter are published by



the San Francisco Bay Area Regional Quality Control Board and are not recognized by the lead environmental regulatory agency for the Project (County of San Diego DEH). This is another example of Local 30's litigation support specialist's lack of knowledge about the rules and regulations applicable to the Project site, which affects the credibility of Local 30's arguments. As described in Response 76.1, regulatory measures will be implemented to ensure that construction workers are protected from hazardous materials during development activities. Note in particular that the development permits will be subject to a condition of approval relating to "Removal and/or Remedy of Soil and/or Water Contamination" requiring preparation of a safety plan, approved by applicable governmental agencies, to "assure workers and other visitor to the site of protection from any health and safety hazards during development and construction of the improvements."

Paragraph 82

Comment 82.1

Furthermore, we found that benzene, ethylbenzene, xylenes, and naphthalene levels detected within the groundwater at the Smith Family Trust Site would also greatly exceed the groundwater vapor intrusion human health risk ESLs for commercial and industrial exposure to shallow groundwater...

Response 82.1

SWAPE has referenced screening levels that are not applicable to the subject property. The ESLs referenced in the comment letter are published by the San Francisco Bay Area Regional Quality Control Board and are not recognized by the lead environmental regulatory agency for the project (County of San Diego DEH). Refer to Responses 76.1, 77.1, and 78.1. Compliance with applicable regulations ensures that construction workers are protected from hazardous materials during development activities. Relative to future potential vapor intrusion related concerns, there will be none. Soil excavation for the five level subterranean parking garage will result in complete source removal of all lead/metal and petroleum hydrocarbon impacts at the property, resulting in a safe development site for future users/occupants and improvement of the environmental quality of land areas surrounding the site. In addition, construction dewatering (pumping and treating) will be performed in compliance with SD-RWQCB Order R9-2015-0013 / NPDES No. CAG919003 and will result in an additional layer of improvement to groundwater quality beneath the property. Further, if deemed warranted by regulatory agencies, a vapor barrier system will be incorporated in to the waterproofing system for the subterranean parking garage that will be installed along its bottom and sidewalls. However, such a vapor barrier system is unlikely to be required due to the massive source removal activities to be completed with excavation for the parking structure.



Paragraph 83

Comment 83.1

We also found that benzene, toluene, ethylbenzene, xylenes, and naphthalene levels detected within the groundwater at the Smith Family Trust Site would also greatly exceed the California Human Health Screening Levels (CHHSLs) soil gas screening numbers for volatile chemicals below buildings constructed with engineered fill below sub-slab gravel for commercial and industrial exposure...

Response 83.1

Refer to Responses 76.1, 77.1, and 78.1. Compliance with applicable regulations ensures that construction workers are protected from hazardous materials during development activities.

SWAPE has referenced screening levels ("CHHSLs") that are defunct and no longer recognized by environmental regulatory agencies. The County of San Diego DEH utilizes its own human health risk mathematical model (Vapor Risk 2000) and other modeling approaches (if deemed warranted) to evaluate potential vapor intrusion concerns at contaminated sites. Such approaches are discussed in the DEH SAM Manual. However, being that complete contaminant source removal will be accomplished as a result of the planned construction activities, vapor risk modeling will likely not be necessary for the project in the forthcoming SMP. See Response 82.1 for a discussion of regulatory compliance measures that will ensure the Project will not have significant environmental impacts relating to hazardous materials.

Paragraph 84

Comment 84.1

The data we have compiled, and which was not disclosed, shows that the Project site is currently highly contaminated. Levels of contamination would pose potential health risks via the two viable exposure pathways: (1) construction worker dermal contact and inhalation of soil/dust; and (2) a commercial/industrial scenario for the parking garage. The two County-led regulatory actions taken to date have been restricted in scope to: (1) the assumption that land use would remain as a parking lot; and (2) removal and cleanup of only the underground storage tanks at the Smith Family Trust. The first regulatory action has been superseded by the proposed Project, which would result in a residential land use. The second action pertains only to one source of contamination at the Project site. The Consistency Evaluation "sticks its head" in the sand about the extent of the contamination, and the need for further investigation and mitigation. It fails to satisfy the good faith informational requirements of CEQA.

Response 84.1

Refer to Responses 4.1, 22.1, 26.1 to 28.1, 31.1, 76.1 through 83.1. Compliance with a DEH approved SMP and any other applicable local, state, and federal requirements ensures that construction workers are protected against hazardous dermal contact and inhalation of soil/dust and that construction and operation of the parking garage will not expose the public to unsafe levels of hazardous materials or substances. The development permits are subject to a



condition of approval relating to “Removal and/or Remedy of Soil and/or Water Contamination” requiring preparation of a safety plan, approved by applicable governmental agencies, to “assure workers and other visitor to the site of protection from any health and safety hazards during development and construction of the improvements.” The development permits will also require designing and constructing improvements in a manner to assure protection of occupants from any contamination, including from vapor or other form, obtaining applicable approval for the removal or remedy of soil or water contamination, and if required due to the presence of contamination, to install an impermeable membrane or other acceptable alternative beneath the foundation of the building. The contamination levels and clean-up history of the Project site have always been publicly available information. CivicSD understands and has confidence in the proven laws and regulations for cleaning up hazardous materials just as City Council did when it adopted the 2006 DCP FEIR.

Paragraph 85

Comment 85.1

The 2006 FEIR and the addenda fail to disclose soil and groundwater contaminants at the Project site and fail to evaluate the potential for significant impacts to result from exposure of construction workers and future residents to contamination. The 2006 FEIR and subsequent addenda provide only deferred and insufficient mitigation to address the contamination in stating "all hazardous materials/wastes and petroleum products will have to be removed and remediated prior to, or during construction, to the standards set by the various federal, state, and local regulations." This general provision in the FEIR (HAZ-B) does not provide for disclosure of specific contaminants at the Project and for the evaluation of health risks to may be posed to construction workers and the future residents. A Project-specific EIR is necessary to include an analysis of soil and groundwater data for remaining contaminants and the health risks they may pose, including performance standards that will guide any cleanup or mitigation effort." See Attachment 1.

Response 85.1

Refer to Responses 4.1, 22.1, 30.1, 76.1 through 85.1. The Project-specific Phase I ESA provides a discussion of the Project’s potential hazardous materials impacts and explains that the presence of residual petroleum hydrocarbons in soil and groundwater beneath the site and the presence of artificial/undocumented fill material remaining beneath portions of the site “do not represent a significant threat to public health or the environment in its current state.” During construction activities, compliance with a DEH approved SMP and other applicable law will ensure that the Project does not create significant hazardous materials impacts. This is consistent with the DCP FEIR’s discussion of the risks of exposure of hazardous materials to construction workers and the solutions described therein for following environmental laws that protect construction workers. (DCP FEIR, p. 5.10-3 – 5.10-7.) It defeats the purpose of a program EIR to repeat the analysis in a new EIR. The Project’s hazardous materials impacts fall within the scope of the DCP EIR and, therefore, do not require a Project-specific EIR.



Paragraph 86

Comment 86.1

This lack of adequate disclosure of site contamination violates CEQA's informational disclosure mandates. CEQA requires that CivicSD make "a reasonable, good faith effort to disclose and evaluate environmental impacts." City of Maywood v. Los Angeles Unified School Dist. (2012) 208 Cal.App.4th 362, 396 (stating rules for property contamination evaluation in CEQA cases). Here, the Evaluation contains scant information about the presence of hazardous substances, but what it does reveal is significant. The Evaluation informs public and decision makers that the site contains "artificial/undocumented fill material" and that this contamination is a "recognized environmental condition." Evaluation at 20-21. The Evaluation concludes without any analysis that this unknown contamination does not pose a significant threat to public health or the environment in "its current state" (i.e. as a paved, surface parking lot). The Agency's conclusory presentation of contamination at the Project site falls far short of "provid[ing] decision-makers [and the public] with information which enables them to make a decision which intelligently takes account of environmental consequences." City of Maywood, 208 Cal.App.4th at 396.

Response 86.1

Refer to Response 77.1.

The status of contamination of the Project site has been well documented for the public. The Phase 1 ESA for the Project site found that the environmental conditions do not represent a significant threat to public health or the environment in its current state and significant impacts during the course of future construction activities for the Project will be avoided through compliance with regulatory measures as described in the DCP FEIR, which include preparation and implementation of a SMP under DEH oversight. The ESA, the Consistency Evaluation, and the environmental analyses in the Project's administrative record described above satisfy CEQA's informational disclosure mandates. Along with the analysis contained in the DCP EIR and subsequent addenda, the Consistency Evaluation analyzed hazardous materials and the potential for contamination. There is more than ample information in the record that demonstrate CivicSD made a reasonable and good faith effort to disclose and evaluate environmental impacts. (*City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 396.) Unlike *City of Maywood*, the Consistency Evaluation does not simply say hazardous materials are "safe" in its current state without discussing what happens when the construction activities begin to affect the hazardous materials on-site. The Project's Consistency Evaluation properly addresses that future construction activities at the Project site that handle on-site hazardous materials will be done safely through the administering on federal, state and local hazardous waste laws. The Phase I ESA further explains what that means, the DCP FEIR hazardous water section explains what that means, and this letter explains more about how those procedures work. The administrative record is adequate to inform the decision that the Project is within the scope of the DCP FEIR.



Paragraph 87

Comment 87.1

Furthermore, the Evaluation improperly provides only deferred and insufficient mitigation to address the contamination without any required performance standards. CEQA case law requires the Agency to "craft mitigation measures that would satisfy enforceable performance criteria." Maywood, 208 Cal.App.4th at 407. This is especially important in light of the fact that concentrations on site are in excess of health-based screening levels and cleanup goals. Attachment B at 20. Despite admittedly incomplete understanding of the site's contamination, CivicSD asserts that its only obligation with respect to this recognized environmental condition is to comply with federal, state and local regulations. However, without the benefit of the nature and extent of the contamination, it is impossible to determine which regulations and performance standards might apply.

Response 87.1

The nature and extent of hazardous materials impacts is discussed above and in the Phase I ESA prepared for the Project. As discussed above, Project construction and development activities will be carried out in compliance with regulatory requirements applicable to hazardous waste, including a SMP and CivicSD's proposed condition to the development permits, as discussed further in Response 77.1. Compliance with applicable regulatory standards can provide a basis for determining that the project will not have a significant environmental impact. (*Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912.) A requirement that a project comply with specific laws or regulations also serves as adequate mitigation of environmental impacts. "[A] condition requiring compliance with regulations is a common and reasonable mitigation measure and may be proper where it is reasonable to expect compliance." (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906 [court upheld the city's reliance on standards in the building code and city building ordinances to mitigate seismic impacts].¹¹);

A determination that regulatory compliance is sufficient to prevent significant adverse impacts is based on a project-specific analysis of potential impacts and the effect of regulatory compliance. (*Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1; *Ebbetts Pass Forest Watch v. Dept. of Forestry & Fire Prot.* (2008) 43 Cal.4th 936, 956.) The DCP FEIR, related addenda, Consistency Evaluation and related technical reports satisfy this requirement.

¹¹ See also *Newhall Ranch*, 234 Cal.App.4th at 245 (compliance with federal regulations for hatchery genetic management plan is reasonable mitigation measure); *Citizens Opposing a Dangerous Env't v. County of Kern* (2014) 228 Cal.App.4th 360, 383 (compliance with Federal Aviation Administration procedures held to be appropriate mitigation for aviation safety impacts); *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1355 (upholding mitigated negative declaration that included requirement that project comply with environmental laws on registering hazardous materials and monitoring underground tanks for leaks); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308 (upholding measures in mitigated negative declaration requiring compliance with air and water quality standards); *Perley v. Bd. of Supervisors* (1982) 137 Cal.App.3d 424 (upholding mitigated negative declaration that included compliance with requirements of various environmental agencies among its mitigation measures).



Paragraph 88

Comment 88.1

This deferral of cleanup performance standards violates CEQA. CEQA disallows deferring the formulation of mitigation measures to post-approval studies with no performance standards to guide the mitigation. CBE v. Richmond, 184 Cal.App.4th at 92, CEQA Guidelines §15126.4(a)(1)(B); Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 308-309. An agency may only defer the formulation of mitigation measures when it possesses "'meaningful information' reasonably justifying an expectation of compliance." Sundstrom at 308; see also Sacramento Old City Association v. City Council of Sacramento (1991) 229 Cal.App.3d 1011, 1028-29 (mitigation measures may be deferred only "for kinds of impacts for which mitigation is known to be feasible"). A lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility Kings County Farm Bureau v. Hanford (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation because there was no evidence that replacement water was available). This approach helps "insure the integrity of the process of decision-making by precluding stubborn problems or serious criticism from being swept under the rug." Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn. (1986) 42 Cal.3d 929, 935.

Response 88.1

Refer to Response 87.1.

Paragraph 89

Comment 89.1

*Air quality impacts are a key component of the CEQA analysis. Bakersfield Citizens, 124 Cal.App.4th 1184, 1220. If an impact is significant, the agency must impose **all** feasible mitigation measures, and may only declare the impacts to be unavoidable if it remains significant after imposition of all feasible mitigation measures.*

Response 89.1

This comment is noted. Refer to Responses 90.1 through 94.1.



Paragraph 90

Comment 90.1

Here, the Consistency Evaluation contains no new mitigation measures for the mobile source oxides of nitrogen ("NOx") emissions from the thousands of car trips attracted daily to the Project, instead sloppily relying on only some of the stale measures from the old 2006 EIR. This violates CEQA.

Response 90.1

Refer to Response 61.1 for a discussion of the enforceability and implementation of mitigation measures related to the Project. Refer to Responses 72.1 and 73.1 for a discussion of lead agency discretion to determine the feasibility of mitigation.

Air quality impacts from DCP buildout were fully evaluated in the DCP FEIR. The DCP FEIR projected both mobile-source and stationary-source emissions in the year 2030 that would result from implementation of the DCP. (DCP FEIR, p. 5.8-8.) The DCP FEIR concluded that the direct impact of the mobile-source emissions resulting from buildout of downtown San Diego under the proposed DCP would not be significant. (DCP FEIR, p. 5.8-8.) However, the DCP FEIR found that those emissions would combine with other emissions in the SDAB to create significant cumulative air quality impacts due to the existing non-attainment status of the SDAB at the time of the DCP FEIR. (DCP FEIR, p. 6-5.) The Project's consistency with the CAP, as demonstrated by the CAP Consistency Checklist and as discussed in Response 61.1, would reduce the severity of potential cumulative air quality impacts associated with the Project or discussed further in Response 91.1 .

Paragraph 91

Comment 91.1

As expert Hagemann explains in Attachment 1, which lists dozens of additional, feasible mobile source NOx reduction measures that we do not re-list here for the sake of brevity:

"According to the Consistency Evaluation, mobile source emissions from operation of the Project will result in a significant impact, even with the inclusion of the proposed mitigation measure AQ-A.1 (p. 4). However, review of section eight of the Consistency Evaluation finds that the mitigation measures included in the Mitigation, Monitoring, and Reporting Program (MMRP) that will be implemented for the proposed Project are measures AQ-B.1-1, HIST-B.1-1, NOI- B.1-1, NOI-C.1-1, and PAL-A.1-1 (p. 4).

Response 91.1

The Consistency Evaluation properly identified that build-out of the DCP would have a cumulatively considerable impact that remains significant and unmitigated despite implementation of Mitigation Measure AQ-A.1. However, Local 30's litigation support specialist incorrectly assumes that Mitigation Measure AQ-A.1 is not applicable to the Project



because it is not listed as a Mitigation Measure in section 8 of the Consistency Evaluation. The DCP FEIR makes it clear that Mitigation Measure AQ-A.1 is simply the requirement that downtown San Diego projects comply with all applicable federal, state and local regulations within the SDAB. Specifically, it states, “Federal, state and local regulations mandate as well as recommend measures to be incorporated by subsequent development within the Air Basin are anticipated to be incorporated into future development within downtown, as appropriate.” (DCP FEIR, p. 6-5.) In short, the mitigation measure merely requires future projects to comply with the air quality laws and regulations that apply within the SDAB at the time the project is developed. It is not an outdated requirement. It is one that is constantly updated as new laws and regulations within the SDAB are adopted. The Project’s development permit already implements Mitigation Measure AQ-A.1 and makes it more enforceable because Condition 36 states, “[i]ssuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies...;” Condition 35 states, “[t]he continued use of this Permit *shall be subject to the regulations of this and any other applicable government agency*” (emphasis added;) and Condition 38 states, “[t]his development *shall comply with the standards, policies, and requirements in effect at the time of approval of this development, including any successor(s) or new policies, financing mechanisms, phasing schedules, plans and ordinances adopted by the City.*” (Emphasis added.) Indeed, the application of the City’s new CAP Consistency Checklist requirement with its new TDM and on-site amenity requirements are good examples of one of the new City regulations that reduce emissions from mobile sources and promote non-vehicular travel. It is important to note that the DCP concludes that, “[a]lthough the Plans and Ordinances would promote non-vehicular travel (e.g. walking and cycling) and implement smart growth principles, implementation of these measures would not be sufficient to reduce cumulative impacts to below a level of significance.” (DCP FEIR, p. 6-6.) Likewise, despite applying updated rules and regulations affecting air quality to the project, the Consistency Evaluation correctly provides that “[t]he air emissions generated by automobile trips associated with the Project would not exceed air quality significance standards established by the San Diego Air Pollution Control District. However, the Project’s mobile source emissions, in combination with dust generated during construction of the Project, would contribute to the significant and unmitigated cumulative impact to air quality identified in the FEIR.” Accordingly, the Consistency Evaluation properly found and contains substantial evidence to support that the Project is within the scope of the applicable program EIRs with regards to its air quality impacts.

With regards to the list of dual GHG-reducing and NO_x-reducing mitigation measures recommended by Local 30’s litigation support specialist in Attachment 1 of its letter, we agree with his statement that “it should be noted that some of the measures suggested below may overlap with requirements set forth by the CAP Consistency Checklist.” For example that CAP Checklist requires bike parking, showers for commuters, compliance with TDM (which is in addition to the transportation demand management rules the Project must follow as part of the CCPDO §156.0313(o); Table 156-0313-D), electric vehicle parking, van pool sharing, preferred parking for van-pool and alternatively fueled vehicles. In addition, commercial car sharing services and bike sharing services already exist in downtown San Diego. As previously discussed, the City also recently adopted the DCP’s new Mobility Element, which further



implements vehicle reducing strategies. The Project will pay impact fees that provide a fair share toward implementing the improvements identified in the Mobility Element and the Downtown PFFP. Through the public hearing process used to adopt the Mobility Element, CAP, and CAP Consistency Checklist, the City very recently vetted which GHG-reducing/NOx-reducing alternatives and mitigation measures were feasible after balancing all the competing demands and issues. Accordingly, any mandatory policies contained therein, which the Project is required to comply with (as previously discussed in the GHG responses) represent what the City's decision-makers believe is feasible based on "social and other considerations." The fact that Local 30's litigation specialist believes (without substantiating) that even more NOx-reducing mitigation measures are cost-effective does not matter because measures that are economically feasible, can still be infeasible based on "social and other considerations," such as here where the particular policies for reducing vehicle emissions were recently established through a public hearing process.¹² If Local 30's litigation specialist believed they were feasible, he could have participated in that public process, but he did not. Because the CAP Consistency Checklist is part of the CAP FEIR and the Mobility Plan SEIR is part of the DCP EIR and both are program EIRs, to revisit them again would violate CEQA's purpose for a Program EIR – to "avoid duplicative reconsideration of basic policy considerations" and "allow reduction in paperwork." (CEQA Guidelines § 15168(b) (3), (5).)

Paragraph 92

Comment 92.1

Not only is mitigation measure AQ-A.1 not listed in section eight of the Consistency Evaluation as a proposed mitigation measure for the Project, it is not even included in the MMRP. The only air quality mitigation measure proposed in the MMRP is mitigation measure AQ-B.1-1, which relates primarily to reducing construction emissions. Therefore, the Consistency Evaluation's claim that mobile source emissions "have been identified as Significant and Not Mitigated even with the inclusion of the proposed mitigation measures" (p. 8) is incorrect because no mitigation for operational mobile source emissions has been identified in the MMRP.

Response 92.1

Refer to Response 91.1.

¹² Feasible" is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (CEQA Guidelines § 15364; Pub. Res. Code § 21061.1.) When determining feasibility, the lead agency considers whether the site is appropriate for the proposed use, whether the physical characteristics of the site would impede successful development of the project, whether infrastructure and services necessary to serve the Project are available and whether there is conflict with state or local policies and regulations. (*Citizens of Goleta Valley, v. Bd. of Supervisors* (1990) 52 Cal.3d 553.)575 n.7; *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 919.)



Paragraph 93

Comment 93.1

Because mobile source emissions have been found to cause a significant and unavoidable impact, mitigation measures must be identified and incorporated in an EIR to reduce these emissions to a less than significant level. Additional mitigation measures as set forth below can be found in CAPCOA's Quantifying Greenhouse Gas Mitigation Measures, which attempt to reduce GHG levels, as well as reduce Criteria Air Pollutants such as NOx. NOx is a byproduct of fuel combustion, and is emitted by on-road vehicles and by off-road construction equipment. Again, it should be noted that some of the measures suggested below may overlap with requirements set forth by the CAP Consistency Checklist and GHG Study. However, because it is unclear as to what design features are actually going to be applied in order to remain consistent with this checklist, and the relevancy of the GHG Study is unknown, we included all of the mitigation measures that can be feasibly incorporated into the Project design . . .

Response 93.1

Refer to Response 91.1.

Paragraph 94

Comment 94.1

When combined together, these measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduces emissions released by mobile sources during Project operation. A Project-specific EIR must be prepared to include additional mitigation measures, as well as include an updated air quality analysis to ensure that the necessary mitigation measures are implemented to reduce mobile- source operational emissions to below thresholds. Furthermore, the Project Applicant needs to demonstrate commitment to the implementation of these measures prior to Project approval, to ensure that the Project's mobile-source operational emissions are reduced to the maximum extent possible." See Attachment 1.

Response 94.1

Refer to Response 91.1.

Paragraph 95

Comment 95.1

The CEQA analysis must discuss any inconsistencies between the Project and applicable General Plan and other planning document. Guidelines §15125(d).



Response 95.1

The DCP FEIR Section 5.1 analyzes the DCP's consistency with the City's General Plan and other planning documents. (See DCP FEIR, p. 5.1-14 to 5.1-18.) The Consistency Evaluation and Staff Reports describe the Project's consistency with the General Plan, DCP and the CCPDO. (See Consistency Evaluation, p. 26 [identifying General Plan designation as Employment/Residential Mixed Use]; See also Staff Report Discussion Section on Neighborhood Context, DCP Goals, Site Description, Project Description, Project Description Summary Chart and Findings.). Because the Project is consistent with the General Plan, DCP and CCPDO, it is within the scope of the DCP FEIR. (DCP FEIR, p. 1-1 [DCP serves as the basis for detailed zoning and development standards].)

Paragraph 96

Comment 96.1

Moreover, the Agency must study and feasibly mitigate cumulative land use impacts to which the Project contributes. Recognizing that several projects may together have a considerable impact, CEQA requires an agency to consider the "cumulative impacts" of a project along with other projects in the area. Pub. Resources Code §21083(b); Guidelines §15355(b). If a project may have cumulative impacts, the agency must prepare an EIR, since "a project may have a significant effect on the environment if '[t]he possible effects of a project are individually limited but cumulatively considerable.'" CBE v. CRA, 103 Cal.App.4th at 98, 114; Kings County Farm Bur., 221 Cal.App.3d at 72. It is vital that an agency assess "'the environmental damage [that] often occurs incrementally from a variety of small sources . . .'" Bakersfield Citizens, 124 Cal.App.4th at 1214. An "inadequate cumulative analysis" prevents the public "from gaining a true perspective on the consequences of approving these projects." San Franciscans for Reasonable Growth v. City and County of San Francisco (1984) 151 Cal.App.3d 61, 80.

Response 96.1

Refer to Response 29.1.

Because the Project is within the scope of the DCP FEIR, the DCP FEIR adequately analyzes the Project's cumulative impacts. (See DCP FEIR, Chapter 6; p. 6-1 [environmental effects analyzed in the DCP FEIR address the cumulative effects of building out the DCP Area, in conjunction with regional growth plans for the County, including to the DCP FEIR buildout year of 2030].) The following table identifies the land use development existing when the DCP FEIR was certified in 2006, the development contemplated in 2030 at DCP buildout, and the development existing as of January 1, 2016, as well as the proposed Project development, to further demonstrate that the Project is within the scope of the DCP FEIR.

2016 Development Conditions for DCP



<u>Land Use</u>	<u>DCP Base Conditions</u>	<u>2016 Conditions*</u>	<u>Proposed Project</u>	<u>DCP Build-Out</u>
<u>Residential Units</u>	<u>14,600</u>	<u>23,939</u>	<u>218</u>	<u>53,100</u>
<u>Office (1,000 SF)</u>	<u>9,473</u>	<u>10,628</u>	<u>1,560</u>	<u>22,028</u>
<u>Retail (1,000 SF)</u>	<u>2,658</u>	<u>3,340</u>	<u>400</u>	<u>6,070</u>
<u>Hotel Rooms</u>	<u>8,800</u>	<u>13,175</u>	<u>153</u>	<u>20,000</u>
<u>*DCP Baseline plus all project constructed from August 2004 to January 1, 2016. (See Attachment E)</u>				

According to the table above, development levels existing as of 2016 would allow for an additional 29,161 residential units, 9,400,000 SF of office use, 2,730,000 SF of retail use, and 6,825 hotel rooms in the DCP area before exceeding the scope of the DCP FEIR. The Project's contribution of 218 residential units, 156,000 SF of office, 40,000 SF of retail and 153 hotel rooms falls well within the scope of the DCP buildout scenario.

Paragraph 97

Comment 97.1

Expert planner Terrell Watt, AICP explains in her comments in Attachment 2 that the land use inconsistency and cumulative land use impacts of this specific Project have not been adequately analyzed.

She notes that:

"The discussion of a proposed project's environmental impacts is at the core of any environmental review. Environmental analysis must inform the public and decision-makers of the environmental consequences of their decisions before they are made. To do so, environmental analysis must contain facts and analysis, not just an agency's bare conclusions. A conclusion regarding the significance of an environmental impact that is not based on analysis of the relevant facts fails to fulfill CEQA's fundamental mandate. Here the Consistency Evaluation and staff reports violate that rule - they contain bare conclusions unsupported by facts, evidence and analysis . . .

Response 97.1

The environmental impacts of the Project have been adequately disclosed through the DCP FEIR, Mobility Plan SEIR, CAP FEIR, Staff Reports, Project Correspondence and the Consistency Evaluation with its technical studies. The Consistency Evaluation is a checklist and is not intended to be detailed. At 41 pages, it is of similar detail to other consistency analysis that courts have upheld when CivicSD procedures have been challenged in Court. (See Attachment I to Rincon and Sheppard Mullin's joint response letter dated July 26, 2016 regarding the Consistency Evaluation for the Navy Broadway project upheld in *San Diego Navy Broadway Complex Coal. v. City of San Diego* (2010) 185 Cal.App.4th 924; See also *CREED*, 134 Cal.App.4th 598.)



Paragraph 98

Comment 98.1

The project logs and maps on CivicSD's website make possible a detailed consistency analysis that allows for analysis of actual existing 2016 environmental baseline today, including pending plus foreseeable development, and comparison with the analysis in the prior environmental documents referenced in the Consistency Evaluation.

Response 98.1

Refer to Responses 11.1, 22.1, 26.1 through 31.1. Data regarding development conditions as of January 1, 2016 have been provided.

Paragraph 99

Comment 99.1

Such an analysis comparing the actual 2016 baseline to the prior EIR "forecasts" is not only possible, it is essential to support the City's assertion that the current proposed Project and cumulative development have been adequately analyzed in the prior EIRs (particularly the 2006 DCP FEIR). It is clear that this "comparative" analysis is not presented in the Consistency Evaluation for the proposed Project. Nor is there a current 2016 baseline calculated as a basis for analyzing Project-related and cumulative development impacts to assess significance for this Project and to determine whether the significant impacts have in fact been analyzed in the prior environmental documents referenced in the Consistency Evaluation. Without evidence that the Project plus cumulative development is within the scope of the prior EIRs and adequately analyzed in those EIRs, the environmental impact analysis for the Project is deficient under CEQA." See Attachment 2.

Response 99.1

Refer to Responses .1, 22.1, 26.1 through 31.1. Data regarding development conditions as of January 1, 2016 have been provided and demonstrates that the Project is well within the scope of the DCP FEIR.

Paragraph 100

Comment 100.1

Commentor understands and appreciates that the Project has an affordability component (although the Applicant gained extensive density bonuses for this affordability concession). However, the Project includes only 34 affordable units. While this may meet or exceed local requirements, this number of affordable units does not mitigate Project impacts (demand for housing affordable to the workforce



generated by the Project and cumulative development). The affordable housing provided by the proposed Project is far less than the number of workers likely to have incomes insufficient to afford housing near or even within transit distance of downtown San Diego.

Response 100.1

Refer to Response 2.1. As Local 30 notes, the Project will meet or exceed applicable affordable housing requirements, which San Diego's policy-makers established to address affordable housing demands from new development. This is not the only source of affordable housing the Project contributes. Local 30 fails to mention that, the Project also financially contributes to the development of affordable housing in that net proceeds from the Project's \$20,000,000 sales price will be deposited into the Low Moderate Income Asset Fund for the purpose of providing future affordable housing in accordance with the City's Affordable Housing Master Plan.

Additionally, demand for affordable housing is a socio-economic impact, not an environmental impact, and therefore is not a consideration under CEQA.

It should also be noted that the Project will include 156,000 SF of employment generating office uses and it is expected that wages for such office employment will exceed the wages for Local 30's constituents.

Paragraph 101

Comment 101.1

In addition, the Evaluation also fails to note that the Project as proposed is inconsistent with existing, applicable policies, plans and regulations. A few illustrative examples are provided below in the table. A thorough and complete analysis of the Project's consistency with all applicable plans, policies and regulations is required and has not been provided.

Response 101.1

Refer to Responses 102.1 through 108.1. The Consistency Evaluation includes a discussion of the Project's consistency with the City's General Plan and Progress Guide, DCP and other applicable land use plans, policies and regulations. (See e.g., Consistency Evaluation, p. 9-11, 26-28.) Further, the DCP FEIR contained a discussion of consistency with the City's General Plan and Progress Guide, DCP, Centre City Redevelopment Plan, CCPDO, the San Diego Unified Port District Master Plan, South Embarcadero Redevelopment Program 1 and 2, North Embarcadero Alliance Visionary Plan, Regional Comprehensive Plan, Regional Transportation Plan, California State Implementation Plan, Water Quality Control Plan for the San Diego Basin, Multiple Species Conservation Plan and Airport Compatibility Plan for San Diego International Airport. (DCP FEIR, p. 5.1-14 to 5.1-18.)



Paragraph 102

Comment 102.1

<i>Goal, Plan or Policy</i>	<i>Inconsistency</i>
<i>San Diego Downtown Community Plan: 5.3-G-5: Maximize sky exposure for streets and public spaces. 5. 3-P-6: Require tower separation to increase key sky exposure for developments with multiple towers.</i>	<i>The staff reports generally note the inconsistency but the Consistency Evaluation fails to address this or state why a variance is justified or to provide alternatives that would meet both this policy as well as protect views.</i>

Response 102.1

The Consistency Evaluation (see p. 10-11) and Staff Reports (see, e.g., Attachment D, p. 1-15) describe the Project's consistency with the DCP and the CCPDO. For example, the Consistency Evaluation expressly addresses the Project's deviation from tower separation requirements set by the CCPDO. While the Project design meets horizontal separation requirements (60 feet) at all occupied floors, it deviates from requirements by including a two-story connection below the 20th floor of the upper tower that connects it to the lower tower. The Consistency Evaluation concludes that this deviation would result in reduced tower massing and impacts to east/west views through the project site to the San Diego Bay, Point Loma, Coronado, and the downtown skyline from public viewing areas than would result from strict compliance with the CCPDO's tower separation requirements. (Consistency Evaluation, p. 10.) Additionally, the Project's proposed deviation from maximum tower dimension requirements (by 11 feet) will increase the tower width on the Project's upper levels, above the highest floors of neighboring buildings within the project area, resulting in better views through the project site than would be available if the tower were lower and bulkier, as would be necessary to comply strictly with the CCPDO. The Project also provides substantial public spaces, including providing space for the Black Historical Society to install an interpretive black history center within the Clermont Hotel, to provide a 6,000 SF privately owned public open space on the ground floor accessible to the public, providing art within public open spaces and providing public restroom and parking facilities. Deference is owed to City Council and CivicSD because a reasonable person could conclude that, the Project, with its proposed deviations findings, is consistent with the DCP and CCPDO. Accordingly, it is within the scope of the DCP FEIR. (DCP FEIR, p. 1-1 [DCP serves as the basis for detailed zoning and development standards].) Substantial evidence exists to support a decision to approve the requested deviations.

Paragraph 103

Comment 103.1

<i>Goal, Plan or Policy</i>	<i>Inconsistency</i>
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<i>San Diego Downtown Community Plan: 9.1-G-3: Allow development adjacent to historical resources respectful of context and heritage, while permitting contemporary design solutions that do not adversely affect historical resources.</i>	<i>The Consistency Evaluation and prior environmental documents lack evidence to support consistency with this policy. To the contrary the scale and massing of the Project is likely to result in adverse effects to the Clermont Hotel's historical context.</i>
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Response 103.1

Refer to Responses 102.1 and 131.1. The Clermont Hotel restoration will be conducted in accordance with the Secretary of Interior's Standards for Rehabilitation of Historic Buildings, DCP FEIR Mitigation Measure Hist-A.1-1 and SDMC sections 143.0201, *et seq.* Compliance with these regulatory requirements, which will include oversight by the City's Historical Resources Board, ensures that development of the Project is sensitive to and compatible with the restoration of the historicity of the Clermont Hotel. It also bears noting that at least one major component of the restoration, the Black Historical Society's installation of an interpretive black history center within the Hotel Clermont, will be in the interior of the building and therefore not in conflict with the scale and massing of the Project's modernity. As stated in the Consistency Evaluation, development of the site would improve the areas surrounding the Clermont Hotel, which are currently occupied by surface parking lots, by providing a new mixed use building on an underutilized site and rehabilitating the exterior of the existing Hotel. Deference is owed to the City Council and CivicSD because a reasonable person could find that the Project is consistent with this policy despite Local 30's speculation that it is not "likely" to be consistent.

Paragraph 104

Comment 104.1

<i>Goal, Plan or Policy</i>	<i>Inconsistency</i>
<i>San Diego Downtown Community Plan: 13.2-P-1: During review of all development projects, require documentation of hazardous materials investigation addressing the building and conditions.</i>	<i>The 2006 FEIR and the Evaluation fail to adequately disclose and identify performance measures to address soil and groundwater contaminants at the Project site and fail to evaluate the potential for significant impacts to result from exposure of construction workers and future residents to contamination.</i>



Response 104.1

Refer to Responses 76.1 through 88.1. The Consistency Evaluation and Project specific Phase 1 ESA disclose the Project's potentially significant hazardous materials and describe that significant impacts can be avoided through compliance with applicable regulatory measures, which the Project must comply with as a matter of law. Accordingly, a reasonable person could conclude the City has required documentation of hazardous materials, investigation addressing the building and conditions, even if Local 30 desires more detailed information. Deference is owed to City Council and CivicSD when making a consistency determination.

Paragraph 105

Comment 105.1

<i>Goal, Plan or Policy</i>	<i>Inconsistency</i>
<i>San Diego Downtown Community Plan: 13.4-G-1: Maintain a pleasant, livable sound environment alongside rising levels of activity and increasing mix of uses.</i>	<i>Evaluation fails to actually demonstrate what the noise impacts from construction would be, and whether the limitations imposed by the City's Noise Abatement and Control Ordinance will be enough to mitigate the impact to a less than significant level. Neither the Consistency Evaluation, nor the Noise Study prepared for the proposed Project by Veneklasen Associates, dated October 29, 2015, discuss the impact that noise from construction will have on nearby sensitive receptors.</i>

Response 105.1

Refer to Responses 132.1 and 133.1. A Project-specific noise study was prepared for the Project, as Local 30 acknowledges. Construction noise impacts were not studied because the lead agency can properly assume a project will comply with the laws. The impact is less than significant because construction would be carried out in compliance with SDMC section 59.5.040, which regulates the hours of construction noise, among other things. (See Permit Conditions 35, 36 and 38.)



Paragraph 106

Comment 106.1

<i>Goal, Plan or Policy</i>	<i>Inconsistency</i>
<i>City of San Diego General Plan Land Use and Community Planning Element:</i> <i>Policy LU-F.2: Review . . . private projects to ensure that they do not adversely</i> <i>affect the General Plan and community plans. LU-F.3 b. Ensure that the granting of development incentives does not result in an adverse impact upon health, welfare, and safety of the surrounding community or upon any designated cultural and/or historic resource. LU- F.3.c: The provision of development incentives should be re-evaluated on a regular basis to be certain that the granting of incentives remains in proportion to the benefits derived. UD- A.5; Design buildings that contribute to a positive neighborhood character and relate to neighborhood and community context.</i>	<i>To our knowledge no such evaluations has occurred since the building boom. Both Project-specific and cumulative impacts appear to be creating adverse impacts including to traffic and transit, affordable housing and related impacts of declining air quality and increasing GHG all constituting impacts on health and welfare.</i> <i>The staff reports generally note the inconsistency with height in comparison to neighborhood, the lack of required setbacks, excess tower dimensions for 39-story tower, insufficient tower separation, and excess signage, but the Consistency Evaluation fails to address this or state why a variance is justified or to provide alternatives that would meet both this policy as well as protect views.</i> <i>A re-evaluation should be part of the new environmental analysis required by the Project.</i>

Response 106.1

Refer to Responses 18.1, 58.2 through 136.1. The Consistency Evaluation evaluates the Project's consistency with the DCP FEIR, the General Plan and the DCP. The Project and other existing development in the downtown community were contemplated as part of the DCP FEIR and not some unexpected "building boom" for which CEQA review has not been performed. Pages 9 through 12 of the Consistency Evaluation describe the requested deviations and how approval of the deviations results in a Project that enhances public views and a development that is generally more compatible with the surrounding environment than would be available if the Project were developed in strict compliance with the CCPDO. Deviations are permitted under the CCPDO with a CCPDP to provide flexibility where the strict application of development regulations would result in a less desirable project. Deviations are permitted under the CCPDO with a Centre City Planned Development Permit to provide flexibility where the strict application of development regulations would result in a less desirable project. The deviations, from tower separation requirements that will add a unique, signature tower feature to the San Diego skyline, for a streetwall deviation to allow for garage ventilation and for valet tandem



parking for hotel use to permit more efficient car parking and maximize public parking capacity are adequately discussed in the Project's administrative record, including the Staff Reports, Carrier Johnson's Project Conceptual Design Narrative and Carrier Johnson's explanations for proposed deviations. The deviations are not of the nature that would impact the CEQA review. Nevertheless, the Staff Reports and other project materials describing the deviations provide adequate support for the consistency determination set forth in the Consistency Evaluation. Substantial evidence supports findings for the deviations, as set forth in the July 22, 2016 Staff Report. As noted above, CEQA does not require consideration of alternatives that would avoid the need for deviations when proceeding by a Consistency Evaluation. It is also important to note that the Project is seeking deviations, not variances from applicable development regulations as Local 30 suggests. Deference is owed to the City Council and CivicSD because a reasonable person could interpret the Project as consistency with these policies.

Paragraph 107

Comment 107.1

<i>Goal, Plan or Policy</i>	<i>Inconsistency</i>
<i>City of San Diego General Plan Noise Element: Goal: Consider existing and future noise levels when making land use planning decisions to minimize people's exposure to excessive noise. Policy NE- A.2: Assure the appropriateness of proposed developments relative to existing and future noise levels by consulting the guidelines for noise-compatible land use (shown on Table NE-3) to minimize the effects on noise sensitive land uses. NE-A.4: Require an acoustical study consistent with Acoustical Study Guidelines (Table NE-4) for proposed developments in areas where the existing or future noise level exceeds or would exceed the "compatible" noise level thresholds as indicated on the Land Use - Noise Compatibility Guidelines (Table NE-3), so that noise mitigation measures can be included in the project design to meet the noise guidelines.</i>	<i>Evaluation fails to actually demonstrate what the noise impacts from construction would be, and whether the limitations imposed by the City's Noise Abatement and Control Ordinance will be enough to mitigate the impact to a less than significant level. Neither the Consistency Evaluation, nor the Noise Study prepared for the proposed Project by Veneklasen Associates, dated October 29, 2015, discuss the impact that noise from construction will have on nearby sensitive receptors.</i>



Response 107.1

Refer to Responses 102.1, 105.1, 132.1 and 133.1.

The Project is compatible with operational noise ranges provided in the DCP FEIR for its proposed uses. The DCP Compatibility Table (table NE-4) does not govern construction noise, which is controlled by the City's Noise Abatement Ordinance. Deference is owed to the City Council and CivicSD because a reasonable person could conclude the Project is consistent with these policies.

Paragraph 108

Comment 108.1

<i>Goal, Plan or Policy</i>	<i>Inconsistency</i>
<i>San Diego Centre City Planned Development Ordinance: TABLE 156- 0310-A: Towers shall be set back from any property line adjoining a public street by a minimum of 15 feet; TABLE 156-0310-A: Tower Floor Plate Dimensions- East-West 130ft; §156.0310.d.3(c): Tower Separation. Within a single development, towers shall be separated by a minimum of 60 feet for sites of 50,000 square feet or more; §156.0314 Sign Regulations: logo height 4' on non-residential tower, not permitted on residential tower, letter height 4' on non-residential tower, max sign size 75 sq. ft. on one tower and 100 sq. ft. on taller tower; max allowed total area 200 sq. ft.</i>	<i>The staff reports generally note the inconsistency with height in comparison to neighborhood, the lack of required setbacks, excess tower dimensions for 39-story tower, insufficient tower separation, and excess signage, but the Consistency Evaluation fails to address this or state why a variance is justified or to provide alternatives that would meet both this policy as well as protect views.</i> <i>A re-evaluation should be part of the new environmental analysis required by the Project.</i>

Response 108.1

Refer to Response 102.1.

Paragraph 109

Comment 109.1

For these reasons, a comprehensive land use consistency analysis must be prepared in a new Project-specific CEQA document.



Response 109.1

Refer to Responses 4.1, 22.1, 26.1 through 31.1, 95.1, 96.1, 100.1 to 108.1, 131.1 and 132.1.

Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation and the entire administrative record, it has been determined that the Project is an activity covered by and within the scope of the program approved by the DCP FEIR and the CAP FEIR, the EIRs adequately describe the Project for purposes of CEQA. No further environmental documentation is required.

Paragraph 110

Comment 110.1

CEQA requires analysis of traffic impacts related to a project. Kings County, 221 Cal.App.3d at 692.

Here, expert traffic engineer Neal Liddicoat P.E.'s review of the Consistency Evaluation's transportation analysis in Attachment 3 hereto reveals significant deficiencies that should be addressed prior to approval of the Project and its related environmental documentation.

Response 110.1

Refer to Responses 112.1-128.1.

Paragraph 111

Comment 111.1

Expert Liddecoat notes insufficient study of intersections likely to be impacted by the Project:

"The Chen Ryan study evaluated traffic operations at 25 existing intersections. Under these scenarios, the bulk of the study intersections do not conform to the "LOS D, E or F" criterion presented by Chen Ryan.

Response 111.1

Refer to Response 112.1.



Paragraph 112

Comment 112.1

This suggests that the "LOS D, E or F" criterion must apply to the list of 62 "Impacted Intersections" presented in Table 5.2-12 (p. 5.2-27) in the March 2006 Downtown Community Plan FEIR and presented here as Attachment 8.

However, only 8 of those 62 intersections were included in the 7th & Market traffic analysis. In fact, there is very little correlation between the Community Plan FEIR's "Impacted Intersections" and the Chen Ryan list of study intersections. For example, the Chen Ryan report addresses 7 intersections on Market Street, while the Community Plan shows only two impacted intersections on Market Street, and the two Community Plan impacted intersections are not on the Chen Ryan list of 7th & Market study locations.

Response 112.1

Consistent with guidance set forth in the Downtown San Diego TIA Methodology for Evaluation of New Projects; June 2007 ("TIA Methodology"), attached hereto as Attachment G, the TIS intersections were selected to include those that were projected to operate at level of service ("LOS") D, E or F in the DCP FEIR and where the Project would add 50 or more peak hour trips – meaning that intersections that were not projected to operate at LOS D, E or F or where the Project would contribute fewer than 50 peak hour trips were not included. (See TIA Methodology § 4.0 ["The project study area will included all downtown intersections where the proposed project will contribute a minimum of 50 trips to either or both the AM or PM peak hours."].) These intersections were developed per and in consultation with City staff and per the City of San Diego Traffic Impact Study Manual. (See City TIS Manual, p. 6 [attached hereto as Attachment I].) This is a very conservative approach as downtown San Diego considers LOS E as acceptable. Only 8 of the 62 intersections projected to operate at LOS D, E or F fit the criteria and were included in the TIS. This is consistent with the DCP TIS criteria. The 22 intersections recommended by the commenter for evaluation do not meet the criteria listed above as they are either not identified as LOS D, E, or F in the DCP or the project does not contribute 50 or more peak hour trips.

After consulting with the City and as permitted by the TIA Methodology, the TIS studies an additional 17 insertions, bringing the study area up to 25 intersections. These 17 intersections were added to the Project study area due to either their close proximity to the Project site or the City staff's determination that the Project could potentially cause an impact at these intersections.

Substantial evidence supports the findings and methodologies in the TIS and Consistency Evaluation. The methodologies used in these documents are owed deference. (*W. States Petroleum Ass'n*, 9 Cal.4th at 571.) Moreover, we note that Mr. Liddecoat does not conclude that the Project would have a significant impact on the additional 22 intersections that are suggested for additional study. Finally, it bears noting that the TIS is conservative in its assumption of trips that the Project will generate as it does not accept a discounted trip rate that could be supported for a mixed use development in close proximity to the transit. Due to the in-fill



mixed use nature of the Project, its close proximity to nearby transit services (minutes' walk from bus and trolley, including the Park & Market trolley station within 1,000 feet), employment centers, restaurants, Petco Park and other attractions, many will travel to the Project by walking, bus, bike and trolley. Indeed, Chen Ryan Associates MDX Memo concludes that if one uses a mixed use development trip generation, the Project would generate only approximately 4,081 average daily trips, but in order to provide a conservative analysis, the Consistency Evaluation did not rely upon mixed use trip generation rates and instead assumed the Project would generate 7,305 average daily trips.

When considering the adequacy of environmental documents, the lead agency is entitled to weigh the evidence relating to the accuracy and sufficiency of the information in the document and to decide whether to accept it. The agency may adopt the environmental conclusions reached by the experts that prepared the environmental document even though others may disagree with the underlying data, analysis, or conclusions. (*Laurel Heights*, 47 Cal.3d at 408; *State Water Res. Control Bd. Cases*, 136 Cal.App.4th at 795.) Discrepancies in results arising from different methods for assessing environmental issues do not undermine the validity of the document's analysis as long as a reasonable explanation supporting the EIR's analysis is provided. (*Planning & Conserv. League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 243.)

The existence of differing opinions arising from the same pool of information is not a basis for finding the document to be inadequate; when approving a document, an agency need not correctly resolve a dispute among experts about the accuracy of the environmental forecasts. (*Save Cuyama Valley*, 213 Cal.App.4th at 1069.¹³)

The lead agency is free to reject criticism from an expert or a regulatory agency on a given issue as long as its reasons for doing so are supported by substantial evidence. (*Laurel Heights*, 47 Cal.3d at 408.¹⁴)

Paragraph 113

Comment 113.1

In short, there appears to be little correlation between the study intersections addressed in the 2006 Community Plan FEIR and the Chen Ryan analysis for the 7th & Market project. Consequently, it is impossible to determine exactly how the study intersections for the Chen Ryan study were defined. Nonetheless, based on evaluation of the project trip distribution and traffic assignment presented in the Chen Ryan report, we have identified 22 additional candidate study intersections at which the 7th & Market project will add 50 or more peak-hour trips . . .

¹³ *Eureka Citizens for Responsible Gov't*, 147 Cal.App.4th 357; *Cal. Oak Found.*, 133 Cal.App.4th at 1243; *Cadiz Land Co.*, 83 Cal.App.4th at 102; *Greenebaum*, 153 Cal.App.3d at 413; *San Francisco Ecology Ctr.*, 48 Cal.App.3d at 594.

¹⁴ *N. Coast Rivers Alliance*, 216 Cal.App.4th at 642; *Cal. Native Plant Soc'y v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603; *Ass'n of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1397.).



Response 113.1

Refer to Response 112.1.

Paragraph 114

Comment 114.1

Although seemingly extensive, we believe that the study area addressed in the Chen Ryan traffic study is insufficient to adequately assess the potential impacts of the proposed project. We find it difficult to understand how three of the streets that are expected to carry such substantial proportions of the project traffic could be so under-represented in the list of study intersections. Consequently, we believe that the list of study intersections must be expanded and the results of the updated analyses must be circulated for public review." See Attachment 3.

Response 114.1

Refer to Response 112.1.

Paragraph 115

Comment 115.1

Expert Liddecoat notes many deficiencies in the traffic model inputs:

"The intersection level of service calculations documented in the Chen Ryan Associates traffic impact analysis that was incorporated into the Consistency Evaluation are deficient in that they were performed using an outdated methodology.

Response 115.1

Refer to Response 118.1.

Paragraph 116

Comment 116.1

As background, the Highway Capacity Manual (HCM) is a publication of the Transportation Research Board (TRB), one of the entities within the National Academy of Sciences. The current, year 2010 edition of the HCM (HCM 2010) follows previous editions completed in 1965, 1985, 1997, and 2000. It was released on April 11, 2011, over four years prior to initiation of the 7th & Market traffic study.



Response 116.1

Refer to Response 118.1.

Paragraph 117

Comment 117.1

Despite this, the intersection level of service calculations presented in the Chen Ryan traffic study reflect application of the superseded year 2000 version of the HCM. In fact, the calculation sheets presented in the traffic study appendix are generally dated February 19, 2016, which confirms that the calculations could have been performed using the 2010 version of the HCM.

Response 117.1

Refer to Response 118.1.

Paragraph 118

Comment 118.1

To ensure the validity of the traffic analysis, the intersection level of service calculations must be performed using the current, year 2010 version of the Highway Capacity Manual . . .

Response 118.1

The City used the HM 2000 methodology to maintain consistency with the traffic analysis set forth in the 2006 DCP and the 2016 Mobility Plan. Additionally, the HCM 2010 methodology for evaluating signalized intersections only supports National Electrical Manufacturers Association ("NEMA") signal phasing, which is incompatible with the majority of the signal timing plan in downtown San Diego. This is another example of how Local 30's litigation support specialists are unfamiliar with the environmental setting and basic development rules and systems for downtown San Diego, which evidences the lack of credibility in their arguments. In contrast, substantial evidence supports the findings and methodologies in the TIS and Consistency Evaluation. Local 30's traffic consultant did not perform an alternative analysis showing that use of the 2010 HCM would have resulted in a different conclusion either; instead, Local 30 simply speculates that to be the case. The methodologies used by the City in these documents are reasonable and owed deference. (*W. States Petroleum Ass'n*, 9 Cal.4th at 571.)

When considering the adequacy of environmental documents, the lead agency is entitled to weigh the evidence relating to the accuracy and sufficiency of the information in the document and to decide whether to accept it. The agency may adopt the environmental conclusions reached by the experts that prepared the environmental document even though others may



disagree with the underlying data, analysis, or conclusions. (*Laurel Heights*, 47 Cal.3d at 408; *State Water Res. Control Bd. Cases*, 136 Cal.App.4th at 795.)

The existence of differing opinions arising from the same pool of information is not a basis for finding the document to be inadequate; when approving a document, an agency need not correctly resolve a dispute among experts about the accuracy of the environmental forecasts. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1069.¹⁵);

Paragraph 119

Comment 119.1

Standard traffic engineering procedures generally require that the traffic volume data used in an analysis not be more than one-year-old at the time the study is initiated. In particular, page 19 of the 2006 Institute of Transportation Engineers (ITE) document, Transportation Impact Analyses for Site Development, specifically states that: ". . . traffic volume data should generally be no older than 1 year."

Response 119.1

Four intersections out of a total of 25 study intersections, were obtained from the Mobility Plan Technical Report and validated by comparing to more recent counts (2014) in the vicinity. It was determined that these counts represent realistic current traffic volumes by both Chen Ryan Associates and City staff. Therefore, while traffic volume data should "generally" be no older than 1 year, even if the 2006 ITE documents were controlling on San Diego, it is not a mandatory requirement and the City has a reasonable basis for using its traffic data. Again, the Project's actual trip rates under a mixed-use generation rate would be less than the trip generation rate the City used. The City used a conservative analysis with conservative assumptions.

Paragraph 120

Comment 120.1

However, the traffic study for the proposed project was performed according to the methodologies set forth in the SANTEC/ITE Guidelines for Traffic Impact Studies [TIS] in the San Diego Region (Final Draft, March 2, 2000). SANTEC is the San Diego Traffic Engineers' Council and ITE is the Institute of Transportation Engineers, which has a local chapter in San Diego known as the California Border Section. To ensure local consistency in the preparation of traffic impact studies, those two organizations coordinated on the creation of the guidelines referenced here. Those guidelines state that the traffic data should generally not be more than two years old (p. 6).

¹⁵ *Eureka Citizens for Responsible Gov't*, 147 Cal.App.4th 357; *Cal. Oak Found.*, 133 Cal.App.4th at 1243; *Cadiz Land Co.*, 83 Cal.App.4th at 102; *Greenebaum*, 153 Cal.App.3d at 413; *San Francisco Ecology Ctr.*, 48 Cal.App.3d at 594.



Response 120.1

Refer to Response 119.1. As noted above, the City is entitled to substantial deference in selecting a methodology for studying traffic impacts. We note Local 30 does not allege that the City's reliance on the *SANTEC/ITE Guidelines for Traffic Impact Studies [TIS] in the San Diego Region* impairs the adequacy of the analysis or its conclusions.

In comments 119 and 120, Local 30 cites to two different sources giving two different opinions about the age traffic data "generally" should be used, which further supports the response that experts can disagree about the methodology, but that does not mean the agency committed a CEQA violation.

These responses also address Mr. Liddicoat's Follow Up Letter, Section 3.

Paragraph 121

Comment 121.1

Review of the data collection summary sheets in Appendix A of the Chen Ryan report indicates that the bulk of the data conforms to the "two-year" standard (assuming project initiation occurred in late October/early November 2015, based on the fact that traffic counts at nine of the study intersections were conducted on November 18 or 19, 2015). However, data collection was conducted at the following four study intersections on March 1, 2011, four years or more prior to traffic study initiation:

- 10th Avenue/A Street,
- 11th Avenue/A Street,
- 16th Street/F Street, and
- 16th Street/G Street . . .

Response 121.1

Refer to Responses 119.1 and 122.1.

These responses also address Mr. Liddicoat's Follow Up Letter, Section 1 and Section 2.

Paragraph 122

Comment 122.1

[T]raffic count sheets were not included in the appendix for the following three locations, so it is impossible to determine the age of the data:

- Park Boulevard/G Street,



- 13th Street/G Street, and
- 8th Avenue/Market Street.

Response 122.1

Refer to Response 119.1.

Traffic counts for Park Boulevard/G Street and 13th/G Street were obtained from the Blue Sky Apartment Traffic Impact Study by Wilson & Company (Blue Sky Traffic Impact Study Final Report, May 2013 ["Blue Sky TIS"]). These counts were either conducted or verified by Wilson & Company and City staff. An excerpt of the Blue Sky TIS was provided in Appendix A. The traffic count for 8th Avenue/Market Street was counted on December 4, 2013 and provided in Appendix A. (*Id.* at p. 59-62.)

These responses also address Mr. Liddicoat's Follow Up Letter, Section 1.

Paragraph 123

Comment 123.1

Because the traffic volumes represent the most critical input parameter in the level of service calculation process, any inaccuracies in those values directly affect the validity of the level of service results. In short, to the extent that the "existing" peak-hour traffic volumes are inaccurate, the corresponding level of service results reported in the traffic analysis are invalid, and a misleading representation of the environmental setting and project-related impacts will be provided.

Response 123.1

Refer to Responses 119.1 and 122.1. The traffic volumes relied upon in the TIS were accurate. As discussed in Response 52.1 and 112.1, the City could have even supported reduced traffic volumes associated with the Project if it allowed utilization of a MDX trip generation rate, but the City elected not to do that so that it would provide a conservative traffic analysis that over-estimates Project impacts, not under-estimates the.

Paragraph 124

Comment 124.1

Consequently, updated traffic data must be obtained for the locations listed above and revised level of service calculations performed for all analysis scenarios. The modified traffic impact analysis should then be incorporated into a revised environmental document, which must be recirculated for further public review." See Attachment 3.



Response 124.1

Refer to Responses 119.1 through 123.1.

Paragraph 125

Comment 125.1

Expert traffic engineer also Liddicoat identifies that the Project's traffic analysis ignores freeway traffic:

"The Chen Ryan traffic analysis fails to provide even a cursory assessment of freeway system operations even though the project trip distribution shows the following (Chen Ryan, Figure 3-2, p. 12):

- *Interstate 5 to/from the north: 20 percent of inbound and outbound traffic*
 - *Daily: 1,461 trips*
 - *AM peak hour: 120 trips*
 - *PM peak hour: 161 trips*
- *State Route 163 to/from the north: 15 percent of inbound and outbound traffic*
 - *Daily: 1,096 trips*
 - *AM peak hour: 90 trips*
 - *PM peak hour: 121 trips*
- *Interstate 5 to/from the south: 15 percent of inbound and outbound traffic*
 - *Daily: 1,096 trips*
 - *AM peak hour: 90 trips*
 - *PM peak hour: 121 trips...*

Response 125.1

Refer to Response 126.1.

These responses also address Mr. Liddicoat's Follow Up Letter, Section 4.

Paragraph 126

Comment 126.1

The lack of any analysis of freeway system impacts is particularly noteworthy in light of the fact that the Final Environmental Impact Report for the Proposed San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project (Centre City Development Corporation, March 2006) specifically identified the "impact on freeways" (Impact TRF-A.2.1) as Significant and Unmitigable. (FEIR, p. 5.2-61)



Response 126.1

Neither the DCP FEIR/Mobility Plan SEIR mitigation measures nor the City's TIA Methodology, require analysis of freeway impacts for downtown San Diego projects. Even for projects outside the downtown environment, the City of San Diego Traffic Impact Study Manual (1998) does not require analysis of freeway impacts unless a project will contribute more than 150 trips to the freeway facility at issue. (See Traffic Impact Study Manual ["Attachment I"], p. 6.) Based on Table 3.1 of the TIA, the Project would generate 602 trips during the AM peak hour (447 inbound / 155 outbound) and 805 trips during the PM peak hour (317 inbound / 488 outbound). As shown in Figure 3-2 of the TIS, approximately 20% of the Project trips would travel to I-5, north of downtown San Diego, 15% would travel to I-5, south of downtown San Diego, 15% would travel to SR-163 north of downtown San Diego, and 15% would travel to SR-94 east of downtown San Diego. The table below displays the Project trips assignment to all freeway segments stated above.

Freeway segment	Direction	Inbound/ Outbound	Trips Distribution (Figure 3-2)	Trips Assignment	
				AM peak	PM peak
I-5, north of Downtown	NB	Out	20%	31	98
	SB	In	20%	89	63
I-5, south of Downtown	NB	Out	15%	23	73
	SB	In	15%	67	48
SR-163, north of Downtown	NB	Out	15%	23	73
	SB	In	15%	67	48
SR-94, east of Downtown	EB	Out	15%	23	73
	WB	In	15%	67	48

Source: Chen Ryan Associates, September 2016

The Project would not contribute more than 150-trips to the freeway under any scenario. On September 12, 2016, Mr. Liddicoat of MRO Engineer's Inc. submitted a supplemental letter report dated September 9, 2016 suggesting that the Project should be required to analyze "mainline freeway segments to which the project will add 50 or more peak-hour trips and all freeway ramps where the proposed project will add a "significant number of trips" pursuant to guidance set forth in the *SANTEC/ITE Guidelines for Traffic Impact Studies [TIS] in the San Diego Region* ("SANTEC/ITE Guidelines"). As discussed above, however, the City applies the methodologies described in the Traffic Impact Study Manual adopted to analyze freeway impacts (where appropriate) in the City, not the SANTEC/ITE Guidelines. The SANTEC/ITE Guidelines provide guidance that may be informative to jurisdictions in San Diego County that have not adopted methodologies for the analysis of traffic impacts, which is not the case in San Diego. The City, through the Traffic Impact Study Manual and the City's TIA Methodology has adopted methodologies that are specifically applicable to the unique traffic conditions relevant to San Diego and the City's decision to rely upon its own policies, rather than general suggested guidance by a trade group, is entitled to deference.



The DCP FEIR concluded that buildout of the DCP area would result in significant and unmitigable freeway system impacts, but imposed a mitigation measure for large projects like this Project to conduct a traffic study in accordance with the City's TIS Manual, not SANTECT/ITE or some other guidance manual. Here the City's TIS Manual does not direct a freeway impact analysis for downtown San Diego projects. Therefore, the City properly followed the DCP mitigation measure and concluded the Project is within the scope of the DCP FEIR. Even if this were not a downtown San Diego project, the City's TIS Study Manual would not have required a freeway impact analysis because the Project's peak hour freeway trips are less than 150 trips on a freeway segment. Therefore, substantial evidence supports the determination analysis of freeway impacts is not required.

Neither the DCP FEIR/Mobility Plan SEIR mitigation measures, the City's TIA Methodology nor the City's Traffic Impact Study Manual, require analysis of freeway impacts for downtown projects. Even for projects outside the downtown environment, the TIA Methodology does not require analysis of freeway impacts unless a project will contribute more than 150 trips to the freeway facility at issue. Chen Ryan Associates has determined that the Project would contribute only 97 peak hour trips to downtown freeways and therefore would not require analysis in a traffic study. (See MDX Memo.)

As the Project is within the scope of the DCP FEIR and the Mobility Plan SEIR, the DCP FEIR provides an adequate analysis of freeway impacts and concludes that buildout of the downtown community would have significant and unmitigable impacts on freeway system impacts. Particularly in light of the fact that the downtown community is less than 50% built out, the Project is consistent with the DCP, and the TIS overstates the Project's traffic impacts by not utilizing mixed-use trip generation rates, it is reasonable to conclude that the Project will not result in more severe impacts to downtown freeway facilities than the DCP FEIR assumed. Further, implementation of the Mobility Plan will lead to reduced reliance on the automobile in and around downtown by making it a more attractive and safer environment for walking, biking and using public transit. Continued development of mixed-use projects, such as the Project, will facilitate successful implementation of the Mobility Plan by increasing residential opportunities in downtown San Diego and diminishing the need to commute into and out of downtown San Diego as well. Finally, pursuant to Mitigation Measure TRA-F.1.1-2, the City has adopted the Downtown PFFP to provide a funding source for a number of improvements, including freeway improvements. (See Mobility Plan, p. 96; Downtown PFFP [Project T-1 funding freeway interchanges, freeway ramps, and ramp intersection improvements].) The Project will be required to pay PFFP fees in connection with development.

The Project is within the scope of the DCP FEIR, and therefore, it will not create additional new or more severe impacts to the freeway systems.

These responses also address Mr. Liddicoat's Follow Up Letter, Section 4.



Paragraph 127

Comment 127.1

Specifically, according to that document, buildout condition traffic volumes would result in significant impacts on nine freeway segments and fourteen freeway ramps, and no mitigation is feasible.

Response 127.1

Refer to Response 126.1.

These responses also address Mr. Liddicoat's Follow Up Letter, Section 4.

Paragraph 128

Comment 128.1

Despite the absence of even the most meager analysis of the proposed project's impacts on the San Diego freeway system, the Consistency Evaluation concludes, completely without substantiation:

"The Project would not have a direct impact on freeway segments and ramps."

Response 128.1

Refer to Response 126.1.

These responses also address Mr. Liddicoat's Follow Up Letter, Section 4.

Paragraph 129

Comment 129.1

The failure to analyze the impacts of the proposed project on the San Diego freeway system is a significant deficiency that must be remedied. An amended traffic impact analysis must be prepared that incorporates a valid freeway system analysis. That amended traffic analysis should then be made part of a project-specific environmental impact report that will need to be circulated for public review. See Attachment 3.

Response 129.1

Refer to Response 126.1. The Consistency Evaluation properly determined that the Project is within the scope of the DCP FEIR, Mobility Plan SEIR and CAP FEIR. Accordingly, no further analysis of freeway impacts is required.

These responses also address Mr. Liddicoat's Follow Up Letter, Section 4.



Paragraph 130

Comment 130.1

It is well-established that architectural and historic resource impacts can be significant impacts that must be studied under CEQA. Guidelines App. G. Numerous cases deem impacts on these resources as significant. Ocean View Estates v. Montecito Water Dist (2004) 116 Cal.App.4th 396, 401; Quail Botanic Gardens v. City of Encinitas (1994) 29 Cal.App.4th 1597, 1603-1605.

Response 130.1

Refer to Response 131.1.

Paragraph 131

Comment 131.1

Here, expert planner Terrell Watt expresses concerns in Attachment 2 about the deferral of analysis of impacts to the historic Clermont Hotel directly adjacent to the Project:

"The Consistency Evaluation states that no significant impacts will occur to the historic Clermont Hotel. Yet as noted in the Staff report for the hearing on 7-27-16, attachment from Carrier Johnson, the Project's design for the renovation of the hotel is still in development. In addition, in evaluating potentially significant impacts to historic resources, surroundings must be considered. None of the environmental documents cited in the Consistency Evaluation analyze how the massive towers proposed for 7th and Market will be compatible with and maintain the historical significance of the Clermont Hotel. Project approval should await final approval of the design and detail for the hotel and additional analysis should be prepared to demonstrate how the integrity of the hotel will be maintained. Moreover, there is no analysis of how impacts of the Project construction, including dust, noise, vibration, are to be mitigated. Mitigation, including temporary relocation of these residents should they desire, must be included in a new environmental analysis. The Consistency Evaluation states that no housing or residents will be displaced. Practically speaking, it may not be possible for these SRO residents to endure Project construction impacts. A new environmental analysis is required both to address the impacts of the Project on the hotel and on its resident population." See Attachment 2.

Response 131.1

The Clermont Hotel is a historic building on the Project site. As discussed in Section 8(a) *Historical Resources* of the Consistency Analysis, the Project would include the restoration of the exterior of this historic building and its use would continue as a hotel. The Project would also provide an African American exhibit space in the historical building, in support of DCP Goals 9.1-G-1, "Protect historic resources to communicate downtown's heritage," and 9.1-G-2, "Encourage the rehabilitation and reuse of designated historic properties."

According to CEQA guidelines, a significant adverse change to a historical resource occurs when the physical characteristics that convey its historical significance and that justify its designation as a historical resource are demolished or materially altered in an adverse manner. (CEQA Guidelines § 15064.5(b)(2); *Taxpayers for Accountable Sch. Bond Spending v. San Diego*



Unified Sch. Dist. (2013) 215 Cal.App.4th 1013, 1043; *Eureka Citizens for Responsible Govt.*, 147 Cal.App.4th 357.) The Project does not include alterations to the Clermont Hotel that would lessen its historical significance but instead restore it.

The Project's design for the renovation is not finalized as it has to be approved by the Historic Review Board, and comply with its regulations. As discussed in the Consistency Evaluation, mitigation measures in the DCP FEIR require compliance with Chapter 14, Article 3, Division 2 of the SDMC, which regulates historic resources (Mitigation Measure Hist-A.1-1). Mitigation Measure Hist-A.1-2 requires the Applicant to submit a Treatment Plan for retained historic resources for review and approval. The Project will additionally comply with the Secretary of the Interior Standards for the rehabilitation of historic structures. Compliance with these regulations is not deferred mitigation, and, instead, this condition is a widely accepted mitigation measure.

Compliance with applicable regulatory standards can provide a basis for determining that the project will not have a significant environmental impact and is not deferred mitigation. (*Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912.) A requirement that a project comply with specific law or regulations also serves as adequate mitigation of environmental impacts. "[A] condition requiring compliance with regulations is a common and reasonable mitigation measure and may be proper where it is reasonable to expect compliance." (*Oakland Heritage Alliance*, 195 Cal.App.4th at 906 [court upheld the city's reliance on standards in the building code and city building ordinances to mitigate seismic impacts]).¹⁶

The Project will comply with all applicable mitigation measures, as well as federal, state and local rules pertaining to historical resources. The Project will also comply with the Secretary of the Interior in Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings. The Project will not result in any historical impacts.

Temporary impacts due to construction were analyzed throughout the Consistency Evaluation and no significant impacts were found. As discussed in Section 12 *Noise* of the Consistency Analysis, construction noise impacts would be avoided by adherence to construction noise limitations imposed by the City's Noise Abatement and Control Ordinance. As discussed in Section 3 *Air Quality* of the Consistency Evaluation, the potential for impacts to sensitive receptors during construction activities would be mitigated to below a level of significance through compliance with the City's mandatory standard dust control measures and the dust

¹⁶ See also *Newhall Ranch*, 234 Cal.App.4th at 245 (compliance with federal regulations for hatchery genetic management plan is reasonable mitigation measure); *Citizens Opposing a Dangerous Env't*, 228 Cal.App.4th at 383 (compliance with Federal Aviation Administration procedures held to be appropriate mitigation for aviation safety impacts); *Leonoff*, 222 Cal.App.3d at 1355 (upholding mitigated negative declaration that included requirement that project comply with environmental laws on registering hazardous materials and monitoring underground tanks for leaks); *Sundstrom* 202 Cal.App.3d at 308 (upholding measures in mitigated negative declaration requiring compliance with air and water quality standards); *Perley*, 137 Cal.App.3d 424 (upholding mitigated negative declaration that included compliance with requirements of various environmental agencies among its mitigation measures).



control and construction equipment emission reduction measures required by EIR Mitigation Measure AQ-B.1-1 (see Attachment C).

Paragraph 132

Comment 132.1

The CEQA analysis must disclose and feasibly mitigate noise impacts. Los Angeles Unit. Sch. Dist. v. City of Los Angeles (1997), 58 Cal.App.4th 1019. Here, the Consistency Evaluation wholly omits review of noise impacts to the neighborhood during the multi-year construction of this huge Project. As expert Hagemann explains in Attachment 1:

"According the Consistency Evaluation, "Short-term construction noise impacts would be avoided by adherence to construction noise limitations imposed by the City's Noise Abatement and Control Ordinance" (p. 28). However, the Consistency Evaluation simply states this and fails to actually demonstrate what the noise impacts from construction would be, and whether the limitations imposed by the City's Noise Abatement and Control Ordinance will be enough to mitigate the impact to a less than significant level.

Response 132.1

As discussed in Section 12 Noise of the Consistency Evaluation, significant construction noise impacts would be avoided by adherence to construction noise limitations imposed by the City's Noise Abatement and Control Ordinance. This is within the scope of the DCP FEIR which found that temporary construction noise was not significance when limited to the hours of 7 AM to 7 PM (excluding Sundays and holidays), and average sound levels at the Property boundaries did not exceed 75 dBA during this twelve hour period. (SDMC § 59.5.040; DCP FEIR, p. 5.7-7 – 5.7-8.) Because it is an ordinance, the Project must comply with its requirements and restrictions, so performing a noise study does construction noise is not necessary. A lead agency is allowed to assume its laws will be followed when analyzing a project's impacts. The DCP FEIR concluded that the City's regulations for construction noise mitigate the potential impact to less than significant and therefore no mitigation is required beyond compliance with established regulations. Indeed, the SDMC states that it was enacted for the purposes of securing and promoting the public health, comfort, convenience, safety, welfare, prosperity, peace and quiet of the City and its inhabitants. (SDMC § 59.5.0101.) The inhabitants of the City include sensitive receptors.

Paragraph 133

Comment 133.1

Furthermore, neither the Consistency Evaluation, nor the Noise Study prepared for the proposed Project by Veneklasen Associates, dated October 29, 2015, discuss the impact that noise from construction will have on nearby sensitive receptors. As is common practice, construction noise impacts are analyzed and



quantified to determine if nearby sensitive receptors will be effected by the excess noise. Therefore, the Consistency Evaluation and Noise Study should have assessed this environmental impact. However, the Noise Study simply discusses the "impact of the exterior noise sources on the 7th and Market project" (p. 1), and the Consistency Evaluation provides one sentence saying that Project construction would not result in a significant noise impact, without supporting this claim with substantial evidence.

Response 133.1

Refer to Response 132.1.

The Project is within the scope of the DCP FEIR and will not have impacts on nearby sensitive receptors. The lead agency is tasked with determining what issues warrant detailed study, the level of analysis needed to evaluate them, and what information to include in explain the results. (CEQA Guidelines §§ 15083(a), 15143, 15151.) This is true regardless of whether a different agency would evaluate the issues differently. CEQA Guidelines § 15088(c) provides that a lead agency is not required to provide detailed information when there is a reasonable, fact-based explanation why there is no need to include it. The Consistency Evaluation is intended to streamline the review process for subsequent buildout of a program EIR. Superfluous discussion of non-issues is intended to be omitted. Here, an analysis of the sensitive uses is superfluous because the Project is not proximate to schools, libraries, hospitals, parks or nature preserves.

Paragraph 134

Comment 134.1

According to the January 2011 Significance Determination Thresholds for the City of San Diego, construction noise exceeding 75 dB (A) Leq at a sensitive receptor location is considered significant. Therefore, simply stating that construction noise impacts will be avoided is inadequate. Rather, the construction noise impact should be quantified at nearby sensitive receptors and compared to the threshold of significance established by the City of San Diego. The Consistency Evaluation fails to satisfy the good faith informational requirements of CEQA. A Project-Specific EIR should be prepared to thoroughly evaluate the noise impact the proposed Project will have on the surrounding sensitive communities and should compare the Project's construction noise to the established threshold." See Attachment 1.

Response 134.1

Refer to Responses 4.1, 18.1, 22.1, 26.1 through 28.1, 31.1, 96.1, 132.1, and 133.1.

The Project is within the scope of the DCP FEIR and, therefore, is not required to prepare a noise analysis in compliance with current thresholds of significance. The new threshold of significance does not constitute new information requiring a new environmental review under CEQA Guidelines section 15168. (*Citizens Against Airport Pollution*, 227 Cal.App.4th 788 [new methodology for analyzing environmental impact not "new information"].) Furthermore, the



City Noise Abatement Ordinance already addresses this issue because construction noise cannot exceed 75 dBA at the Property line. (SDMC § 59.5.040.)

Paragraph 135

Comment 135.1

The 2006 FEIR was adopted prior to AB 52, set forth in Pub. Res. Code §§ 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 5097.94. Under AB 52, a project that may cause a substantial adverse change in the significance of a tribal cultural resource is defined as a project that may have a significant effect on the environment under CEQA. See https://www.opr.ca.gov/s_ab52.php. Recognizing that tribes may have expertise with regard to their tribal history and practices, AB 52 requires CSD to provide notice to tribes that are traditionally and culturally affiliated with the geographic area of Project if they have requested notice of projects proposed within that area. If the tribe requests consultation within 30 days upon receipt of the notice, Anaheim must consult with the tribe. Consultation may include discussing the significance of tribal cultural resources, the significance of the Project's impacts on the tribal cultural resources, and alternatives and mitigation measures recommended by the tribe. The parties must consult in good faith, and consultation is deemed concluded when either the parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource (if such a significant effect exists) or when a party concludes that mutual agreement cannot be reached. Mitigation measures agreed upon during consultation must be recommended for inclusion in the environmental document. None of that is referenced in the environmental analysis here.

Response 135.1

Assembly Bill ("AB 52") was adopted after the 2006 EIR was adopted and therefore, does not legally apply to the Project. Assembly Bill 52 applies to projects for which the EIR notice of preparation is filed on or after July 1, 2015. (Stats 2014, ch. 532 § 11(c).) The notice of preparation of the DCP FEIR was issued well prior to July 1, 2015 and a consistency evaluation is, statutorily, not bound by AB 52.

Furthermore, it is noteworthy that the Local 30 believes "Anaheim" must consult with a tribe. The Project is not located in the City of Anaheim. When litigation support specialist cut and paste comments from one paid project opposition assignment to the next, it is not uncommon for them to forget which city they are working against. Again, this goes to the credibility of Local 30, who lacks familiarity with the basic downtown San Diego development regulations but may be more familiar with the City of Anaheim's rules.

Paragraph 136

Comment 136.1

The 2006 FEIR and the Consistency Evaluation admit, at a minimum, that the Project will have significant, unmitigated air quality, historical resource, water quality, land use, noise, and traffic



impacts. As a result; a statement of overriding considerations will be required. Under CEQA, when an agency approves a project with significant environmental impacts that will not be fully mitigated, it must adopt a "statement of overriding considerations" finding that, because of the project's overriding benefits, it is approving the project despite its environmental harm. Guidelines §15043; Pub. Res. Code §21081(B); Sierra Club v. Contra Costa County (1992) 10 Cal.App.4th 1212, 1222. A statement of overriding considerations expresses the "larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes and the like." Concerned Citizens of South Central LA v. Los Angeles Unif. Sch. Dist. (1994) 24 Cal.App.4th 826, 847.

Response 136.1

Refer to Responses 4.1, 17.1, 19.1, 22.1, 26.1 through 31.1, 34.1, 36.1, Responses to Paragraphs 58 through 134, and 139.1.

Pursuant to CEQA Guidelines section 15168(c)(4)-(5) and (e), and as demonstrated by the substantial evidence contained in the Consistency Evaluation and the entire administrative record, it has been determined that the Project is an activity covered by and within the scope of the program approved by the DCP FEIR and the CAP FEIR, the EIRs adequately describe the Project for purposes of CEQA. No further environmental documentation is required. As there is no new EIR being certified, there is no requirement to make a new finding of Statement of Overriding Considerations.

Paragraph 137

Comment 137.1

A statement of overriding considerations must be supported by substantial evidence in the record. Guidelines §15093(b); Sierra Club v. Contra Costa Co. (1992) 10 Cal.App.4th 1212, 1223). As with all findings, the agency must present an explanation to supply the logical steps between the ultimate finding and the facts in the record. Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 515.

Response 137.1

Refer to Responses 136.1 and 139.1.

Paragraph 138

Comment 138.1

To the extent that overriding considerations are needed, key among the findings that the lead agency CSD must make is that:

"Specific economic, legal, social, technological, or other considerations, including the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or



alternatives identified in the environmental impact report...[and that those] benefits of the project outweigh the significant effects on the environment." Pub. Res. Code § 21081(a)(3), (b) (emphasis added)

Response 138.1

Refer to Responses 136.1 and 139.1.

Paragraph 139

Comment 139.1

Here, neither the Consistency Evaluation or the 2006 FEIR Overriding Considerations makes an attempt to determine whether new jobs created by the Project, in either the construction phase or the operational phase, will be for "highly trained workers," and what the likely salary and wage ranges of these jobs will be. Without this information, CSD lacks substantial evidence to make any statement of overriding considerations. This issue of job quality is critically important to Local 30.

Response 139.1

Local 30's goal to achieve more socioeconomic benefits for its members is well documented even though it is not the purpose of an environmental disclosure statute like CEQA. Here, because the Project is within the scope of the DCP FEIR, the Mobility Plan SEIR and the CAP FEIR, no new EIR needs to be certified and no corresponding statement of overriding considerations is required. Even if that were not the case, the salary and wage ranges of jobs created by a Project provide only one possible basis for a statement of overriding considerations. Here, there is substantial evidence in the record relating to job creation. The Staff Report specifically states the Project will create 700 construction jobs and 800 permanent jobs. As the Project will offer a variety of uses, the employment positions will be varied and diverse in terms of responsibility and salary. There is no requirement that a statement of overriding considerations disclose the exact types of jobs created by the project and the range of salaries. Moreover, the time for challenging the DCP FEIR's statement of overriding considerations has long since expired.

Additionally, the degree of job quality created by the Project does not have any effect on the environment and, therefore, is not a concern under CEQA. Under Public Resources Code sections 21100 and 21151, which require an EIR for projects that "may have a significant effect on the environment," the phrase "significant effect on the environment" is limited to substantial, or potentially substantial, adverse changes in physical conditions within the area as defined in Public Resources Code section 21060.5. In Section 21060.5, "environment" is defined as "the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (CEQA Guidelines § 15360.)

As a result of this statutory mandate, effects that are subject to review under CEQA must be related to a change to the physical environment. (CEQA Guidelines § 15358(b).) Only changes



to the physical environment will trigger the need for an EIR; social or economic impacts alone will not do so because they are not changes in physical conditions. This principle is reflected in CEQA Guidelines sections 15064(e) and 15382, which provide that economic and social changes may not be treated as significant effects on the environment. It is also reflected in Public Resources Code sections 21080(e) and CEQA Guidelines section 15064(f)(6), which provide that evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment is not substantial evidence of a significant effect on the environment. (Pub. Res. Code § 21082.2(c); *City of Hayward*, 242 Cal.App.4th 833, 843 [increase in demand for fire protection and emergency medical services is socioeconomic impact, not environmental impact].¹⁷)

The many social and economic benefits of the Project set forth in the CBA would also provide substantial evidence in support of a statement of overriding considerations, if the Project required a statement of overriding considerations.

Paragraph 140

Comment 140.1

Commentors request, at a very minimum, for the Project to include binding commitments on the Developer and/or the City as follows:

- 1) Inclusion of union representatives in the Stakeholder group to be provided the community benefits report quarterly report upon beginning of construction and expanded role for the Community Benefits Stakeholder Group to recommend and hold the City accountable to the implementation of any and all additional measures necessary for the Project to achieve the community benefits outcomes;*
- 2) Public transit passes for all workers;*
- 3) Adjusting/Improving public transit operation times to accommodate the real- world schedules of workers likely to be employed at the Project, with specific emphasis on common hotel work schedules; and*

¹⁷ See also *Porterville Citizens for Responsible Hillside Dev.*, 157 Cal.App.4th at 903 (claimed impact of new homes on existing home values is economic impact); *Lighthouse Field Beach Rescue*, 131 Cal.App.4th 1170 (impact of dogs using a beach on the enjoyment of visitors to the beach is a social impact); *Goleta Union Sch. Dist.*, 37 Cal.App.4th at 1031 (school overcrowding without link to a physical environmental change is not a significant effect on the environment); *Baird*, 32 Cal.App.4th at 1469 n2 (claim that expansion of residential addiction treatment facility will increase crime is not subject to CEQA review); *Citizen Action to Serve All Students*, 222 Cal.App.3d at 757 (social effect of school closure on disadvantaged students was not significant effect on environment under CEQA); *Gabric*, 73 Cal.App.3d at 200 (city's refusal to approve negative declaration was abuse of discretion because evidence that construction of residence would affect character of neighborhood is not evidence of environmental impact that would require EIR); *Hecton*, 58 Cal.App.3d at 656 (CEQA not designed to protect against decline in commercial value of property adjacent to public project); *City of Orange*, 37 Cal.App.3d at 249 (social characteristics of visitors to proposed state unemployment insurance office not a factor to consider in determining whether EIR is necessary).



- 4) *If the Project is approved prior to the additional environmental analysis and planning, an increase to the community benefits fee to be determined prior to Project approval actions. The fee to be used both for planning and to address additional Project-related and cumulative impacts not foreseen and/or underestimated in the areas of transit, affordable housing, displacement, homelessness and open space, among others to be determined by the Community Benefits Stakeholder Group; and*
- 5) *A study of living wages and employment opportunities for highly trained workers during the operational phase of the Project.*

Response 140.1

Refer to Responses 2.1 and 139.1.

The Project complies with CEQA, federal, state and local regulations. No further Project conditions are required beyond those already identified in the draft permit conditions.

Paragraph 141

Comment 141.1

*The CEQA, land use and other concerns addressed in this letter must be adequately addressed in order to make the required City of San Diego Zoning Code findings. The entitlements are discretionary, are not by right. Absent compliance with the issues addresses herein, Applicant's requested discretionary entitlements should be rejected by CSD decision-makers, and the required discretionary findings not be made. See, eg, City Municipal Code § 126.0205 (Neighborhood Use Permit requires findings that "proposed development will not adversely affect the applicable land use plan," and "will not be detrimental to the public health, safety and welfare") and § 156.0304(f) (Planned Development Permit requires findings that "proposed development will not adversely affect the applicable land use plan," and "will not be detrimental to the public health, safety and welfare"). This review must not be perfunctory or mechanically superficial. *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 923. The inquiry is whether the administrative decision is "supported by the findings, or the findings are not supported by substantial evidence." *Topanga Assn. v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515; *Stolman*, 114 Cal.App.4th at 923 (variance reversed for lack of substantial evidence).*

Response 141.1

Refer to Responses 4.1, 19.1 22.1, 26.1 through 28.1, and 31.1.

There is substantial evidence in the record to make the findings necessary for a NUP, CCDP, CCPDP and all other necessary permits and approvals even though some Project opponents disagree. The Project meets the requirements set forth in the City's Request for Proposals and has followed the City's rules and regulations for development and supported its deviations. The Applicant cannot force its tenants to hire union labor, but has agreed to use union labor to construct the project. Denial of the Project permits and DDA would result in a lost opportunity to provide \$20,000,000.00 in affordable housing funds to the City's Low and Moderate Income Housing Asset Fund.



Paragraph 142

Comment 142.1

Commentors believe that the Project may fall within the scope of AB 562, which was intended to improve transparency for taxpayers concerned about the use of public funds for economic development activities. AB 562 defines "subsidy" broadly to include "land price subsidies," which is assumed to include offering land to private developers for fair reuse value, as is being proposed for the Project. The law places certain requirements on the City of San Diego (and by extension on CSD) with respect to such subsidies. Commentors request that CSD provide some explanation as to the applicability of AB 562 to the Project. Taxpayers deserve to know the benefit to them of awarding economic development incentives to businesses, and the City of San Diego deserves to know how well these incentives translate into benefits for the community.

Response 142.1

AB 562 does not apply to the Project. Even if AB 562 applied, the record contains evidence of compliance, including the disclosure of the required information.

AB 562 defines "economic development subsidy" (referred to as the "subsidy" herein) as any expenditure of public funds or loss of revenue to a local agency in the amount of one-hundred thousand dollars (\$100,000.00) or more, for the purpose of stimulating economic development within the jurisdiction of the local agency, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zone or empowerment zone incentives, fee waivers, land price subsidies, funds and tax abatements, exemptions and credits. "Economic development subsidy" does not include subsidies for the purpose of providing affordable housing.

AB 562 requires each local agency to provide specified information to the public before approving a subsidy within its jurisdiction. Specifically, the local agency is required to make all of the following information in written form available to the public and through its website, if applicable:

1. Name and address of all corporations that are beneficiaries of the subsidy (if applicable);
2. Start and end dates and schedule for subsidy (if applicable);
3. Description of the subsidy;
4. Statement of public purpose for the subsidy;
5. Projected tax revenue to the local agency as a result of the subsidy;
6. Estimated number of jobs created by the subsidy.

Prior to granting the subsidy, the local agency shall provide notice and hold a hearing regarding the subsidy. However, this notice and hearing are not required if a hearing is otherwise required by law.

The DDA for the Project does not qualify as an "economic development subsidy" agreement within the meaning of AB 562 because: (i) the "write-down" from \$28,050,000.00 as the estimated best use fair market value to \$20,000,000.00 as the estimated fair reuse value offered



in the DDA is for the purpose of subsidizing on-site affordable housing and publicly accessible components of the Project; and (ii) the revenue generated from the sale of the property goes to the City's Low and Moderate Income Housing Asset Fund. This information was confirmed in the Summary Report Pertaining to the Proposed Conveyance of Certain Real property Interest Within the Redevelopment Project Area dated July 2016 and prepared by Keyser Marston Associates ("Section 33433 Summary Report"). Accordingly, the "write-down" in land value is not for the purpose of "stimulating economic development" under AB 562. Instead, it is a public subsidy for the provision of affordable housing, which is expressly exempted from the definition of subsidy under AB 562.

However, even assuming *arguendo* that AB 562 applies, the information required by AB 562 is provided herein and can also be found in the Section 33433 Summary Report, July 8, 2016 CivicSD Staff Report, and the Conservative Fiscal Impact Analysis dated July 22, 2016 and prepared by The London Group, attached as Attachment G, Attachment H and Attachment I to Rincon and Sheppard Mullin's joint letter dated July 26, 2016 re *Third Party Review and Response to Comments Received July 12, 2016 regarding the 7th and Market Project*.

1. Name and address of all corporations that are beneficiaries of the subsidy (if applicable):

Cisterra 7th & Market, LLC (consisting of Sierra Summit Partners, LLC; Kaweah Partners, LLC; and Cisterra Capital, Inc.)
3580 Carmel Mountain Road, Suite #460
San Diego, California 92130

2. Start and end dates and schedule for subsidy (if applicable):

The reduced land value is provided through sale of the property in the DDA, which will be effective upon its execution.

3. Description of the subsidy:

Assuming this qualifies as a non-exempt AB 562 subsidy, which it does not, the "write-down" is the difference in land value from \$28,050,000.00 (estimated best use fair market value) to \$20,000,000.00 (estimated fair reuse value offered in the DDA.)

4. Statement of public purpose for the subsidy:

The Project will include the following public benefits:

- Temporary and permanent job creation;
- Up to 20% subcontracting participation by Minority Business Enterprises; Woman and Disadvantaged-Owned and Small Business Enterprises;
- Approximately 85% of construction workforce targeted towards local workers;
- Offer approximately 5 training classes, comprised of 12 3-hour sessions during the construction period covering topics such as bonding, insurance, safety, estimating, marketing, etc., leading to industry certification for Minority Business Enterprises; Woman and Disadvantaged-Owned and Small Business Enterprises;



- 34 affordable apartment units restricted for a 55-year period;
- Various uses to promote a walkable, pedestrian-friendly environment to energize the East Village neighborhood;
- Rehabilitation of the historic Clermont Hotel;
- 600 SF space for the Black Historical Society to design, develop and construct an interpretive black history center within the historic Clermont Hotel;
- 225-space privately-owned public parking facility;
- 6,000 SF privately-owned public open space accessible to the public;
- Public restrooms; and
- Commission and installation of artwork within the privately-owned public space at the estimated cost of \$1,000,000.00.

5. Projected tax revenue to the local agency as a result of the subsidy:

The total gross, *annual* fiscal revenue to be generated by the Project is \$1,461,582.00. The Project is also estimated to pay approximately \$8,700,000.00 in various fees to the City.

6. Estimated number of jobs created by the subsidy:

The Project is estimated to generate 800 construction jobs and 700 direct, full-time, permanent jobs.

Paragraph 143

Comment 143.1

Commentors respectfully reserve the right to supplement these comments at hearings and proceedings for this Project. Chevron, 184 Cal.App.4th at 86 (EIR invalidated based on comments submitted after Final EIR completed).

Response 143.1

This comment is noted and further validates Response 17.1 regarding the additional opportunities provided to the public.

Paragraph 144

Comment 144.1

Finally, this Office is requesting, on behalf of Commentors, all notices of CEQA actions and any approvals, Project CEQA determinations, or public hearings to be held on the Project under any provision of Title 7 of the California Government Code, as well as the City Municipal Code § 112.0302(b)(5). This request is filed pursuant to Pub. Res. Code §§ 21092.2 and 21167(f), and Government Code § 65092, that require local agencies to mail such notices to any person who has filed a written request for them. Please send notice by electronic and regular mail to:

Gideon Kracov, Esq., 801 S. Grand Avenue, 11th Fl., Los Angeles, CA 90017, gk@gideonlaw.net.



Response 144.1

This comment is noted. Rincon recommends that the Lead Agency send all future notices regarding environmental review for the Project, when required under CEQA, via USPS to: Gideon Kracov, Esq., 801 S. Grand Avenue, 11th Floor, Los Angeles, California, 90017. In addition, notification should be sent via email to: gk@gideonlaw.net.

Paragraph 145

Comment 145.1

Thank you for consideration of these comments. We ask that this letter and all the Attachments be placed in the Administrative Record for the Project.

Response 145.1

This comment is noted. Rincon requests this response letter and all the Attachments be placed in the administrative Record for the Project.

CIVICS D REGULATORY AUTHORITY

By email dated September 23, 2016, Gideon Kracov submitted additional comments via email to the City Clerk and CivicSD arguing that the City has unlawfully delegated land use decision-making authority to CivicSD in violation of the California Government Code, the San Diego Municipal Code and the City Charter, for the reasons set forth in the Third Amended Petition in *Baxamusa v. CivicSD*. However, as described in the Memorandum of Law dated April 23, 2015 by the Office of the City Attorney regarding “Delegation of Governmental Functions to Civic San Diego” (“City Attorney Memo”), attached hereto as Attachment L, the City has properly and legally delegated to CivicSD the authority to issue non-legislative development permits and approvals. Moreover, the City has appropriate oversight and controls over CivicSD’s exercise of regulatory authority, including as set forth in the Centre City Planned Development Ordinance (SDMC §§ 156.0301 *et seq.*), which sets forth the procedural rules and substantive parameters governing CivicSD’s permitting authority, including as it relates to Process 1 through 5 decisions. The Administration of Certain Planned Districts, the Downtown Community Parking District and Economic Development Services Agreement between the City and CivicSD, approved by the San Diego City Council via Resolution R-307537, June 28, 2012) (“Downtown Services Agreement”), attached hereto as Attachment K, establish further City oversight and controls over CivicSD’s exercise of permitting authority. A copy of the Downtown Services Agreement is attached herewith for ease of reference. The City’s delegation of land use permitting authority to CivicSD with regard to non-legislative approvals occurs in accordance with applicable law and does not create any improper conflict of interest.

PLANNING COMMISSION APPEAL ISSUES. In addition to the issues raised below, Local 30’s Appeal of the CivicSD’s approval of the development permit to the Planning Commission raise the following issues:



1) The “Grounds for Appeal” attachment to the Appeal states “the Applicant’s requested for a larger one-way main entrance than otherwise permitted which, according to city traffic expert, posed a safety concern that two vehicles may enter or exit side by side.” (Appeal, Grounds for Appeal attachment at p. 6.) In response to that concern, the applicant demonstrated to the City that the dual entry/exist design is featured in many parking structures in downtown San Diego and that no safety concerns have arisen. The City was satisfied with the safety concerns previously raised which resulted in City staff recommending the City Council, Civic SD Board and Planning Commission approve the project and deny the appeal. Accordingly, there is substantial evidence to support the permit findings. Local 30’s effort to select only a portion of the record, without explaining the rest of the process that led to the final staff recommendation, is disingenuous and fails to meet their burden of proof to show that no reasonable person could have found that the project meet the permit findings.

2) The “Grounds for Appeal” attachment to the Appeal states the public had inadequate time to review the DDA and CBA, that they are still subject to change because they have not yet been approved by the City, and that considering them separately constitutes a violation of CEQA. Please refer to Response 55.1 for an explanation as to why separate consideration of the CBA and DDA does not violate CEQA. CivicSD approved the CBA on July 13, 2016 after providing public notice and review periods as required by applicable law. That agreement is final and not subject to further change. It is only conditioned on the final passage of the DDA by the City Council. Likewise, the DDA has been available for public review since at least July 8, 2016, when it was attached to the CivicSD Staff Report for the July 13, 2016 hearing on the CBA. The DDA was also attached to the Staff Report for the City Council hearing scheduled for September 13, 2016, which has been continued to October 18, 2016. Thus, the public has had months to review and comment on the DDA. The form of the DDA is being presented to the City Council for approval and not expected to change, but the City Council does have the ability to consider comments and require modifications as warranted. The DDA is within the jurisdiction for City Council to review and approve in the City Council’s good discretion. It is not a matter on appeal before the Planning Commission.

Conclusion

The Project is consistent with the Downtown Community Plan and San Diego Climate Action Plan. Further, the DCP FEIR and CAP FEIR adequately anticipated and described the impacts of the proposed project, identified applicable mitigation measures necessary to reduce project specific impacts, and the project implements these mitigation measures. Therefore, as detailed in the Downtown 15168 Consistency Evaluation for 7th and Market, and in accordance with Public Resources Code Sections 21166 and 21083.3 and Sections 15168, 15180 and 15162 of the CEQA Guidelines, the Project would not have effects that were not examined in the EIRs prepared for the DCP, CCPDO, the six subsequent addenda to the EIR, and the CAP FEIR.

We appreciate your consideration of these comments. Please contact us with any questions regarding this Response to Comments.



Sincerely,

Rincon Consultants, Inc.

Erik Feldman, MS, LEED AP
Senior Program Manager

Richard Daulton, MURP
Principal and Vice President

Sally Schiffman
Associate Environmental Planner

cc: Jason Wood, Cisterra Development
Brad Richter, Civic San Diego
Eli Sanchez, Civic San Diego
Aaron Hollister, Civic San Diego
Jeffrey W. Forrest, Esq.
Elizabeth Maland, City Clerk

Attachments

- Attachment A Rincon Consultants, Inc., Chen Ryan Associates, Advantage Environmental Consultants, LLC - Professional Resumes
- Attachment B Original Comment Letter from the Law Office of Gideon Kracov on behalf of Unite Here Local 30 and Sergio Gonzalez

Dated July 25, 2016

Attachment B-2 Comments on the 7th & Market Development Project from SWAPWE



Dated September 12, 2016

Attachment B-3 Comments on the 7th & Market Development Project from MRP Engineers

Dated September 9, 2016

Attachment B-4 Community Budget Alliance Letter

Attachment B-5 Public Participation Manual Compliance Comment Letter from Unite Here Local 30

Dated September 23, 2016

Attachment C Downtown 15168 Consistency Evaluation for 7th & Market

Dated August 26, 2016

Attachment D CivicSD Staff Report

Dated July 22, 2016

Attachment E DCP Baseline Table (2016)

Attachment F Downtown Community Public Facilities Financing Plan
Fiscal Year 2015

Attachment G Downtown San Diego TIA Methodology for Evaluation of New Projects

Dated June 2007

Attachment H Chen Ryan Associates MDX Letter Report

Dated September 9, 2016

Attachment I City's Traffic Impact Study Manual

Dated July 1998

Attachment J Letter dated July 15, 2011 from County of San Diego to Redevelopment Agency of the City of San Diego re Voluntary Assistance Program File #H38358-001 and Letter dated March 10, 2014 from County of San Diego to Successor Agency to Redevelopment Agency of the City of San Diego re Underground Storage Tank (UST) Case#H38275-00

Attachment K Agreement for Consulting Services By and Between the City of San Diego and Civic San Diego for Administration of Certain Planned Districts, The Downtown Community Parking District and Economic Development Service



Attachment L Memorandum of Law dated April 23, 2015 by the Office of the City Attorney regarding “Delegation of Governmental Functions to Civic San Diego” (“City Attorney Memo”).

ATTACHMENT 7

**PLANNING COMMISSION
RESOLUTION NO. PC-XXXX
CENTRE CITY DEVELOPMENT PERMIT
CENTRE CITY PLANNED DEVELOPMENT PERMIT
NEIGHBORHOOD USE PERMIT
NO. 2015-73**

WHEREAS, City of San Diego, Owner, and Cisterra 7th & Market, LLC, Permittee, filed an application for Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit (CCDP/CCPDP/NUP) No. 2015-73 on December 24, 2015 with Civic San Diego (“CivicSD”) for the construction of a mixed-use development containing a 39-story and 19-story tower (approximately 475 feet and 227 feet tall, respectively) comprised in total of approximately 218 dwelling units (DU) including indoor and outdoor amenity space, approximately 156,000 SF of office space, a proposed 153-room hotel, an estimated 40,000 SF retail space for a grocer and 887 automobile parking spaces including a minimum of 200 public parking spaces, commonly referred to as 7th & Market (“Project”);

WHEREAS, a 60,000 square-foot (SF) full-block premises bounded by Market Street and Island, Seventh and Eighth avenues in the East Village neighborhood of the Downtown Community Plan (DCP) area and within the Centre City Planned District (CCPD);

WHEREAS, the site is legally described as Lots A, B, C, D, E, F, G, H, I, J, K & L in Block 98 of Horton’s Addition in the City of San Diego, County of San Diego, State of California, according to partition map thereof, made by L.L. Lockling, filed in the Office of the County Recorder of San Diego County;

WHEREAS, on September 28, 2016, the CivicSD Board of Directors (CivicSD Board) held a duly noticed public hearing to consider the appeal, including a staff report and recommendation, and public testimony, pursuant to the Centre City Planned District Ordinance (CCPDO) and the San Diego Municipal Code (SDMC) of the City of San Diego; and,

WHEREAS, on September 28, 2016, the CivicSD Board adopted Resolution No. 2016-22 granting CCDP/CCPDP/NUP 2015-73 for the Project;

WHEREAS, on October 11, 2016, Sergio Gonzalez filed an appeal application regarding the approval of CCDP/CCPDP/NUP 2015-73 by the CivicSD Board on September 28, 2016;

WHEREAS, on October 27, 2016, the City of San Diego Planning Commission held a duly noticed public hearing to consider the appeal, including a staff report and recommendation, and public testimony, pursuant to the Centre City Planned District Ordinance (CCPDO) and the San Diego Municipal Code (SDMC) of the City of San Diego; and,

WHEREAS, Development within the Downtown Community Plan (DCP) area (“Downtown”) is covered under the following documents, all referred to as the “Downtown FEIR”: Final Environmental Impact Report (FEIR) for the San Diego DCP, Centre City Planned District Ordinance (CCPDO), and 10th Amendment to the Centre City Redevelopment Plan, certified by the former Redevelopment Agency (“Former Agency”) and the City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively); subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193),

April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115); and, the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561). The Downtown FEIR was adopted prior to the requirement for documents prepared under the California Environmental Quality Act (CEQA) to consider a project's impacts related to greenhouse gas emissions. The effect of greenhouse gas emissions on climate change, and the subsequent adoption of guidelines for analyzing and evaluating the significance of data, is not considered "new information" under State CEQA Guidelines Section 15162 triggering further environmental review because such information was available and known before approval of the Downtown FEIR. Nonetheless, development within Downtown is also assessed for consistency under the following documents, all referred to as the "CAP FEIR": FEIR for the City of San Diego Climate Action Plan (CAP), certified by the City Council on December 15, 2015 (City Council Resolution R-310176), and the Addendum to the CAP, certified by the City Council on July 12, 2016 (City Council Resolution R-310596). The Downtown FEIR and CAP FEIR are both "Program EIRs" prepared in compliance with CEQA Guidelines Section 15168. Consistent with best practices suggested by Section 15168, a Downtown 15168 Consistency Evaluation has been completed for the project. The Evaluation concluded that the environmental impacts of the project were adequately addressed in the Downtown FEIR and CAP FEIR, the project is within the scope of the development program described in the Downtown FEIR and CAP FEIR, and therefore adequately described within both documents for the purposes of CEQA, and that none of the conditions listed in Section 15162 exist; therefore, no further environmental documentation is required under CEQA.

BE IT RESOLVED, by the Planning Commission of the City of San Diego as follows:

The Planning Commission adopts the following written findings dated October 27, 2016.

CENTRE CITY DEVELOPMENT PERMIT FINDINGS

- 1. The proposed development is consistent with the DCP, CCPDO, San Diego Municipal Code (SDMC), and all other adopted plans and policies of the City of San Diego pertaining to the CCPD.*

The proposed development is consistent with the DCP, CCPDO, SDMC, and all other adopted plans and policies of the City of San Diego pertaining to the CCPD as the development advances the goals and objectives of the DCP and CCPD by:

- Providing for an overall balance of uses;
- Adding to the range of Downtown housing opportunities;
- Contributing to the vision of Downtown as a major residential neighborhood;
- Increasing the Downtown residential population;
- Providing the production of affordable housing;
- Reinforcing the evolving high-intensity Market Street corridor; and,
- Continuing East Village's evolution as a thriving high-intensity residential and mixed use neighborhood.

In addition, with approval of CCDP/CCPDP/NUP No. 2015-73, this Project will be consistent with the requirements of the SDMC and CCPDO.

CENTRE CITY PLANNED DEVELOPMENT PERMIT FINDINGS

1. *The proposed development will not adversely affect the applicable land use plan;*

The proposed Project is generally consistent with the objectives of the DCP, CCPDO, and the DDGs in that the Project provides a well-designed mixed-use development that is consistent with the orderly growth and scale of the neighborhood. The requested deviation for tower separation will add a unique, signature tower feature to the San Diego skyline via the connecting portion of the Project between the two towers and will move building massing towards the center of the Project site. The streetwall deviation allows for a practical garage ventilation solution, and furthermore, the deviation is not anticipated to affect the streetwall experience on Eighth Avenue. Permitting valet tandem parking for the hotel use will allow for more efficient car parking within the Project and maximizes the amount of public parking that can be provided by the Project. These requested deviations will provide relief from the strict application of the development standards and will have a negligible impact on the surrounding neighborhood.

2. *The proposed development will not be detrimental to the public health, safety, and welfare;*

The granting of the deviations and approval of the Project will not negatively impact the public health, safety, and general welfare. Overall, the proposed development is consistent with the plans for this neighborhood and will contribute to its vitality by providing an attractive streetscape and a contextual development.

3. *The proposed development will comply with the regulations of this Division, except for any proposed deviations which are appropriate for this location and will result in a more desirable project than would be achieved if designed in conformance with the strict regulations of this Division; and,*

The proposed development will meet all of the requirements of the SDMC and CCPDO with the approval of the deviations, which are allowable under a CCDP. The requested deviations will result in a more desirable project than would be achieved if designed in conformance with the strict regulations of the CCPDO. The tower separation deviation will allow for a signature tower feature. The streetwall deviation will allow for the appropriate location of garage ventilation, while not affecting the streetwall experience on Eighth Avenue. The hotel valet tandem parking deviation will allow for further parking efficiency within the Project. With approval of the CCPDP for these foregoing deviations, the Project will comply to the maximum extent feasible with all applicable regulations.

4. *The proposed deviations are consistent with the Downtown Design Guidelines (DDG) and exhibits superior architectural design.*

Approval of the requested deviations will result in a mixed-used development consistent with the surrounding area and the DDGs. The mixed-use Project exhibits appropriate massing in

scale with the long-term development plans for the East Village neighborhood, and furthermore, will add a unique form on the Downtown skyline. Overall, the Project will result in a distinctive development compatible with the surrounding neighborhood that exhibits superior architectural design.

NUP – Comprehensive Sign Plan

1. *That the proposed sign, as a whole, is in conformance with the intent of the sign regulations and any exceptions result in an improved relationship among the signs and building facades on the premises;*

The proposed signs, as whole, are in conformance with the intent of the sign regulations, suitable for the location, and do not interfere with the existing design of the building. The requested sign areas and placements are proportional to the heights and widths of the towers on which they will be placed and are consistent with other high-rise signage in the surrounding neighborhood. The proposed signage is designed in a fashion that maintains a balanced relationship with the architecture of the building so as to not detract from the Project design.

2. *That the proposed use will not adversely affect the applicable land use plan;*

The proposed Comprehensive Sign Plan is located within the ER Land Use District of the DCP area. High-rise building identification signage within this land use district is permitted through a Comprehensive Sign Plan with approval of an NUP and typical of high-rise office and hotel buildings in order to identify major tenants. Therefore, the proposed Comprehensive Sign Plan does not adversely affect the applicable land use plan as the proposed use with approval of an NUP is consistent with the regulations of the CCPDO.

3. *That the proposed use will not be detrimental to the public health, safety and welfare; and,*

The proposed Comprehensive Sign Plan will not be detrimental to the public health, safety, and welfare of the community when installed in compliance with the recommended conditions of approval, which include size limitations and additional standard conditions to ensure that the use is compatible with the surrounding neighborhood.

4. *That the proposed use will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.*

The proposed use will comply to the maximum extent feasible with the regulations of the CCPDO and City of San Diego Land Development Code with approval of an NUP, including obtaining all additional applicable permits as required by the City of San Diego Development Services Department.

BE IT FURTHER RESOLVED that, based on the findings, hereinbefore adopted by the Planning Commission, CCDP/CCPDP/NUP No. 2015-73 is hereby **GRANTED** by the Planning Commission to the referenced Owner and Permittee, in the form, exhibits, terms and conditions set forth in the CCDP/CCPDP/NUP No. 2015-73, a copy of which is attached hereto and made part hereof.

Aaron Hollister	Date
Senior Planner	
Civic San Diego	

Adopted on: October 27, 2016