



REPORT NO. PC-16-093

DATE ISSUED: October 27, 2016

ATTENTION: Planning Commission, Agenda of November 3, 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. 2015-60 for the 7th & Island Hotel Project – Process Three

OWNER/ 7th and Island, LLC
APPLICANT: J Street Development, Inc.

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) 2015-60 for the 7th & Island Hotel Project (“Project”)?

Staff Recommendation: Deny the appeal and approve CCDP/CCPDP/NUP Permit No. 2015-60 for the Project.

CivicSD Board Action: On September 28, 2016, the CivicSD Board voted 7-0 to grant CCDP/CCPDP/NUP No. 2015-60 for the Project.

Community Planning Group: On June 15, 2016, the Downtown Community Planning Council (DCPC) voted 20-0 to recommend approval of CCDP/PDP/NUP No. 2015-60.

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). 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 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; that the project is within the scope of the development program described in the Downtown FEIR and CAP FEIR and is 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.

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. 2015-60 that proposes the construction of a 20-story (approximately 240 foot tall) hotel tower comprised of 324 hotel guest rooms, 137 valet parking spaces, and 2,750 square feet (SF) of public urban open space. A detailed description of the Project program can be found in Attachment #4; the CivicSD Board Staff Report dated September 23, 2016.

DISCUSSION

On September 28, 2016, the CivicSD Board considered the Project at a public hearing. Public testimony was presented in favor and in opposition to the Project during the public hearing. The East Village Association and the San Diego Downtown Resident's group spoke in favor of the Project during the public hearing, while Sergio Gonzalez representing Unite Here Local 30

raised a number of concerns in his comments to the CivicSD Board including issues regarding living wages for hotel workers and the adequacy of the environmental review that was completed for the Project. The CivicSD Board voted 7-0 to adopt Resolution 2016-21 approving CCDP/CCPDP/NUP No. 2015-60. 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 September 12, 2016 Downtown FEIR Consistency Evaluation prepared for the Project used for the Approvals. The Consistency Evaluation and the associated previously completed environmental documents fail to comply with CEQA. Furthermore, 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.

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 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 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; that the project is within the scope of the development program described in the Downtown FEIR and CAP FEIR and is 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 Downtown FEIR 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 Project's GHG impacts are not specifically analyzed and all feasible mitigation measures are not imposed.

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.

Appeal Issue #3:

The Project's air quality impacts are not specifically analyzed and all feasible mitigation measures are not imposed.

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 Project's hazardous substances impacts are not specifically analyzed and all feasible mitigation measures are not imposed.

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 Project's traffic impacts are not specifically analyzed and all feasible mitigation measures are not imposed.*

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 project has been determined to generate 2,268 trips based on the 324-room hotel which is classified as a "Resort Hotel". Under the City's Land Development Manual Trip Generation Manual (TGM), traffic generation rates in the Downtown area are generally lower than elsewhere in the City based on a higher share of mass transit in mode split, high density of land use, high proportion of "walk trips," parking availability and parking costs.

A Resort Hotel is defined in the TGM as a larger hotel with many amenities and recreational opportunities within the hotel site or walking distance and applies a rate of 7 ADTs/room. While the Project does not contain a lot of amenities on site, it is centrally located in Downtown with many shopping, eating, and recreational opportunities within walking distance or a short transit ride. Therefore, the Resort Hotel classification is appropriate for the project and has been used on a similar project in the past, including the recently completed Hilton Hotel project at Pacific Highway and Hawthorn Street.

Appeal Issue #6

The Project's land use impacts are not specifically analyzed and all feasible mitigation measures are not imposed.

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 23, 2016 and in CivicSD Board Resolution No. 2016-21 (see Attachment No's. 4 and 2, respectively).

Appeal Issue #7:

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 #8:

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 23, 2016, and in the CivicSD Board Resolution No. 2016-21 (see Attachments #4 and #2, respectively).

CONCLUSION

Staff recommends that the Planning Commission denies the appeal and upholds the CivicSD Board's approval of CCDP/CCPDP/NUP No. 2015-60 for the Project.

Respectfully submitted:

Concurred by:



Steven Bossi
Associate Planner



Reese A. Jarrett
President



Brad Richter
Assistant Vice President, Planning

Attachments: 1 – Ownership Disclosure Statements
2 – CivicSD Board Resolution 2016-21 with CCDP/CCPDP/NUP No. 2015-60
3 – Appeal Application
4 – CivicSD Board Staff Report dated September 21, 2016
5 – Public Comment
6 – Downtown FEIR Consistency Evaluation
7 – Draft Resolution with Findings
Basic Concept/Schematic Drawings dated May 26, 2016

January 2015



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 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 & Island Hotel

Project Address: 502-522, 536/538 7th Avenue, San Diego, CA 92101

Assessor Parcel Number(s): 535-111-08, -09

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 & Island Hotel

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):

7th and Island, LLC

☐ Corporation ☒ LLC ☐ Partnership

Assessor Parcel Number(s):

535-111-08, -09

Street Address:

515 5th Avenue, Suite 200

City/State/Zip Code:

San Diego, CA 92101

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

Sajan Hansji

Title:

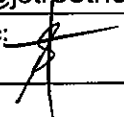
Manager

Phone Number:

619-376-1850

E-mail:

sajan@jstreethospitality.com

Signature: 

Date:

3/7/16

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:

Project Title: 7th & Island Hotel

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):

Delawie

☐ Corporation ☐ LLC ☐ Partnership

☐ Applicant ☒ Architect ☐ Other _____

Street Address: _____

1515 Morena Blvd.

City/State/Zip Code: _____

San Diego, CA 92110

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

Frank Ternasky

Title: _____

Principal in Charge

Phone Number: _____

619-299-6690

E-mail: _____

fternasky@delawie.com

Signature: _____

Date: _____

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: _____

City/State/Zip Code: _____

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

Title: _____

Phone Number: _____

E-mail: _____

Signature: _____

Date: _____



7th & Island Hotel Civic Submittal
Ownership Disclosure Statement: Delawie Owners

In response to comment 7) 1.2. of the Completeness Review for 7th & Island Hotel, please find below the owners of the architecture firm, Delawie:

Frank Ternasky

Michael Asaro

Paul Schroeder

Andrew Rodrigues

**CIVIC SAN DIEGO
RESOLUTION NO. 2016-21
CENTRE CITY DEVELOPMENT PERMIT
CENTRE CITY PLANNED DEVELOPMENT PERMIT
NEIGHBORHOOD USE PERMIT
NO. 2015-60**

WHEREAS, J Street Development, Inc. ("Permittee") filed an application for Centre City Development Permit/Planned Development Permit/Neighborhood Use Permit (CCDP/PDP/NUP) No. 2015-60 on October 16, 2015 to allow for the construction of a hotel with 324 hotel guest rooms and 137 valet parking spaces ("Project"); and,

WHEREAS, the Project site is a 27,500 square-foot (SF) site located on the northwest corner of Seventh and Island avenues in the East Village neighborhood of the Downtown Community Plan (DCP) area; and,

WHEREAS, on September 28, 2016 the Civic San Diego ("CivicSD") Board of Directors ("Board") held a duly noticed public hearing and considered CCDP/PDP/NUP 2015-60, including a staff report, permit and recommendation, and public testimony; and,

WHEREAS, 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 FEIR for the City of San Diego Climate Action Plan (CAP FEIR), certified by the City Council on December 15, 2015 (City Council Resolution R-310176), and the Addendum to the CAP FEIR, 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.

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, LDC, and all other adopted plans and policies of the City of San Diego pertaining to the Centre City Planned District.*

The proposed development is consistent with the DCP, CCPDO, Land Development Code (LDC), 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 CCPDO by:

- Supporting the vision for the area which encourages the development of a multi-use district with a regional entertainment and cultural focus;
- Maintaining the prominence of Petco Park while reinforcing the evolving high-intensity Market Street corridor;
- Transitioning between the shopping and entertainment district of the Gaslamp/Horton neighborhood and the residential developments of the East Village; and,
- Permitting 100% commercial projects, including hotels.

The Project provides a well-designed, corner block development that contributes a tower that is consistent with the overall architectural character of the skyline. The lower levels also provide features consistent with the historic warehouse uses in the district.

CENTRE CITY PLANNED DEVELOPMENT PERMIT FINDINGS

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

The proposed Project is consistent with the objectives of the DCP, CCPDO, and the DDG in that the Project provides appropriate mass and scale to the existing block and provides an appropriate use for the location. The hotel use is appropriate for the location near the Horton/Gaslamp neighborhood and East Village's residential uses and Petco Park. The valet-only and tandem parking deviation will provide an efficient use of a limited site area and has been granted in other Downtown hotel projects. The shorter loading dock will allow for the proper servicing of the hotel's needs, while ensuring that the loading dock door remains closed to avoid pedestrian views into the service area while maximizing the efficiency of the ground floor of the hotel.

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. The valet parking spaces exceed the required number of parking spaces providing the necessary capacity to accommodate parking needs. The loading dock design will allow for efficient hotel services while not interfering with safe pedestrian access on the public sidewalk.

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 this 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 CCPDP. The valet-only parking deviation is appropriate for the hotel use and is an efficient use of the space on a smaller lot. The loading dock deviation for depth will accommodate the service needs of the hotel operations while maximizing the efficiency of the hotel's ground floor.

4. *The proposed development is consistent with the DDG and exhibits superior architectural design.*

The proposed Project is consistent with the DDG and will provide for a contemporary architectural design with unique design elements consistent with the architecture and massing of the surrounding neighborhood. The use of upgraded materials on the entire building base and throughout the tower provides interest and enhances the skyline of the neighborhood.

NEIGHBORHOOD USE PERMIT FINDINGS

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

The Project will not adversely affect the land use plan and will enhance the East Village neighborhood by providing a rooftop dining area and a sidewalk café that will add to the pedestrian activity, vitality and commercial offerings in the area. There will be no live entertainment with potential for loud noise generating uses on the rooftop or on the ground floor.

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

The Project will not create any sidewalk hazards from the sidewalk café nor will it create lighting or noise issues from the rooftop dining area. These rooftop dining and sidewalk café uses will add to the amenities offered in the community without being a detriment to the surrounding area and the public health, safety, and welfare.

3. *The proposed use or development will comply to the maximum extent feasible with the regulations of the LDC; and,*

The Project will comply to the maximum extent feasible with the LDC with approval of the NUP for a sidewalk café and public outdoor use on the rooftop. The dining area on the rooftop will provide for a unique dining and gathering space that will comply with the development standards.

4. *The proposed use is appropriate at the proposed location.*

The Project is appropriate at the proposed location as it proposes a sidewalk café and a rooftop dining area in an area promoting pedestrian activity and a wide array of cultural uses and destinations. These uses augment the offerings of the hotel and will activate the area by providing gathering spaces and commercial attractions to all users in the area.

NOW, BE IT FURTHER RESOLVED that, based on the findings, hereinbefore adopted by, the Board, CCDP/PDP/NUP No. 2015-60 is hereby **GRANTED** to the referenced Permittee, in the form, exhibits, terms and conditions set forth in Permit No. 2015-60, a copy of which is attached hereto and made part hereof.

AYES: 7

NOES: 0

ABSTENTIONS: 0

CERTIFICATION

I, Carlos Vasquez, Secretary of Civic San Diego, do hereby certify that the above is a true and correct copy of a resolution adopted by the Board of Directors of Civic San Diego 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

WHEN RECORDED MAIL TO:

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

THIS SPACE FOR RECORDER'S USE ONLY

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

**CENTRE CITY DEVELOPMENT PERMIT / CENTRE CITY PLANNED
DEVELOPMENT PERMIT / NEIGHBORHOOD USE PERMIT
NO. 2015-60**

**7TH & ISLAND HOTEL
ASSESSOR PARCEL NUMBER
535-111-08 & -09**

**7th & Island Hotel
CCDP/CCPDP/NUP No. 2015-60**

This Centre City Development Permit/Planned Development Permit/Neighborhood Use Permit (CCDP/PDP/NUP) No. 2015-60 is granted by the Civic San Diego Board of Directors to J Street Development, Inc., Permittee, to allow the construction of a 20-story (approximately 240-foot tall) hotel tower located on a 27,500 square-foot (SF) site located on the northwest corner of Seventh and Island avenues in the East Village neighborhood of the Downtown Community Plan (DCP) area; and more particularly described in Exhibit A.

Subject to the terms and conditions set forth in this Permit, permission is granted to the Owner and/or Permittee to construct and operate uses as described and identified by size, dimension, quantity, type and location as follows and on the approved Basic Concept/Schematic Drawings dated May 26, 2016, and associated Color and Materials Boards, on file at Civic San Diego (CivicSD).

1. General

The Owner and/or Permittee shall construct, or cause to be constructed on the site, a hotel that consists of 324 hotel guest rooms and 137 valet parking spaces. The development shall not exceed a height of 240 feet above grade level, measured to the top of the uppermost level, with roof equipment enclosures, elevator penthouses, mechanical screening and architectural elements above this height permitted per the Centre City Planned District Ordinance (CCPDO).

2. Floor Area Ratio

- a. An increase in the maximum allowable Base 6.0 FAR to 7.9 FAR is hereby granted under the following provisions of the CCPDO:

§156.0309(e)(8) Green Building FAR– The Project is entitled to 1.0 FAR (15,000) square feet) 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 Silver Certified 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 Silver Certification level for construction of the 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 Gold)

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. *§156.0309(e)(7)* FAR Payment Bonus – The Project is entitled to 0.955 FAR (26,250 square feet) under the FAR Payment Bonus Program. The Owner and/or Permittee will be required to pay \$457,012 (based on the FY 16 fee structure at \$17.41 per square foot) prior to the issuance of a building permit for the Project, which will be deposited into a fund to be used for the construction of public parks and enhanced public right-of-way improvements in the DCP area.
- c. *§156.0309(e)(2)* Urban Open Space – The Project is entitled to 0.5 FAR (13,750 square feet) under the provisions of the CCPDO for the provision of 27,500 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 Schematic 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 6:00 a.m. and 10:00 p.m. every day. The open space 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.

3. Centre City Planned Development Permit

The Civic San Diego Board of Directors hereby grants a Planned Development Permit (PDP) pursuant to Sections 156.0313(b) and 156.0313 (b) (f) of the CCPDO for deviations to the following development regulation:

- a. SDMC §142.0555(b)(2) and CCPDO §156.0313 Parking Provisions: Allowing valet-only parking and tandem parking associated with a hotel.
- b. CCPDO §156.0313(b)(2)(B)(ii) Off-Street Loading Dock: One off-street loading bay that is 30 feet deep, 14 feet wide (with a 12-foot door opening), and 14 feet tall.

4. Neighborhood Use Permit

The Civic San Diego Board of Directors hereby grants a Neighborhood Use Permit for an outdoor use area pursuant to CCPDO Section 156.0308 for outdoor use areas on the ground floor and rooftop subject to the following terms and conditions:

- a. The rooftop outdoor use area shall not exceed 2,500 square feet. Any change or expansion of use shall be reviewed by CivicSD to determine the appropriate process for approval.
- b. The occupancy of the rooftop outdoor use area shall be limited to no later than 10:00 p.m. Sunday through Thursday and 11:00 p.m. Friday through Saturday.
- c. No live entertainment or dancing is allowed on the premises at any times unless permitted by right per the land use regulations or through the approval of the required use permit.
- d. Sound shall be monitored during and after business hours to ensure that audible noise remains at acceptable levels. Noise levels shall be in conformance with the Noise Abatement Standards of the San Diego Municipal Code and the City of San Diego Noise Ordinance. In the event that a noise complaint is filed, CivicSD shall evaluate the complaints and, if it is determined that the business is potentially creating a nuisance to the neighborhood, a duly noticed public hearing shall be scheduled. After receiving public testimony, the Hearing Officer may modify or revoke the permit.
- e. The outdoor use areas shall meet all applicable disabled accessibility codes.
- f. The Permittee shall respond to complaints pertaining to the Permit by members of the community within 24 hours of receiving the complaint. A current point of contact shall be maintained with CivicSD for the premise to ensure full compliance with this condition.

5. Parking

The development includes approximately 137 valet only parking spaces. All of the minimum parking spaces shall be designed to meet City standards. A minimum of 5 motorcycle parking spaces and 5 bicycle parking spaces shall be provided. Any subterranean parking facilities encroaching into the public right-of-way (PROW) shall be located a minimum of six feet back from the face of curb to a depth of eight feet below sidewalk grade, measured to the outside of any shoring. An Encroachment Maintenance Agreement (EMA) shall be obtained from the City to allow any encroachment of a subterranean garage into the PROW.

PLANNING AND DESIGN REQUIREMENTS

6. 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. 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 324 guest room hotel. The building shall be a 20-story Type IA building measured at a height of 240 feet. 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 1 (one) inch of finish sidewalk grade, as illustrated in the approved Basic Concept/Schematic Drawings. 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 down-spouts 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.

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.

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/Trash Areas - Areas housing trash, storage, or other utility services shall be located in the garage or otherwise completely concealed from view of the PROW 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 Municipal Code 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. The development shall implement a recycling program to provide for the separation of recyclable materials from the non-recyclable trash materials. The ground floor garage and commercial units shall be designed to provide direct access from the commercial lease spaces through the garage to the trash room to avoid any use of the public sidewalk for the transport of trash.
- f. Mail and Delivery Locations - It is the Owner 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 PROW, either within the building or recessed into a building wall. A single, centralized interior mail area in a common lobby area is encouraged for all residential units within a development, including associated townhouses with individual street entrances. Individual commercial spaces shall utilize 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, along Seventh Avenue.
- 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. Such plan shall be submitted in conjunction with 100% Construction Drawings.

All subterranean parking shall meet the requirements of the Building Department, Fire Department and City 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 PROW.

- 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 shall be submitted with 100% Construction Drawings.
- j. Roof Tops - A rooftop equipment and appurtenance location and screening plan shall be prepared and submitted with 100% Construction Drawings. Any roof-top mechanical equipment must be grouped, enclosed, and screened from surrounding views (including views from above).
- k. Signage - All signs shall comply with the City of San Diego Sign Regulations and the CCPDO.
- l. Lighting - A lighting plan which highlights the architectural qualities of the proposed development and also enhances the lighting of the PROW shall be submitted with 100% Construction Drawings. All lighting shall be designed to avoid illumination of adjoining properties.
- m. Noise Control - All mechanical equipment, including but not limited to, air conditioning, heating and exhaust systems, shall comply with the City of San Diego Noise Ordinance and California Noise Insulation Standards as set forth in Title 24 of the California Code of Regulations. All mechanical equipment shall be located to mitigate noise and exhaust impacts on adjoining development, particularly residential. Owner and/or Permittee shall provide evidence of compliance at 100% Construction Drawings.
- n. Energy Considerations - The design of the improvements shall include, where feasible, energy conservation construction techniques and design, including cogeneration facilities, and active and passive solar energy design. The Owner and/or Permittee shall demonstrate consideration of such energy features during the review of the 100% Construction Drawings.
- o. Street Address - Building address numbers shall be provided that are visible and legible from the PROW.

7. 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 with the 100% Construction Drawings. Any on-site landscaping shall establish a high quality of design and be sensitive to landscape materials and design planned for the adjoining public rights-of-way.

8. Storm Water Compliance

- a. Prior to the issuance of any building permit, the Owner and/or Permittee shall assure by permit and bond the closure of all no-utilized driveways with City standard curb, gutter, and sidewalk, satisfactory to the City Engineer.
- b. Prior to the issuance of any building permit, the Owner and/or Permittee shall assure by permit and bond the construction of a City standard driveway on 7th Avenue, satisfactory to the City Engineer.
- c. Prior to issuance of any construction permit, the Owner and/or Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.
- d. Prior to issuance of any construction permit, the Owner and/or Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications.
- e. Prior to issuance of any construction permit, the Owner and/or Permittee shall submit a Technical Report that will be subject to final review and approval by the City Engineer, based on the Storm Water standards in effect at the time of permit issuance.
- f. The drainage system shall be private and will be subject to approval by the City Engineer.
- g. Prior to the issuance of any building permit, the Owner and/or Permittee shall obtain an Encroachment Maintenance and Removal Agreement with the City for the private curb outlet/sidewalk underdrain and tree grates located within the City's right-of-way, satisfactory to the City Engineer.

9. Geology

- a. Prior to the issuance of any construction permits (either grading or building permits, the Owner and/or Permittee shall submit a geotechnical investigation report that includes a fault investigation prepared in accordance with Appendix D of the City's 2011 Guidelines for Geotechnical Reports. The geotechnical investigation report must specifically address the proposed construction plans. The geotechnical investigation report shall be reviewed for adequacy by the Geology Section of Development Services.
- b. Prior to City inspection of the building foundation, an interim as-graded geotechnical report shall be submitted that presents detailed geologic logs and maps of the entire basement excavation verifying that active or potentially active faults do not cross the site. The interim as-graded geotechnical report shall be reviewed for adequacy by the Geology Section of Development Services.

10. Single Room Occupancy Hotel Relocation and Removal

- a. Prior to the issuance of construction permits, the Housing Commission must verify that the developer has satisfied all obligations set forth in both: (i) that certain Relocation Assistance Agreement Affecting Real Property [Single Room Occupancy Relocation Benefits] dated as of November 5, 2015, between the Housing Commission and 7th and Island, LLC; and (ii) that certain Agreement Affecting Real Property [Memorandum of Payment of In Lieu Fee] dated as of November 5, 2015, between the Housing Commission and 7th and Island, LLC.

PUBLIC IMPROVEMENTS, LANDSCAPING AND UTILITY REQUIREMENTS

11. Off-Site Improvements

The following public improvements shall be installed in accordance with the Centre City Streetscape Manual. The Manual 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:

Off-Site Improvements	Seventh Avenue	Island Avenue
Paving	Ballpark Paving	Island Avenue Paving
Street Trees	Evergreen Ash	Chinese Evergreen Elm
Street Lights	Standard Street Light	Standard Street Light

All trees shall be planted at a minimum 36-inch box size with tree grates provided as specified in the Centre City Streetscape Manual, 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 property.

The Owner and/or Permittee will be responsible for evaluating, with consultation with the CivicSD, whether any existing trees within the right-of-way shall be maintained and preserved. No trees shall be removed prior to obtaining a Tree Removal Permit from the Development Services Department per City Council Policy 200-05.

- a. 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.
- b. Sidewalk Paving - Any specialized paving materials shall be approved through the execution of an Encroachment Removal and Maintenance Agreement with the City.
- c. Litter Containers – The development shall provide a minimum of two litter receptacles on each street frontage.
- d. 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.

- e. Planters - Planters shall be permitted to encroach into the right-of-way a maximum of two (2) feet for sidewalk areas measuring at least 12-feet and less than 14 feet-in-width. For sidewalk areas 14 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/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 right-of-way.
- f. On-Street Parking - The Owner and/or Permittee shall maximize the on-street parking wherever feasible.
- g. 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 public right-of-way. 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 Encroachment Maintenance and Removal Agreement.

If it is determined 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 (kill) any unused water and sewer services and install new services and meters. Service kills 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 of San Diego 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 submit for a tentative map or tentative map waiver, the Water Department will require 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 10 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 of San Diego 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 Land Development Code.

- h. 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 franchised utilities located above grade serving the property and in the sidewalk right-of-way shall be removed and incorporated into the adjoining development where feasible.
 - i. Fire Hydrants - If required, the Owner and/or Permittee shall install fire hydrants at locations satisfactory to the City of San Diego Fire Department and Development Services Department.
 - j. 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 public right-of-way 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 public right-of-way. All items of improvement shall be performed in accordance with the technical specifications, standards, and practices of the City of San Diego'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 of the State Building Code.
12. 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 public rights-of-way 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

13. Cool/green roofs must be utilized in the development including:

- 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.

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

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

- a. 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.

15. 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.

16. 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.
17. The project must provide one shower stall plus three two-tier personal effects lockers. Compliance with this measure must be demonstrated prior to the issuance of the building permit.
18. The development must provide a minimum of nine 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.
19. The development must provide a transportation demand management program 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

STANDARD REQUIREMENTS

20. Environmental Impact Mitigation Monitoring and Reporting Program (MMRP)

As required by the San Diego Municipal Code Section 156.0304 (f), the development shall comply with all applicable MMRP measures from the 2006 Final Environmental Impact Report (FEIR) for the DCP as applicable:

- a. Air Quality – Mitigation Measure AQ-B.1
- b. Historical Resources – Mitigation Measures HIST-A.1-2 and HIST-B.1
- c. Paleontological Resources – Mitigation Measure PAL-A.1
- d. Noise – Mitigation Measures NOI-B.1 and NOI-C.1-1

21. Development Impact Fees

The development will be subject to Centre City Development Impact Fees. For developments containing commercial space(s) 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; and 2) applicable floor plans showing those areas outlined for verification. 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.

22. 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 of San Diego's Inclusionary Housing Ordinance. The Owner and/or Permittee shall provide documentation of such compliance to CivicSD prior to issuance of any Building Permits.

23. 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.

24. 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 (4) feet by six (6) 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 square feet 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.

25. Tentative Map

The Owner and/or Permittee shall be responsible for obtaining all map approvals required by the City of San Diego for the residential units and/or commercial spaces condominium units for individual sale.

26. 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 Section 126.0108 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time (EOT) has been granted pursuant to Section 126.011 of the SDMC.
27. Issuance of this Permit by CivicSD does not authorize the Owner and/or Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies.
28. 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.
29. 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 of San Diego.
30. 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.
31. The Owner and/or Permittee shall defend, indemnify, and hold harmless the CivicSD and the 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 CivicSD will promptly notify Owner and/or Permittee of any claim, action, or proceeding and, if CivicSD should fail to cooperate fully in the defense, the Owner and/or Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. CivicSD 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 and/or 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 CivicSD and Owner and/or Permittee regarding litigation issues, the CivicSD 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 and/or Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner and/or Permittee.

This CCDP/PDP/NUP 2015-60 is granted by the Civic San Diego Board of Directors on September 28, 2016.

CIVIC SAN DIEGO:

OWNER/PERMITTEE:

Steven Bossi Date
Associate Planner

J Street Development, Inc. Date

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

Attachment: Exhibit A – Legal Description
 Civic San Diego Board Resolution

EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: APN 535-111-08

LOTS G AND H IN BLOCK 97 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L. L. LOCKLING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

TOGETHER WITH THAT PORTION OF THE WEST HALF OF 7TH AVENUE (FORMERLY 7TH STREET) ADJOINING SAID LAND ON THE EAST, WHICH WHEN VACATED, WOULD REVERT TO SAID LAND BY OPERATION OF LAW.

ALSO TOGETHER WITH THAT PORTION OF THAT NORTH HALF OF ISLAND AVENUE (FORMERLY I STREET) ADJOINING SAID LAND ON THE SOUTH, WHICH, WHEN VACATED, WOULD REVERT TO SAID LAND BY OPERATION OF LAW.

PARCEL 2: APN 535-111-09

LOT 1, IN BLOCK 97 OF HORTON'S ADDITION, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L. L. LOCKLING ON FILE IN THE OFFICE OF THE RECORDER OF SAN DIEGO COUNTY.

TOGETHER WITH THAT PORTION OF THE WEST HALF OF 7TH AVENUE (FORMERLY 7TH STREET) ADJOINING SAID LAND ON THE EAST, WHICH, WHEN VACATED, WOULD REVERT TO SAID LAND BY OPERATION OF LAW.



Attachment 3

Attachment 3 contains a hard copy of the Appeal Application, the Grounds for Appeal, the correspondence dated September 2016, and the Third Amended Petition in *Baxamusa v. CivicSD* 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 Steve Bossi of Civic San Diego at bossi@civicsd.com or via phone at 619-533-7172.



APPEAL APPLICATION

1. Type of Appeal:

- ☐ Process Two Decision – Appeal to the Civic SD Board
☐ Process Three Decision – Appeal to the Civic SD Board
☒ Process Three Decision – Appeal to the City of San Diego Planning Commission
☐ 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.

J Street Development, Inc.

4. Project Information

CCDP/CCPDP/NUP No. 2015-60	September 28, 2016	S. Bossi
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)

- ☒ Factual Error
☒ Conflict With Other Matters
☒ Findings Not Supported
☐ 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 Appellant's lawyer Gideon Kracov comment letter dated September 23, 2016; expert comments from traffic engineer Neal Liddicoat, P.E. dated September 22, 2016; SWAPE' environmental scientists dated September 22, 2016; urban planner Terrell Watt's, AICP dated July 25, 2016 with attachments; and the Third Amended Petition in Baxamusa v. CivicSD (Case No. 37-2015-00012092) – 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 CivicSD in connection with the Approval including all previously submitted documentation.

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: 10/10/16

Note: Faxed appeals are not accepted.

401 B Street, Suite 400, San Diego, CA 92101 (619) 235 - 2200

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



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 & Island Hotel - J Street Development, Inc.

4. Project Information

Permit/Environmental Determination & Permit/Document No.: CCDP/CCPDP/NUP No. 2015-60	Date of Decision/Determination: 09/28/16	City Project Manager: S. Bossi @ CivicSD
---	---	---

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 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 Appellant's lawyer Gideon Kracov comment letter dated September 23, 2016; expert comments from traffic engineer Neal Liddicoat, P.E. dated September 22, 2016; SWAPE' environmental scientists dated September 22, 2016; urban planner Terrell Watt's, AICP dated July 25, 2016 with attachments; and the Third Amended Petition in Baxamusa v. CivicSD (Case No. 37-2015-00012092) – 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 CivicSD 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: 10/10/16

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

Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services.
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 Island Project – Centre City Development Permit / Centre City Planned Development Permit/Neighborhood Use Permit (CCDP/CCPDP/NUP) No. 2015-60 ("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 Island 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.

The entire administrative record of the Approvals made by the CivicSD Board are incorporated by this reference. Specifically incorporated to this Appeal Attachment includes Gideon Kracov (Appellant's lawyer) comment letter dated September 23, 2016; expert comments of traffic engineer Neal Liddicoat, P.E. dated September 22, 2016; SWAPE environmental scientists dated September 22, 2016; urban planner Terrell Watt dated July 25, 2016 with attachments; and the Third Amended Petition in *Baxamusa v. CivicSD* (Case No. 37-2015-00012092) – all incorporated by this reference in their entirety and previously provided to the CivicSD Board in connection with the Approval.

GROUND'S FOR APPEAL

1. Factual Error

The September 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 impacts, fail to comply with CEQA, Pub. Res. Code § 21000 et seq, and the State CEQA Guidelines, Cal. Code Regs. § 15000 et seq ("Guidelines"). 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 attached 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. Conflict With Other Matters

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. Civic SO* - Case No. 37-2015-00012092 incorporated in its entirety to this comment letter. CivicS D's exercise of this improper authority in connection with the Project approval violates state law, the Charter and Municipal Code.

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").

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).

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

GIDEON KRACOV

Attorney at Law

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www.gideonlaw.net

September 23, 2016

VIA E-MAIL AND HAND DELIVERY

bossi@civicsd.com

Jeff Gattas, Chair
Rich Geisler, Vice-Chair
Michael Jenkins
Maddy Kilkenny
Phil Rath
Robert Robinson
Theodore Shaw
Carlos Vasquez
401 B Street, Suite 400
San Diego, CA 92101-4298

**Re: 7th and Island Project – Centre City Development Permit / Centre City
Planned Development Permit/Neighborhood Use Permit
(CCDP/CCPDP/NUP) No. 2015-60
CivicSD Board 9/28/16 Item No. 11**

Dear Chair Gattas and Directors:

On behalf of UNITE HERE Local 30 ("Local 30") and Sergio Gonzalez (collectively "Commenters"), this Office respectfully provides comments to Civic San Diego ("CivicSD" or "Agency") and the CivicSD Board ("Board") regarding the proposed September 28, 2016 approvals for the 7th and Island Project – Centre City Development Permit / Centre City Planned Development Permit/Neighborhood Use Permit (CCDP/CCPDP/NUP) No. 2015-60 ("Project").

Please see attached, for the Project administrative record, the expert comments of traffic engineer Neal Liddicoat dated September 22, 2016; SWAPE environmental scientists dated September 22, 2016; urban planner Terrell Watt dated July 25, 2016; and the Third Amended Petition in *Baxamusa v. CivicSD* – Case No. 37-2015-00012092.

Local 30's members have an interest in and are directly impacted by 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 California Environmental Quality Act ("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”).

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.

As set forth in the attached documents incorporated in their entirety for the record:

1. The September 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 impacts, fail to comply with CEQA, Pub. Res. Code § 21000 et seq, and the State CEQA Guidelines, Cal. Code Regs. § 15000 et seq. (“Guidelines”). 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 attached 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"). 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).

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.

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.

Thank you for consideration of these comments. We ask that this letter and the attachments be placed in the Administrative Record for the Project.

Sincerely,



Gideon Kracov

Law Office of Gideon Kracov

Lawyer for UNITE HERE Local 30 and Sergio Gonzalez

Attachment 1 – SWAPE/Matt Hagemann, P.G. 9/22/16 comment letter

Attachment 2 – Terrell Watt, AICP 7/25/16 comment letter

Attachment 3 – Neal Liddicoat, P.E. 9/22/16 comment letter

Attachment 4 – Third Amended Petition in *Baxamusa v. CivicSD* – Case No. 37-2015-00012092

M R O**ENGINEERS**

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Suite 201B
Auburn, California

95603

PHONE (916) 783-3838

FAX (916) 783-5003

September 22, 2016

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

Subject: *Consistency Evaluation for the 7th & Island Hotel Development
San Diego, California*

Dear Mr. Kracov:

As requested, MRO Engineers, Inc., (MRO) has reviewed the *Consistency Evaluation for the 7th & Island Hotel Development* (Civic San Diego, September 12, 2016) as well as other documents relating to the proposed project. The Consistency Evaluation states that no traffic impact analysis is required for the proposed hotel development, because its daily trip generation will be less than the 2,400 trips/day threshold established in the Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan (DCP). That conclusion, however, is based on certain assumptions regarding the nature of the proposed hotel, which may not stand up to scrutiny. We are concerned that the decision to dispense with a traffic analysis is unsupported by substantial evidence.

Background

Review of various pieces of correspondence regarding the project shed a certain amount of light on this determination, including the following:

- In a letter dated October 13, 2015, Civic San Diego staff documented the results of a "Completeness Review" for the proposed 7th & Island hotel. In that letter, Item 8.4 specifically states that, "A traffic study will be required as the project results in greater than 2,400 ADT [Average Daily Traffic]."
- A response from the applicant dated December 2, 2015, states that, "A traffic engineer has been engaged and will provide a study as part of the updated submittal package."
- An updated Completeness Review (March 22, 2016) from Civic San Diego staff describes the traffic study as "Not Applicable."

It is unclear what, if any, changes were made to the project between October 2015 and March 2016 that altered the staff conclusion regarding the need for a traffic study. Recent information received from Civic San Diego staff by e-mail reveals that the project is now assumed to be a "Resort Hotel," which is subject to a lower trip generation rate than other types of hotels in San Diego. This questionable assumption is addressed in detail below.

Trip Generation Comparison

In San Diego, the volume of traffic associated with proposed development projects is typically estimated using information provided in that city's "Trip Generation Manual" (Revised May 2003). Table 5 within that document specifically addresses projects in the Centre City, including three types of hotels:

- Hotel (w/convention facilities/restaurant),
- Motel, and

- Resort Hotel.

Table 1 compares the three categories of hotel trip generation rates, including application of the rates to the proposed 324-room 7th & Island hotel.

Table 1 Trip Generation Comparison by Hotel Category								
		Daily Trips ¹	AM Peak Hour ²			PM Peak Hour ²		
			In	Out	Total	In	Out	Total
Hotel (w/convention facilities/restaurant)	Trip Rate ³	9	60%	40%	0.54	60%	40%	0.72
	Trips	2,916	105	70	175	140	93	233
Motel	Trip Rate ³	8	40%	60%	0.64	40%	60%	0.72
	Trips	2,592	83	124	207	93	140	233
Resort Hotel	Trip Rate ³	7	60%	40%	0.35	60%	40%	0.49
	Trips	2,268	68	45	113	95	64	159
Notes:								
¹ Source: City of San Diego, "Trip Generation Manual," Revised May 2003, Table 5 – Centre City Cumulative Trip Generation Rates								
² Source: City of San Diego, "Trip Generation Manual," Revised May 2003, Table 1 – Trip Generation Rate Summary								
³ Trips per room.								

As shown, use of the daily trip rates associated with two of the three hotel categories would result in an estimated daily trip generation that would exceed the 2,400 daily trip threshold established in the DCP FEIR. Only use of the "Resort Hotel" category would fail to do so, and then by only 132 daily trips. Thus, if the project had been defined as either of those other two types, a traffic study would be required.

In addition to the 2,400 daily trip threshold, the DCP FEIR establishes a threshold of 200 peak-hour trips for the requirement of a traffic study. Again, both the "Hotel (w/convention facilities/restaurant)" and "Motel" category would require that the project complete a detailed traffic study. By defining the proposed project as a "Resort Hotel," the need for a traffic study is avoided.

Hotel Classification

So, the obvious question becomes: Is the proposed 7th & Island hotel a Resort Hotel? According to the City's "Trip Generation Manual," a Resort Hotel is defined as follows:

Larger hotels with many amenities and recreational opportunities within the hotel site or walking distance.

The most complete Project Description that we were able to find was presented in the "CCDP - PDP Package" of drawings dated September 28, 2015, specifically on the "Project Data" sheet (i.e., Sheet No. 2). With the exception of a proposed 654-square-foot (SF) African-American Heritage Museum, the amenities proposed in the hotel are pretty standard hotel fare – a fitness center (998 SF), a

ground-level café/bar (1,946 SF), a buffet dining area (1,160 SF), and a roof-top café (3,500 SF). No pool or spa is proposed as part of the project, and the nearest beach is some distance away.

In short, it appears that the determination that the proposed project is a "Resort Hotel" was an arbitrary decision that is not supported by the facts.

Cisterra 7th & Market Project

In many respects, the proposed 7th & Island hotel is similar to the Cisterra 7th & Market hotel, which is proposed for a site directly across 7th Avenue and, therefore, has the same amenities within walking distance. Although the Cisterra hotel is somewhat smaller than the 7th & Island hotel, it is part of a larger mixed-use project that exceeded the City's 2,400 daily trip threshold, so a traffic impact analysis was required for that project. (Reference: Chen Ryan Associates, Inc., *Traffic Impact Study – Cisterra 7th & Market*, March 3, 2016.) In that analysis, the 7th & Market hotel was treated as a "Hotel (w/convention facilities/restaurant)." As described above, if the currently-proposed hotel were considered to be that type of hotel, it would generate 2,916 daily trips and would far exceed the threshold requiring completion of a traffic impact analysis.

Downtown Community Plan FEIR

Finally, we note that the DCP FEIR has clearly indicated that future traffic conditions in the vicinity of the proposed project will be highly unacceptable. According to that document, 62 intersections will operate at Level of Service F (i.e., beyond capacity) in the future. Although the Consistency Evaluation (p. 32) asserts, without substantiation, that, "The projects [sic] direct impacts on downtown roadway segments or intersections would not be significant," the only way to be certain of this is to perform a detailed traffic analysis.

Similarly, the DCP FEIR found that all freeway segments in the downtown area and several freeway ramps serving downtown will operate at LOS F. The Consistency Evaluation includes two questionable statements in its consideration of project-related freeway impacts.

First, it says:

. . . the land use designation of the Project is consistent with the land use designation assumed in the FEIR analysis . . .

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.

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 an specific property due to the uncertainty associated with the ultimate type and intensity of use which might occur.

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.

Therefore, with respect to the current 7th & Island 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.

Then, the Consistency Evaluation says:

The Project would not have a direct impact on freeway segments and ramps.

Given the lack of even the most cursory analysis of the nearby freeway system, this statement is completely unsupported by facts.

In fact, we believe that the DCP FEIR itself is subject to question. That document was certified ten years ago, in 2006. According to the FEIR (p. 5.2-2), though, 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. Thus, fourteen-year-old data serves as the basis for the critical determination as to the need for a detailed traffic analysis to identify the project-specific impacts of the proposed 7th & Island project.

It strains credibility to suggest that the future year traffic volume forecasts presented in the DCP FEIR would bear any similarity to updated forecasts based on:

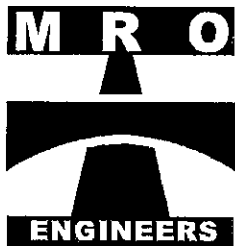
1. Current (year 2016) traffic volumes,
2. Updated growth factors developed using the current SANDAG travel demand forecasting model, and
3. A more reasonable and up-to-date planning horizon year (e.g., 2035 or 2040).

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):

	Daily Traffic Volume		
	2002	2014	Change
North of I-5	107,000	114,000	+6.5%
South of I-5	42,500	56,000	+31.8%

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.

As noted above, the Downtown Community Plan FEIR identified 62 intersections that would have significant impacts upon buildout of that plan, 12 of which would be unmitigable. Further, traffic



demand on all freeway segments and several freeway ramps in the downtown area will exceed capacity. 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 & Island project.

Therefore, it is essential that the near- and long-term traffic impacts of the proposed project be addressed in detail and reported in a project-specific environmental impact report.

CONCLUSION

Our review of the *Consistency Evaluation for the 7th & Island Hotel Development* and other documents relating to that proposed project leads us to believe that the designation of that project as a "Resort Hotel" is faulty. Further, under City of San Diego policy, designation of the project as either of the other defined hotel categories would require that a detailed traffic impact analysis be prepared. Because this designation is subjective (and potentially arbitrary), we believe that the responsible approach to this matter involves completion of such an analysis.

Finally, we believe it is inappropriate to base decisions regarding project-specific traffic impacts on the Downtown Community Plan FEIR, which is 10-years old and, even worse, is based on 14-year-old data. Given the level of development activity in downtown San Diego in the past 10 years, it is simply unrealistic to think that the DCP FEIR conclusions remain credible.

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, reading 'Neal K. Liddicoat'.

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

ENGINEERS

Education:

BSCE/1977

Michigan State University

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Technical Specialties

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Parking Analysis

Pedestrian/Bicycle

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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 22, 2016

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

Subject: Comments on the 7th & Island Hotel Project

Dear Mr. Kracov:

We have reviewed the 2016 Downtown Final Environmental Impact Report Consistency Evaluation for the 7th & Island Hotel Development (Consistency Evaluation); the July 8, 2016 Climate Action Plan Consistency Checklist Submittal Application (CAP Checklist Submittal); the July 8, 2016 7th & Island Climate Action Plan Checklist Supplemental Explanation of How Proposed Project will Implement Requirements of CAP Checklist (Supplemental Explanation); the February 4, 2016 Phase I Environmental Site Assessment; the 2014 Phase II Environmental Site Assessment; and the September 13, 2016 Notice of Public Hearing (Public Hearing Notice) by the Civic San Diego Board of Directors to either approve, conditionally approve, or deny the Centre City Development Permit / Centre City Planned Development Permit/Neighborhood Use Permit (CCDP/CCPDP/NUP) No. 2015-60 for the 7th & Island Hotel ("Project"). The Project proposes to construct a 20-story, 240-foot tall hotel comprised of 324 guest rooms with 138 valet parking spaces in four levels of subterranean parking.

Our review concludes that the Consistency Evaluation fails to adequately evaluate the Project's Hazard and Hazardous Waste, Greenhouse Gas and Air Quality impacts and as a result, the significance determinations made for the proposed Project are incorrect and unreliable. A Project-specific Environmental Impact Report (EIR) should be prepared to adequately assess the potential impacts that the Project may have on health, regional and local air quality, and global climate change.

Hazards and Hazardous Waste

The Consistency Evaluation fails to disclose contamination detected beneath the Project site in a 2014 Phase II Environmental Site Assessment (ESA) and provides for no specific mitigation to address the contamination. A Project-specific EIR should be prepared to disclose and to mitigate, as warranted, the contamination to ensure the protection of the health of future Project occupants.

The 2014 Phase II ESA¹ documented petroleum-related compounds, including total petroleum hydrocarbons and benzene, in soil at a depth of 28 to 35 feet. The contamination detected at the Project site was attributed in the Phase II to a source directly upgradient, an underground storage tank site closed by the San Diego County Department of Environmental Health in 2007.²

The Phase II concluded (p. 7):

Petroleum hydrocarbons and associated VOCs appear to have migrated to the Site from former off-Site leaking underground storage tanks (USTs) at up-gradient properties.

A 2016 Phase I prepared for the Project site³ concluded (p. 7):

it can be reasonably assumed that petroleum hydrocarbon impacts in groundwater and in soil at approximate depths of 25 feet to 35 feet below existing grades are present throughout the 15,000 square foot Site and likely extend further downgradient to other off-Site properties.

The presence of the contamination was not noted in the Consistency Evaluation and no mitigation to address the contaminants was identified. An EIR should be prepared to identify the contamination along with mitigation to address what may be conditions that would pose a hazard to the health of future occupants. Whereas shallow groundwater was not present during the 2014 Phase II investigation (because of drought conditions, according to the Phase II (p. 5)), a water table may be reestablished upon cessation of the drought. Petroleum hydrocarbon contamination that is likely present in groundwater, as identified at the Project site in the Phase I, may pose a vapor intrusion risk to future Project occupants. Benzene, detected in soil and therefore likely to be detected in groundwater when present beneath the Project site, is a known human carcinogen.⁴

The San Diego County Department of Environmental Health should be engaged to reevaluate the appropriateness of the closure of the upgrading underground storage tank site that was fingered in the Phase I and Phase II as the source of the contamination at the Project site. The 2016 Phase I ESA states that County involvement is not necessary but we disagree. It is important for the County to re-evaluate contamination from all potential sources, including the closed upgradient underground storage tank, to ensure that residual contamination is not present at levels that would pose a health risk through vapor intrusion. Documentation of County oversight and their regulatory approval of Project site assessment and cleanup, as necessary, should be included in an EIR with appropriate performance standards to guide cleanup.

¹ Phase II Environmental Site Assessment, 502 and 538 7th Avenue, San Diego, California, December 1, 2014

² http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T06019747273

³ Phase I Environmental Site Assessment 502-522 and 538 7th Avenue, San Diego, California, February 4, 2016

⁴ <http://www.atsdr.cdc.gov/toxprofiles/tp.asp?id=40&tid=14>

Greenhouse Gas

Failure to Adequately Evaluate the Project's Greenhouse Gas Impacts

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. 15). 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. 15).

This justification, as well as the significance determinations made within the Consistency Evaluation 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) indicates 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.
- Second, 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.

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.

Failure to Demonstrate Consistency with CAP Reduction Strategies

According to the Consistency Evaluation, the Project would comply with the reduction strategies set forth in the CAP Consistency Checklist (p. 15). 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 are 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, pp. 3). This required additional information should all be included in the Supplemental Explanation dated July 8, 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. 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 all of the required information needed to demonstrate how the Project will implement the requirements set forth in the CAP Checklist. For example, Step 2, Strategy 2, Checklist Item 3 – Energy Performance Standard/Renewable Energy requires that the Project be designed to have an energy budget that meets the following performance standards when compared to the Title 24, Part 6 Energy Budget for the Proposed Design Building (see excerpt below) (CAP Consistency Checklist Submittal Application, pp. 6).

Strategy 2: Clean & Renewable Energy

3. Energy Performance Standard / Renewable Energy

Is the project designed to have an energy budget that meets the following performance standards 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):

- Low-rise residential – 15% improvement?
- Nonresidential with indoor lighting OR mechanical systems, but not both – 5% improvement?
- Nonresidential with both indoor lighting AND mechanical systems – 10% improvement?

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).

Note: For Energy Budget calculations, high-rise residential and hotel/motel buildings are considered non-residential buildings.

Check "N/A" only if the project does not contain any residential or non-residential buildings.

As you can see in the excerpt above, there are required improvements based on land use types that vary depending on the Project's land uses. Since the Project proposes to construct a 324-room hotel, the Project is classified as nonresidential with both indoor lighting and mechanical systems, and is required to achieve a 10% improvement. Once the applicant has identified what percent improvement their project is required to achieve, the CAP Checklist then requires that the applicant list what measures will be implemented in order to achieve the required improvement. According to the CAP Checklist, these improvements can be achieved through on-site renewable energy generation or by designing the Project

to have an energy budget that meets the required performance standards when compared to the Title 24, Part 6 Energy Budget for the Proposed Design Building (CAP Consistency Checklist Submittal Application, pp. 6). This information as to how the required improvements (whatever they might be) will be achieved should have been included in the Supplemental Explanation. Review of this document demonstrates that this information was not provided.

All the Supplemental Explanation says is that “the project will have an energy budget that meets the following performance standards 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) with (a) Non residential with both indoor lighting AND mechanical Systems – 10% Improvement” (Supplemental Explanation, p. 3). The Supplemental Explanation does not provide any information as to how this 10% improvement will be achieved, nor does it list any Project-specific design features that will be used to comply with this CAP Checklist item. By failing to provide this information, we are unable to verify the adequacy of the features (whatever they might be) at achieving the required improvements, thus making the Project’s consistency with the CAP questionable.

Finally, once the Project applicant determines what percent improvement the Project is required to achieve, and determines the design features they will implement in order to achieve the required improvement, the Project applicant then has to calculate the percent improvement that their proposed design features will achieve using “Compliance Software certified by the California Energy Commission,” in order to ensure that the proposed design features will actually achieve the required improvement. Again, the Supplemental Explanation fails to provide this information, which is required in order to verify the Project’s compliance with the CAP.

The Supplemental Explanation fails to demonstrate how the percent improvements required for the Project 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. 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

The Consistency Evaluation relies upon the CAP Consistency Checklist to determine the Project’s GHG impact. This Checklist only accounts for the reductions required to meet 2020 emission reductions set forth by AB 32. Governor Brown recently issued an executive order to establish an even more ambitious GHG reduction target for 2030, which is not addressed in the Consistency Evaluation. By failing to demonstrate consistency with the reduction targets set forth by Executive Order B-30-15 for 2030, the Project may conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing

GHG emissions. As a result, the Project may have a potentially significant impact that was not previously addressed in the Consistency Evaluation, and as such, an EIR should be prepared.

Executive Order B-30-15⁵ requires emissions reductions above those mandated by AB 32 to reduce GHG emissions 40 percent below their 1990 levels by 2030. 1990 statewide GHG emissions are estimated to be approximately 431 million MTCO₂e (MMTCO₂e).⁶ Therefore, by 2030 California will be required to reduce statewide emissions by 172 MMTCO₂e (431 x 40%), which results in a statewide limit on GHG emissions of 259 MMTCO₂e. 2020 “business-as-usual” levels are estimated to be approximately 509 MMTCO₂e.⁷ In order to successfully reach the 2030 statewide goal of 259 MMTCO₂e, California would have to reduce its emissions by 49 percent below the “business-as-usual” levels. This reduction target is consistent with goals set forth by other recently passed legislature, such as SB 32,⁸ indicating that compliance with these more aggressive reduction goals, beyond what is mandated by AB 32, will be necessary.

This 49 percent reduction target should be considered as a threshold of significance against which to measure Project impacts. Because the proposed Project is unlikely to be redeveloped again prior to 2030, the 2030 goals are applicable to any evaluation of the Project's impacts. An EIR should be prepared to demonstrate the Project's compliance with these more aggressive measures specified in Executive Order B-30-15. Specifically, the Project should demonstrate, at a minimum, a reduction of 49 percent below “business-as-usual” levels. It should be noted that this reduction percentage is applicable to statewide emissions, which is not directly applicable to a project-level analysis. As a result, an additional analysis would need to be conducted to translate the new statewide targets into a project-specific threshold against which Project GHG emissions can be compared. 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.

Air Quality

Failure to Implement All Feasible Mobile-Source Mitigation Measures

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) from the 2006 Final Environmental Impact Report For The Downtown Community Plan, Centre City Planned District Ordinance And 10th Amendment To The Centre City Redevelopment Plan (2006 FEIR).⁹ 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

⁵ <http://gov.ca.gov/news.php?id=18938>

⁶ <http://www.arb.ca.gov/cc/inventory/data/bau.htm>

⁷ http://energyinnovation.org/wp-content/uploads/2015/04/CA_CapReport_Mar2015.pdf

⁸ <http://www.latimes.com/politics/la-pol-ca-jerry-brown-signs-climate-laws-20160908-snap-story.html>

⁹ <http://civicsd.com/planning/environmental-documents.html>

Project are measures AQ-B.1-1, HIST-B.1, PAL-A.1-1, NOI-B.1-1, NOI-C.1-1, and PAL-A.1-1 (p. 4) from the 2006 FEIR.

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. 4) is incorrect because no mitigation for operational mobile source emissions has been identified in the MMRP.

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 new, feasible mitigation measures developed since the stale 2006 FEIR 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.¹⁰ 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. 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. Mitigation for criteria pollutant emissions should include consideration of the following measures in an effort to reduce mobile source operational emissions to below 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.

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

¹⁰ <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>

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. The Project Applicant also 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,

A handwritten signature in black ink, appearing to read "Matt Hagemann".

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

A handwritten signature in black ink, appearing to read "Jessie Jaeger".

Jessie Jaeger



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**Geologic and Hydrogeologic Characterization
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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

SOIL WATER AIR PROTECTION ENTERPRISE



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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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6 San Diego County Building & Construction
Trades Council, AFL-CIO
7

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

08/16/2016 at 02:57:00 PM

Clerk of the Superior Court
By Christina Villegas, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

10
11 MURTAZA BAXAMUSA, an individual,
SAN DIEGO COUNTY BUILDING &
12 CONSTRUCTION TRADES COUNCIL,
AFL-CIO,

13 Petitioners,

14 v.

15 CIVIC SAN DIEGO, a California
16 Corporation, CITY OF SAN DIEGO, a
municipal corporation, and DOES 1
17 through 50, Inclusive,

18 Respondents.
19
20
21

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**

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

26 **INTRODUCTION AND BACKGROUND**

27 1. In 2011, the California legislature ended a roughly 60-year tax-funded
28 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.

1. The first step is to identify the problem.

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,
15 hold harmless, and other provisions to protect the City from liability
16 caused by CivicSD’s conduct; termination for non-performance and
17 convenience; and other provisions.

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

22 38. CivicSD divides the tasks of reviewing and approving permit applications between
23 its Board and its President. The Board reviews and approves certain Conditional Use Permits,
24 Variances, and all Planned Development Permits which are required for any new structure over
25 1,000 feet in size.

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

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 a 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).

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

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

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

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

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Petitioners pray for the following relief:

- 25 1. For a judicial declaration as stated in the First Cause of Action regarding the City's
26 unlawful delegation of legislative authority to CivicSD since the end of tax-funded
27 redevelopment in California, and specifically, since June 2012;
- 28 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(e)) 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
business. The envelope was sealed and placed for collection and mailing on that date following
ordinary business practices.

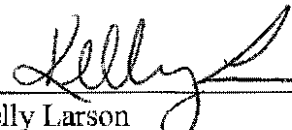
4 ☐ **BY FACSIMILE** (C.C. P. § 1013(e)) Based on agreement of the parties to accept service by fax
5 transmission, I faxed the documents on this date to the person(s) at the fax numbers listed. No
error was reported by the fax machine that I used. A copy of the record of the fax transmission,
which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

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

8
9 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

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

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

13
14 
Kelly Larson



Item #11

DATE ISSUED: September 23, 2016

ATTENTION: Civic San Diego
Meeting of September 28, 2016

SUBJECT: 7th and Island Hotel (northwest corner of Seventh and Island avenues) –
Centre City Development Permit/Centre City Planned Development
Permit/Neighborhood Use Permit – East Village Neighborhood of the
Downtown Community Plan Area – **PUBLIC HEARING**

STAFF CONTACT: Steven Bossi, Associate Planner

STAFF RECOMMENDATION: That Civic San Diego (“CivicSD”) receives a presentation on the design proposal and associated permits for the 7th and Island Hotel (“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. 2015-60 for the Project.

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

SUMMARY: J Street Development, Inc. (“Applicant”) is requesting Design Review approval and approval of CCDP/CCPDP/NUP No. 2015-60 for the construction of a 20-story (approximately 240-foot tall) hotel tower located on a 27,500 square-foot (SF) site located on the northwest corner of Seventh and Island avenues in the East Village neighborhood of the Downtown Community Plan (DCP) area (“Downtown”). The Project is comprised of 324 hotel guest rooms and 137 valet parking spaces. Implementation of the Project requires a CCPDP for deviations to off-street loading dock minimum size requirements and parking requirements to allow valet and tandem parking spaces. An NUP for outdoor uses on the ground floor and rooftop is also being proposed.

FISCAL CONSIDERATIONS: Under the Downtown Public Facilities Financing Plan, the Project will pay Development Impact Fees (DIF) in the approximate amount of \$1,190,325 to fund its fair share of new parks, fire station, and traffic circulation improvements in the DCP area. The Applicant will also pay approximately \$457,012 through the Floor Area Ratio (FAR) Bonus Program. These funds will go into the FAR Bonus Payment Fund which is utilized for public parks and enhanced public rights-of-way.

ECONOMIC IMPACTS: It is estimated that the Project will generate approximately 480 construction jobs and 232 permanent jobs. As of December 31, 2015, approximately 79,930 construction jobs and 28,000 permanent jobs have been generated Downtown as a result of redevelopment activities.

COMMITTEE RECOMMENDATION: On June 8, 2016, the CivicSD Design Review Committee (“Committee”) voted 3-0 (Geisler, Rath, Robinson) to recommend that CivicSD grants Design review approval and approves CCDP/CCPDP/NUP No. 2015-60 for the Project with all requested deviations.

DOWNTOWN COMMUNITY PLANNING COUNCIL: On June 15, 2016, the Downtown Community Planning Council voted 20-0 to recommend that CivicSD grants Design Review approval and approves CCDP/CCPDP/NUP No. 2015-60 for the Project with all requested deviations.

OTHER RECOMMENDATIONS: None.

CHANGES SINCE BOARD COMMITTEE MEETING: This item has not changed since the Committee action noted above.

DEVELOPMENT TEAM

ROLE	FIRM/CONTACT	OWNERSHIP
Applicant	J Street Development, Inc.	Sajan Hansji (100% Ownership) (Privately Owned)
Property Owner	7 th and Island, LLC	Sajan Hansji (100% Ownership) (Privately Owned)
Architect	Delawie	Andrew Rodrigues Paul Schroeder Michael Asaro Frank Ternasky

DISCUSSION

Neighborhood Context

The East Village neighborhood is anticipated to be a residential and mixed-use community upon build-out. Ultimately, East Village is projected to contain up to 46,000 residents. The highest residential intensities downtown will be attained in the area, served by the necessary retail, commercial and open space amenities. The Project site is located in the Ballpark sub-district of East Village neighborhood with close proximity to Petco Park to the south and the Gaslamp Quarter to the west. In the southwestern portions of East Village around the ballpark, entertainment, tourism, and employment are expected to flourish alongside new residents. There is an array of uses in the immediate vicinity of the Project site, including neighborhood restaurants and bars, retail stores, storage facilities, hotels, office buildings, and high-rise residential buildings.

Applicable DCP Goals and Policies

The DCP establishes the overall goals and policies for specific neighborhoods within Downtown. The Project site is located in the East Village Ballpark sub-district. This location is situated between the Gaslamp/Horton neighborhood and the new residential neighborhoods of eastern Downtown. The DCP envisions for the area to serve as a downtown-wide entertainment and cultural attraction as well as a residential and commercial district with supporting amenities.

DCP goals and policies applicable to the Project site include:

- Guide Ballpark's evolution into a multi-use district, including the new Main Library and Park-to-Bay Link, with a regional entertainment and cultural focus.
- Maintain the prominence of Petco Park while reinforcing the evolving high-intensity Market Street corridor.

Site Description

The Project site is 27,500 SF on the northwest corner of Seventh and Island avenues in the East Village neighborhood of Downtown. The site's western portion is occupied by an existing four-story Hotel Z building, which will remain, while the eastern portion (15,000 SF) will accommodate the new construction. The existing Hotel Z building has been incorporated into the Development Permit application site so that the new Project can utilize its excess, unused FAR. The site's eastern portion is currently occupied by a two-story hotel and a warehouse that would be demolished under the Project. The existing structures are over 45 years old, but have been cleared of any potential historical significance by City Staff. Surrounding land uses include:

North:	19-story Alta residential tower
South:	4-story Ballpark Self Storage
East:	Clermont Hotel and parking lot (future Seventh & Market high-rise)
West:	2-story restaurant and bar

The Land Use District for the site is Employment/Residential Mixed Use (ER). The District is intended to provide synergies between educational institutions and residential neighborhoods, or to transition appropriate development 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 ER District permits 100% commercial projects.

The Base Maximum FAR for the Project site is 6.0, with a maximum allowable FAR with bonuses of 8.0. The Applicant is proposing to increase the Project FAR from 6.0 to 7.9 through the use of the following FAR Bonus Programs:

- FAR Bonus Payment Program: The Applicant is seeking to obtain 0.955 FAR (26,250 SF) by participating in the FAR Bonus Payment Program. The payment rate is \$17.41/SF which will result in a payment of \$457,012 into the FAR Bonus Payment Fund to be utilized towards public parks and enhanced public rights-of-way

- **Green Building:** The Applicant is seeking to obtain 1.0 FAR (15,000 SF) by providing LEED Silver designation for the new hotel building, so the bonus is calculated only on the portion of the site containing the new construction.
- **Urban Open Space:** The Applicant is seeking to obtain 0.5 FAR (13,750 SF) by reserving 10% of the 27,500 SF site for the development of a public urban open space.

PROJECT DESCRIPTION

The Applicant is requesting approval of CCDP/CCPDP/NUP No. 2015-60 to allow the construction of a 20-story (approximately 240 foot tall) hotel tower comprised of 324 hotel guest rooms and 137 valet parking spaces.

The following is a summary of the Project (based on drawings dated May 26, 2016):

Site Area	27,500 SF (15,000 SF 7 th & Island Hotel site + 12,500 SF Hotel Z site)		
Base Minimum FAR	3.5		
Base Maximum FAR	6.0		
Maximum FAR with Amenity Bonuses	8.0		
Maximum FAR with Affordable Housing Bonus	N/A		
Proposed FAR	7.9		
FAR Bonuses Proposed	0.96 (FAR Bonus Payment Bonus Program) 1.0 (Green Building) 0.5 (10% Urban Open Space)		
Total Above-Grade Gross Floor Area	217,674 SF (176,922 SF new construction + 40,752 SF existing)		
Stories/Height	20 stories/240 feet; 4 stories/45 feet (existing)		
Amount of Commercial Lease Space	N/A		
Number of Hotel Rooms	324 new; 96 existing		
Amount of Office Space	N/A		
Housing Unit Summary			
Total Number of Housing Units	#	Range	Average
	N/A	N/A	N/A
Number of Units to be Demolished	44 SRO units		
Number of Buildings over 45 Years Old	2 (1914 & 1927)		
Inclusionary Housing Ordinance Compliance	N/A		
Automobile Parking			
Hotel (Required / Proposed)	97 (0.3 per guest room) / 137*		
Commercial (Required / Proposed)	0 (exempt < 30,000 SF) / 0		
Motorcycle Parking (Required / Proposed)	5 (1 per 20 required parking spaces) / 9		
Bicycle Parking (Required / Proposed)	5 (1 per 20 required parking spaces) / 5		
Common Indoor Space Required	N/A		

Proposed	N/A
Common Outdoor Open Space	
Required	N/A
Proposed	N/A
Private Open Space (Balconies and Decks)	
Required	N/A
Proposed	N/A
Pet Open Space	
Required	N/A
Proposed	N/A
Residential Storage	N/A
Assessor's Parcel Nos.	535-111-08 & 09
Sustainability	LEED Silver

*Parking will be accommodated through valet only.

PERMITS REQUIRED

- CCDP for new construction with Design Review approval by the CivicSD Board of Directors for developments over 85 feet and/or over 100,000 SF in area;
- CCPDP for deviations from the CCPDO including minimum loading dock size requirements and valet only parking; and,
- NUP for outdoor use areas on the ground floor and rooftop.

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.

DESIGN REVIEW

The new hotel will be a Type-IA structure that will contain 324 hotel guest rooms. The hotel is a 20-story concrete structure with the upper stories (levels 6-20) articulated to express two different towers on the northern and southern portions. The five-story podium occupies the entire 15,000 SF site where the new construction would occur with the exception of the 2,750 SF of urban open space on the ground floor occupying a recessed area that is beneath levels 3-5 on the southern portion of the site. Four levels of below-grade valet parking are accessed off of Seventh Avenue.

The following analysis will examine each building component:

Podium/Ground Floor/Streetwall

The first five floors of the structure contain textures and proportions related to the neighboring architectural scale incorporating an industrial façade composed of brick veneer, punched glass openings, and exposed concrete. The materials are expressed with brick veneer and exposed concrete architectural elements framing the glazing on the ground floor and the punched window openings on levels 2-5. The podium contains a relief pattern in the brick veneer on the north elevation facing the adjacent Alta residential project.

The Seventh Avenue frontage, heading north from Island Avenue, contains the urban open space, glazing looking into the restaurant and bar, the loading dock, and garage entries. During the Design Review process, the extent of street frontage dedicated to utilities was reduced, landscaping was added to screen the exposed utilities, and more glazing was added adjacent to the loading dock. The interior of the ground floor has been reconfigured to place additional glazing in front of the interior bar area.

On Island Avenue, the urban open space contains exposed concrete columns and provides seating and landscaping intended for public gathering adjacent to building entrances for the two hotels and for a separate roof terrace entry. The street wall along Island Avenue is set back from the southern property line providing a 30-foot tall, ground floor urban open space beneath levels 3-5 of the podium. Above the first two levels of the podium, the structural footprint of levels 3-5 covers the entire site and the materials are carried along the façade from the ground floor upward with brick veneer, vision glass, and exposed concrete. A small recess in the wall above the first two levels along Seventh Avenue provides a transition from the lower levels to the two tower elements for the separate hotel entities above.

Urban Open Space

The urban open space is composed of both brick veneer and exposed concrete architectural columns and seating and landscaping situated in front of the three private entrances, two for the hotels and one for the rooftop dining area. As detailed in the DDG for Urban Open Spaces (4.6.1) in Attachment C, these spaces must be publicly accessible, have a minimum of 20 percent ground area improved with landscaping, and have one linear foot of seating for each 40 SF of urban open space area. The CCPDO in §156.0309(e)(2) requires that the urban open space be open to the general public from 6:00 a.m. and 10:00 p.m. every day and include signs indicating the hours open to the public. The CCPDO also requires that CC&Rs be recorded on the property providing for the development and on-going maintenance of the open space area to City standards in perpetuity.

The building frontage and landscaping along the urban open space are more oriented toward Island Avenue than Seventh Avenue, as there is limited access off of Seventh Avenue. The urban open space has the potential to feel private because it is located in an area beyond a perceived boundary created by the architectural framing elements located prominently at the entrance to the space. In addition, the nearby entrances for three separate private uses also can

signify private usage and discourage public usage. The quantitative requirements in the CCPDO and the DDG for urban open space have been met (e.g. a minimum of 20 percent of the ground area must be landscaped, one linear foot of seating must be provided for each 40 SF of urban open space) and comments during the Design Review process were generally supportive.

Tower

The high-rise tower has been designed with two distinct architectural designs to express two different towers. There is contemporary aesthetic aluminum panel and glass on the south, east, and west elevations, and predominantly concrete on the north elevation, facing the residential building to the north. The towers are located above the podium from level 6 to level 20, and there are two different articulation approaches. The southern portion of the tower is at an angle that twists the southern façade to face southwest, in contrast from the parallel south facing podium. A floor to ceiling curtainwall glass system allows for vistas of the bay and city from the interior. The glass system is framed by a grid-like pattern of light aluminum panels that are mixed with a varied horizontal pattern of the aluminum panels.

The northern portion of the tower steps away from the neighboring residential building and incorporates a more solid, painted concrete façade with an angled design pattern around the glass system. This is composed of dark aluminum mullions, a GFRC frame, and vision glass. This angled concrete design pattern and glass system continues from the eastern façade around the northeastern corner. Between the two tower portions is a tall recess characterized by a vertical window system at its end with solid walls on either side that provides a break in the massing between the two tower features. Section 156.0310(d)(3) of the CCPDO requires that any tower be set back at least 20 feet from an interior property line to ensure adequate glazing on all sides of a tower and to avoid solid walls. This distance is allowed to be reduced to 10 feet if adequate glazing is provided to allow views into, and out from, the hotel rooms. The direct northern view of the tower (Sheet 24) is somewhat stark and inconsistent with the DDG, which discourages large solid elements in towers (see attached DDG Section 4.5.10); however, it should be noted that there are several distinct planes resulting from the staggered floorplate of the tower which is best seen in the floor plans (Sheets 16-19) and the northwest perspective (Sheet 35). The design was revised to include additional spandrel glazing on this northeast return of the tower on the upper façade (Sheets 24/24B), although it utilizes spandrel glass rather than vision glass. This additional glazing reduces the blank wall as it would be visible from Seventh Avenue and from the northeast perspective, but large solid expanses of the core and tower would be visible from the northwest perspective. The remaining solid tower walls viewed in the north elevation are located in different off-set planes, reducing the visual impact.

The CCPDO also requires that towers be set back above the building base from the property lines abutting street frontages; however, one side of a tower is allowed to encroach into this 15-foot setback and a second tower face may also be exempted from this requirement if it is determined to result in an appropriate design through the Design Review process. The southeast corner of the tower encroaches into the setback but the resulting design presents a strong tower presence at this corner which Staff supports. The existing Alta residential tower to the north and the proposed 7th and Market high-rise development to the east provide a nearby context of building massing that is consistent with this proposed tower (see Sheet 37).

Level 20/Rooftop

Level 20 contains a roof-top dining area along with the supporting kitchen facilities and additional hotel rooms. The light colored aluminum grid pattern of the southern tower is carried up in height to a full 11 feet above the highest occupied area, which results in a 22-foot-high open grid pattern surrounding the open rooftop dining area (see Sheet 34). The regular grid pattern is interrupted by a darker, angled metal system adjacent to the rooftop dining area. Staff has questioned whether this tall frame is structurally feasible as depicted, whether it would interfere with window washing operations of the building, and if the resulting design is awkward, although the DCPC and the Board Design Review Committee only expressed minimal concerns about the structural feasibility and the window washing operability.

Loading Dock Deviation

The hotel proposes to deviate from the off-street loading dock minimum size requirements in CCPDO §156.0313(b)(2)(B). The required loading dock size is 35 feet deep, 14 feet wide and 14 feet tall for developments containing over 100,000 SF of commercial space. The proposed loading dock is 30 feet deep, 14 feet wide (with a 12 foot door opening), and 14 feet tall. The Applicant has provided justification for this substandard sized loading dock by stating that the vehicles servicing this hotel are shorter and can be accommodated in this shorter loading dock while the loading dock door remains closed to avoid pedestrian views into the loading dock. Staff finds that the loading dock deviation for depth is acceptable as it will accommodate the service needs of the hotel operations while maximizing the efficiency of the hotel's ground floor.

CCDP

The purpose and intent of a CCDP is to administer and ensure compliance with the CCPDO, DCP, Centre City Streetscape Manual, and any policies or guidelines adopted by the City of San Diego to implement the DCP.

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 Centre City Planned District (CCPD).*

The proposed development is consistent with the DCP, CCPDO, Land Development Code (LDC), 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 CCPDO by:

- Supporting the vision for the area which encourages the development of a multi-use district with a regional entertainment and cultural focus;
- Maintaining the prominence of Petco Park while reinforcing the evolving high-intensity Market Street corridor;
- Transitioning between the shopping and entertainment district of the Gaslamp/Horton neighborhood and the residential developments of the East Village; and,
- Permitting 100% commercial projects, including hotels.

The Project provides a well-designed, corner block development that contributes a tower that is consistent with the overall architectural character of the skyline. The lower levels also provide features consistent with the historic warehouse uses in the district.

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 a more desirable project. 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.

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

1. SDMC §142.0555(b)(2) and CCPDO §156.0313 Parking Provisions: Valet-only parking and tandem parking may be provided for valet parking associated with a restaurant use, not a hotel.
2. CCPDO §156.0313(b)(2)(B)(ii) Off-Street Loading Dock: One off-street loading bay that is 35 feet deep, 14 feet wide and 14 feet tall shall be provided for developments containing over 100,000 SF of commercial space.

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 consistent with the objectives of the DCP, CCPDO, and the DDG in that the Project provides appropriate mass and scale to the existing block and provides an appropriate use for the location. The hotel use is appropriate for the location near the Horton/Gaslamp neighborhood and East Village's residential uses and Petco Park. The valet-only and tandem parking deviation will provide an efficient use of a limited site area and has been granted in other Downtown hotel projects. The shorter loading dock will allow for the proper servicing of the hotel's needs, while ensuring that the loading dock door remains closed to avoid pedestrian views into the service area while maximizing the efficiency of the ground floor of the hotel.
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. The valet parking spaces exceed the required number of parking spaces providing the necessary capacity to accommodate parking needs. The loading dock design will allow for efficient hotel services while not interfering with safe pedestrian access on the public sidewalk.

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 this 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 CCPDP. The valet-only parking deviation is appropriate for the hotel use and is an efficient use of the space on a smaller lot. The loading dock deviation for depth will accommodate the service needs of the hotel operations while maximizing the efficiency of the hotel's ground floor.

4. *The proposed development is consistent with the DDG and exhibits superior architectural design.*

The proposed Project is consistent with the DDG and will provide for a contemporary architectural design with unique design elements consistent with the architecture and massing of the surrounding neighborhood. The use of upgraded materials on the entire building base and throughout the tower provides interest and enhances the skyline of the neighborhood.

NUP

A NUP is required for outdoor activities including a variety of community serving uses, including the proposed ground-floor outdoor café seating and rooftop outdoor dining area.

Findings

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

The Project will not adversely affect the land use plan and will enhance the East Village neighborhood by providing a rooftop dining area and a sidewalk café that will add to the pedestrian activity, vitality and commercial offerings in the area. There will be no live entertainment with potential for loud noise generating uses on the rooftop or on the ground floor.

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

The Project will not create any sidewalk hazards from the sidewalk café nor will it create lighting or noise issues from the rooftop dining area. These rooftop dining and sidewalk café uses will add to the amenities offered in the community without being a detriment to the surrounding area and the public health, safety, and welfare.

3. *The proposed use or development will comply to the maximum extent feasible with the regulations of the LDC; and,*

The Project will comply to the maximum extent feasible with the LDC with approval of the NUP for a sidewalk café and public outdoor use on the rooftop. The dining area on the rooftop will provide for a unique dining and gathering space that will comply with the development standards.

4. *The proposed use is appropriate at the proposed location.*

The Project is appropriate at the proposed location as it proposes a sidewalk café and a rooftop dining area in an area promoting pedestrian activity and a wide array of cultural uses and destinations. These uses augment the offerings of the hotel and will activate the area by providing gathering spaces and commercial attractions to all users in the area.

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). 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 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.

CONCLUSION

Staff recommends that CivicSD grants Design Review approval and approval of CCDP/CCPDP/NUP No. 2015-60 for the Project.

Respectfully submitted,

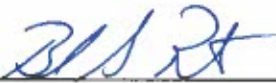


Steven Bossi
Associate Planner

Concurred by:



Reese A. Jarrett
President



Brad Richter
Assistant Vice President, Planning

Attachments: A – Ownership Disclosure Statements
 B – Project Description and Architectural Narrative
 C – Downtown Design Guidelines: Blank Walls & Urban Open Space
 D – Letter from Applicant with CCPDP Findings
 E – Draft Permit CCDP/CCPDP/NUP No. 2015-60
 F – Draft Resolution No. 2016-21
 G - DCP/CAP FEIR Consistency Evaluation dated September 12, 2016
 Basic Concept/Schematic Drawings dated May 26, 2016



7th & Island Hotel Civic Submittal
Rooftop Food and Beverage Outlet
NUP – Use Description
March 7th, 2015

Project Description:

Located on the twentieth floor of the post-tensioned concrete dual-branded Hampton and Canopy hotel at 7th & Island, this proposed rooftop restaurant will serve as public amenity focused around its Gaslamp Quarter location. Anticipated as casual yet upscale, this 3,500 SF single story restaurant will have a mix of informal soft seating, casual dining, bar seating and areas which may be reserved for larger groups or conferences.

With a menu that includes full bar service and light fare, the restaurant will operate 7 days a week from 10:00am to 2:00am and be directly accessible from the building's urban open space. Menu offerings will also be focused around San Diego's regional cuisine, offering a full bar with beer, wine and spirits as well as a limited food menu focused on appetizers and shareable plates.

With non-live entertainment, the ambiance at the rooftop restaurant will recede into the background and let the guest experience be more open. The informal atmosphere paired with an upscale staff experience will make the space an anchor that is focused around fitting into the neighborhood culture.

The restaurant design creates a subtle beacon on top of the proposed hotel, which blends into the façade during the day and stands out at night. The orientation of the restaurant is designed around enhancing views toward downtown and the harbor. The restaurant's exterior will set itself apart from the tower's glass curtainwall system with a subtly angled mullion pattern that creates the glass wind & safety barrier, while the interior will be a blend of concrete, wood, metal and glass.

The building's taller mass on the north side will shield the food and beverage outlet from the residential buildings to the north, preventing it from being visible to residents.



7th & Island Hotel Civic Submittal
September 29, 2015

Architectural Narrative:

This design for San Diego's new Hampton and Canopy dual-branded hotel at 7th & Island strongly emphasizes the architectural character of its site within the East Village. The podium design incorporates a brick industrial façade using textures and proportions related to the neighboring architectural scale, while the tower aims to progress downtown's skyline aesthetic by utilizing highly engineered and beautiful curtainwall systems.

Urban open space at the ground level draws pedestrian activity into the project site and is served by a number of public amenities including food carts, open seating and a public rooftop restaurant entry alongside separate hotel entries. This, coupled with the historic nature of the façade, enhances neighborhood in which it is sited.

Above the podium, the building is visually differentiated into two distinct brands. By creating a slight twist above the level 6 podium roof, the southernmost portion of the tower is focused directly around views to San Diego Harbor and enhances the guest experience by incorporating floor to ceiling curtainwall glass. The northern portion of the tower steps away from the neighboring residential building and distinguishes itself by incorporating a more solid, concrete façade with a design pattern that creates an interesting texture from varying angles.

The public rooftop restaurant incorporates several distinct seating areas which allow for a number of user experiences regarding density and views. It will also serve as a new destination amenity within the East Village and emphasize sweeping panoramic views of downtown and the harbor.

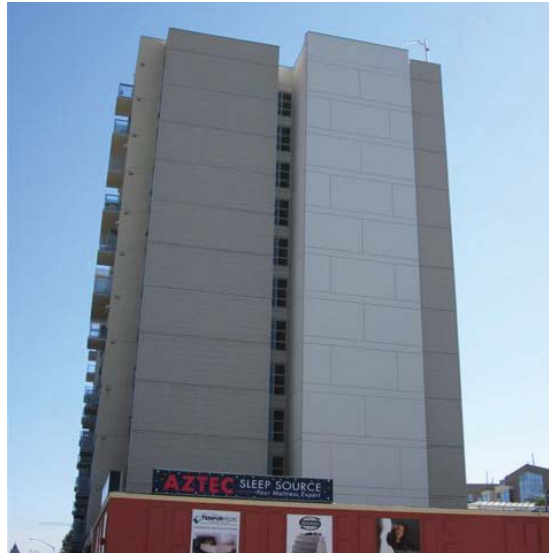
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4.5.10

Blank Walls

Guidelines

- **4.5.10.A** Blank walls on the ground level or on façades of buildings are to be limited to provide a pleasant and rich pedestrian experience. Blank walls include any street wall area that is not transparent, including solid doors and mechanical areas.
- **4.5.10.B** Unavoidable blank walls along public streets or those viewed from public streets, open spaces and thoroughfares should be treated to create an inviting visual experience. All blank wall area should be enhanced with architectural detailing, material texture, ornamentation, landscape treatment and/or artwork.



Unavoidable blank walls viewed from public streets should be enhanced with architectural detailing, material texture, and other devices. Above, San Diego, CA.



Blank walls at street-level should be treated through use of rich and textured materials, color, and landscape materials. Top, Portland, OR; bottom, San Diego, CA.

4.6.1

Urban Open Spaces

These guidelines apply to any public urban open space that is proposed as a public amenity, including those proposed for the purpose of obtaining an FAR bonus or as an exception to the street wall requirements of the PDO. The following guidelines should be used in the evaluation of urban open spaces during the Design Review process.

Guidelines

- **4.6.1.A** The urban open space area should be a publicly accessible park or plaza area.
- **4.6.1.B** The urban open space should be located along the eastern, western, or southern block face, and it should be designed to maximize exposure to the sun, especially from the southwest.
- **4.6.1.C** The urban open space area should be a minimum of 1,000 square feet in area. The open space area should contain a minimum dimension of 40 feet measured parallel to a public sidewalk and 25 feet measured perpendicular to a public sidewalk.
- **4.6.1.D** The grade of an urban open space should not be more than 3 feet above or below the sidewalk grade. On sloping sites, the change in elevation between the sidewalk and adjacent urban open space must include gracious steps and landings, with features such as low risers and wide treads, and any planter boxes should include seating ledges. Any walls, planters, or other obstructions (not including trees, lights, and steps) that would prevent views into the open space should be limited and generally not exceed a height of 18 inches above the adjacent sidewalk.
- **4.6.1.E** A minimum of 20 percent of the urban open space ground area should be improved with landscaping, which may be reduced with the provision of substantial tree canopy coverage. At least one 36-inch box tree should be planted in the urban open space for each 25 feet of street frontage (for linear open space) and/or for each 500 square feet of urban open space, whichever is greater. Urban open space landscaping should complement and extend the materials and design of the adjoining



Photo credit: Keith Baker/The Urbanist. Spur January 2009.

Well designed, publicly-accessible urban open spaces are welcoming and provide public serving amenities such as shade and seating. Above, San Francisco, CA



Gracious steps help pedestrians enter an open space area on a sloping site. Above, New York, NY

SAN DIEGO DOWNTOWN DESIGN GUIDELINES

public right-of-way. Trees planted in urban open space areas should have a minimum planting area of 100 square feet, with a minimum soil depth of 5 feet. Shrubs should have a minimum planting area of 24 square feet, with a minimum soil depth of 30 inches.

- **4.6.1.F** Seating should be provided for users in urban open spaces at a ratio of 1 linear foot of seating for each 40 square feet of urban open space. The seating may be composed of benches and seating walls, and movable seating is highly encouraged. Seating should be between 12 and 24 inches above the level of the adjacent walking surface, and comprise 14 inches of minimum horizontal surface.
- **4.6.1.G** Open-air cafés should not occupy more than 25 percent of the total area of the urban open space.
- **4.6.1.H** Other site amenities may include open-air cafés, kiosks and pushcarts. Kiosks should be constructed of predominantly light materials such as metal, glass or fabric. No kitchen equipment should be installed within any open-air café. Movable pushcarts providing food products, fresh fruits or vegetables, fresh-cut flowers or live plants are encouraged.
- **4.6.1.I** Plaza lighting should be provided to ensure adequate security and its design should be coordinated with the lighting used in the public right-of-way and with the building's architectural lighting.



Movable seating should be provided for users in urban open spaces. Above, New York, NY



Urban open spaces should be improved with landscaping, incorporating impervious surfaces, trees and other plantings. Above, San Francisco, CA



Kiosks should be free-standing and constructed of light materials such as metal, glass, or fabric. Above left, Portland, OR; right Victoria, BC.



Architecture • Experience • Integrity

Principals

M. Andrew Rodrigues, AIA
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June 2, 2016

Steven Bossi
Associate Planner
Civic San Diego 401 B Street, Suite 400
San Diego, CA 92101-4298

Re: PDP Findings for 7th and Island Hotel

CCPDO §156.0313(b)(2)(B)(i)

Parking, Loading, Traffic and Transportation Demand Management Standards

(B) For developments containing over 100,000 square feet of commercial space:

- (i) One off-street loading bay shall be provided, with the bay measuring a minimum of 35 feet deep, 14 feet wide, and 14 feet tall.

A deviation from the required off street loading bay is being requested. A loading bay with a 12 ft. entry (expanding to the required 14 ft. once inside the building) and 30 ft. in depth is being requested.

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

The proposed deviation provides for adequate off street loading this project per the intent of the land use plan. It allows for vehicles to be off the street and out of the way of pedestrians and flow of traffic.

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

The proposed deviation provides off street loading for a standard size 25 ft. delivery truck. The 5 ft. behind the truck provides for loading and unloading of the truck. The truck will not protrude into the sidewalk or pedestrian way during while parked in the dock. The door to the loading bay can be shut during the loading process.

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.

The proposed development will comply except for proposed deviations. See below for design items.

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

Increasing the loading bay depth on this project will result in a less usable ground floor space for the public. The goal of the ground floor is to provide space for guests and public visitors to use as bistro dining space and hotel lobby and to bring activity into the ground floor. Using more ground floor space for loading area decreases available space for the public and hotel guests to use as bistro and lobby.

Increasing the loading bay depth separates an area of public space from the front space, decreasing the amount of natural light that can penetrate the space and restricting the guest flow to the remaining ground floor program. The bistro becomes disconnected from the public space beyond and it would not encourage public use.

A wider loading bay entry door increases the amount of garage door the public must walk past and reduces the amount of glazing for the bistro. The glazing and visibility of the bistro, both in and out, create a better street experience on 7th Avenue than a loading dock door.

Increasing the width of the loading bay door also decreases the required transparency on 7th Avenue. It is a more desirable experience to have a public function be transparent than making more loading bay door.

Sincerely,

A handwritten signature in black ink, appearing to read 'DM' followed by a long horizontal stroke.

David Mann, LEED AP, Associate
Delawie



September 28, 2016

Jeff Gattas, Chair
Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101-4298

Re: *7th and Island Project – Centre City Development Permit / Centre City Planned Development Permit/Neighborhood Use Permit No. 2015-60
CivicSD Board Sep. 28, 2016 Item # 11*

Dear Chair Gattas and Directors:

The San Diego Building and Construction Trades Council ("Building Trades") hereby provides comments to Civic San Diego for the 7th and Island Project – Centre City Development Permit / Centre City Planned Development Permit/Neighborhood Use Permit (CCDP/CCPDP/NUP) No. 2015-60.

The Building Trades support transparent and sound planning decisions. Here, 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 new, Project-specific EIR study is warranted.

Specifically, no traffic study was done for this Project – a twenty floor hotel that is receiving extra floor area bonuses, allegedly because it is a "resort" with below the 2,400 daily car trip threshold that triggers a traffic study. That conclusion is not credible. This is a Hampton Inn with no pool, not a "resort" hotel. In fact, Civic San Diego staff originally required a traffic study. Now, in the addendum published two days ago, Civic San Diego claims it changed its mind and that its approach to planning nevertheless is "conservative." This rings false. If Civic San Diego were concerned about "conservative," sound planning, it would have used a higher car trip rate for a regular "hotel" or would have performed a traffic study for the Project. **A twenty story hotel without a traffic study?** Civic San Diego Staff is trying to get the developer out of paying for traffic mitigation. **Do not enable that.**

The lack of transparent decision-making and sound planning is structural at Civic San Diego. The Building Trades believes that the City of San Diego has unlawfully administered its delegation of land use decision-making authority to CivicSD and thereby also allowed improper conflicts of interest to exist in violation of the San Diego City Charter and Municipal Code, and prevailing California law. This 7th and Island Project is just the latest example.

Thank you for consideration of these comments.

Sincerely,

Tom Lemmon
San Diego Building and Construction Trades Council

**DOWNTOWN
FINAL ENVIRONMENTAL IMPACT REPORT (Downtown FEIR)
CONSISTENCY EVALUATION
FOR THE
7th & Island Hotel Development**

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

Downtown FEIR Consistency Evaluation

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

2. DEVELOPER: J Street Development, Inc.

3. PROJECT LOCATION: The Project site is 27,500 SF on the northwest corner of Seventh and Island avenues in the East Village neighborhood of Downtown Community Plan (DCP) Area ("Downtown"). 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-04508 and 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 the East Village neighborhood. This description is hereby incorporated by reference.

The Project site is located in the Ballpark sub-district of the East Village neighborhood. The site's western portion is occupied by an existing four-story Hotel Z building, which will remain, while the eastern portion (15,000 SF) will accommodate the new construction. The existing Hotel Z building has been incorporated into the Development Permit application site so that the new project can utilize its excess, unused FAR. The site's eastern portion is currently occupied by a two-story hotel and a warehouse that would be demolished under the project. There is an array of uses in the immediate vicinity of the Project site, including neighborhood restaurants and bars, retail stores, storage facilities, hotels, office buildings, and high-rise residential buildings.

Surrounding Uses to the site include the following:

- North: 19-story Alta residential tower
- South: 4-story Ballpark Self Storage
- East: Clermont Hotel and parking lot (future Seventh & Market high-rise)
- West: 2-story restaurant and bar

The land use district for the site, as designated in the CCPDO, is Employment/Residential Mixed Use (ER). The ER District is intended to provide synergies between educational institutions and residential neighborhoods, or to transition appropriate development 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 ER District permits 100% commercial projects.

5. PROJECT DESCRIPTION:

The Applicant is requesting approval of Centre City Development Permit and a Planned Development Permit and Neighborhood Use Permit to allow the construction of a 20-story (approximately 240 foot tall) hotel tower comprised of 324 hotel guest rooms and 137 valet parking spaces.

The Applicant is seeking deviations to the following deviations from applicable development regulations:

1. SDMC §142.0555(b)(2) and CCPDO §156.0313 Parking Provisions: Valet-only parking and tandem parking may be provided for valet parking associated with a restaurant use, not a hotel.
2. CCPDO §156.0313(b)(2)(B)(ii) Off-Street Loading Dock: One off-street loading bay that is 35 feet deep, 14 feet wide and 14 feet tall shall be provided for developments containing over 100,000 SF of commercial space.

The Base Maximum FAR for the Project site is 6.0, with a maximum allowable FAR with bonuses of 8.0. The Applicant is proposing to increase the Project FAR from 6.0 to 7.9 through the use of the following FAR Bonus Programs:

- FAR Bonus Payment Program: The Applicant is seeking to obtain 0.955 FAR (26,250 SF) by participating in the FAR Bonus Payment Program. The payment rate is \$17.41/SF which will result in a payment of \$457,012 into the FAR Bonus Payment Fund to be utilized towards public parks and enhanced public rights-of-way
- Urban Open Space: The Applicant is seeking to obtain 0.5 FAR (13,750 SF) by reserving 10% of the 27,500 SF site for the development of a public urban open space.
- Green Building: The Applicant is seeking to obtain 1.0 FAR (15,000 SF) by providing LEED Silver designation for the new hotel building, so the bonus is calculated only on the portion of the site containing the new construction.

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 Downtown FEIR is a “Program EIR” prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The aforementioned environmental document is the most recent and comprehensive environmental document pertaining to the proposed Project. The 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.

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. No additional documentation is required for subsequent proposed actions if the Evaluation determines that the potential impacts have been adequately addressed in 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 b) there is a substantial change in circumstances that would require major revision to the Downtown 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 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; PAL-A.1-1; NOI-B.1-1; NOI-C.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. These documents address the potential environmental effects of future development within the Downtown area 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, 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 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;

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 that any significant effects previously examined will be substantially more severe than shown in 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 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 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 Downtown FEIR or addenda to the Downtown FEIR, and therefore, the proposed Project is within the scope of the program approved under the 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.



Steven Bossi, Associate Planner
Lead Agency Representative/Preparer

September 12, 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 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, the following table indicates how the impacts of the proposed activity relate to the conclusions of the Downtown 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 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 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 resources 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 planning area. The CCPDO and DCP identifies The Centre City Planned District Ordinance (CCPDO) identifies the Project area outside of the View Corridor areas. It is not anticipated that the Project will have an impact on scenic resources, vista or view from a public viewing area.</p> <p>The Project would result in the construction of a 20-story (approximately 240 foot tall) hotel tower comprised of 324 hotel guest rooms and 137 subterranean valet parking spaces. The architectural features of the proposed Project does not include extreme height, bulk, scale, or site orientation that would substantially disturb views of the San Diego Bay, San Diego-Coronado Bay Bridge, Point Loma, Coronado, Petco Park, and the Downtown skyline from public viewing areas. Thus, significant direct impacts associated with this issue would not occur.</p> <p>The Project site itself does not possess any significant scenic resources that could be impacted by the proposed Project. Impacts to on-site scenic resources are not significant.</p>					X	X
<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</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						
improve the area by providing a new, modern building on a site with two vacant buildings. 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 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

	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						
<i>(b) 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>Geocon Incorporated prepared a Geotechnical Investigation for the project in 2015. 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 a State of California earthquake fault zone.</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 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</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						
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
<p>(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</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						
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.						
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 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.					X	X
(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</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						
<i>to the public or the environment?</i> The Project is not located on or within 2,000 feet of a site on the State of California Hazardous Waste and Substances Sites List; however, there are sites within 2,000 feet of the Project site that are listed on the County of San Diego's Site Assessment Mitigation (SAM) Case Listing. The 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 7.a above. Therefore, the FEIR states that no mitigation measures would be required.						
<i>(c) 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 SDIA 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 SDIA would not be significant, consistent with the analysis in the FEIR. Therefore, the potential impacts are not significant.					X	X
<i>(d) 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.					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:						
(a) <i>Substantially impact a significant historical resource, as defined in § 15064.5?</i> The proposed project site currently contains two buildings that are not designated as historic resources. The City of San Diego Historic Resources Board voted not to designate these properties as historic resources and the site does not contain any historic or architectural resources listed in the National Register of Historic Places (NRHP). Therefore, no significant direct or cumulative impacts associated with this issue would occur.					X	X
(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 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 four levels of below grade parking could have potentially adverse impacts to archaeological resources, including buried human remains. Implementation of FEIR Mitigation Measure HIST-B.1-1, (see Attachment A) would minimize, but not fully mitigate, these potential impacts. Since the potential for archaeological resources and human remains on the Project site cannot be confirmed until grading is conducted, the exact nature and extent of impacts associated with the proposed Project cannot be predicted. Consequently,	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						
the required mitigation may or may not be sufficient to reduce these direct project-level impacts to below a level of significance. Therefore, project-level impacts associated with this issue remain potentially significant and not fully mitigated, and consistent with the analysis of the FEIR. Furthermore, project-level significant impacts to important archaeological resources would contribute to the potentially significant and unmitigated cumulative impacts identified in the 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 below grade 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		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>could surpass known groundwater levels, which 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.</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						
Consistent with the FEIR, the Project's contribution to 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.					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						
Therefore, impacts associated with these issues are not 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 is intended to transition between the Core and residential neighborhoods. The classification includes a variety of uses, including office, residential, hotel, research and development, and educational and medical facilities. The proposed mixed use development is consistent with the allowed uses in the ER District.</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 Land Development Code. Therefore, no significant direct or</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						
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)
Issues and Supporting Information						
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		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						
mitigation measures available to reduce the significant noise increase in noise on affected roadways and this impact remains significant and unavoidable.						
(b) <i>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 is a 20-story (approximately 240 foot tall) hotel tower containing 217,674 square feet, 324 hotel guest rooms and 137 valet parking spaces. The PDO does not require outdoor open spaces for non-residential projects; therefore, no outdoor open spaces are required. The project also includes an urban open space on the ground floor and an outdoor open space on the rooftop where substantial noise exposure may occur exceeding the 65dB(A) standard. Exposure in those locations could exceed 65 dB(A) CNEL. The Project will need to incorporate noise attenuation measures for public plazas as per Mitigation Measure NOI-D.1.			X	X		
(c) <i>Substantial interior noise within habitable rooms (e.g. levels in excess of 45 dBA CNEL)?</i> As traffic noise levels would exceed 65 dB(A) CNEL in the project area, interior noise levels within habitable rooms facing Island and 7 th avenues could experience interior noise levels in excess of 45 dB (A) CNEL (the standard set forth in the FEIR). However, adherence to Title 24 of the California Building Code and implementation of Mitigation Measure NOI-B.1-1 would reduce interior noise levels to below 45 dB (A). Therefore, direct project-level impacts associated with this issue would be mitigated to a level less than significant.			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 will include					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						
the addition of 324 hotel guest rooms. The addition of these guest rooms is consistent with the DCP and CCPDO proposed build-out and does not exceed those analyzed throughout the FEIR. Therefore, project-level and cumulative impacts associated with this issue are not significant.						
<i>(b) Substantial displacement of existing housing units or people?</i> The Project site is currently occupied by a vacant SRO building with 96 rooms which would be demolished under the project. The 96 rooms are currently vacant and the project would provide 324 rooms. There is a recorded Agreement Affecting Real Property and Relocation Assistance Affecting Real Property with the San Diego Housing Commission requiring replacement fees to be paid prior to implementation of the Project. Given the vacant nature of the existing buildings and the requirements in the San Diego Housing Commission agreement, no direct or cumulative impacts associated with this would occur.					X	X
14. PUBLIC SERVICES AND UTILITIES:						
<i>(a) 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					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						
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.						
(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 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.					X	X
(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					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						
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.						
(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.					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>(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 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>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 proposed project does not require the preparation of a Water Supply Assessment (WSA) as it does not meet any of the thresholds established by SB 610 or SB 221. According to the FEIR, in the short term, planned water supplies and transmission or treatment facilities are adequate. Water transmission infrastructure necessary to transport water supply to the downtown area is already in place. Potential direct impacts would not be significant. However, buildout of the 2006 Downtown Community Plan would generate 1.4% more water demand than planned for in the adopted 2005 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 that it will have a local water supply (from surface water, water recycling, groundwater, and seawater desalination) to meet the additional demand resulting from buildout of the Downtown Community Plan. In accordance with the conclusion in the FEIR, this additional demand would not represent a substantial increase in the challenge of meeting the otherwise anticipated demand for water within the SDCWA</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						
service area. Since the proposed project does not meet the requirements of SB 610 and is consistent with the Downtown Community Plan, direct and cumulative impacts related to water supply would be considered not significant.						
(f) <i>Substantial adverse physical impacts associated with the provision of new storm water facilities?</i> The FEIR 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.					X	X
(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					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						
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 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:						

	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>(a) Cause the LOS on a roadway segment or intersection to drop below LOS E? 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. The proposed ADT for the Project is approximately 2,268 ADT based on a trip generation rate of seven trips per hotel room. Based on the proposed uses, the Project would not exceed the daily and peak hour thresholds established in the DCP for triggering the requirement for a traffic study.</p> <p>With buildout of the DCP, a total of 62 intersections are anticipated to operate at LOS F; however, none of the impacted intersections are adjacent to the Project site. The projects direct impacts on downtown roadway segments or intersections would not be significant; However, the traffic generated by the proposed Project would in combination with the traffic generated by other downtown development, contribute to the significant cumulative impacts projected in the 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. The FEIR includes mitigation measures to address these impacts, but 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. These mitigation measures are not the responsibility of the proposed project, and are therefore not included in Attachment A. Therefore, consistent with the analysis of the FEIR, the proposed Project would contribute to significant cumulative impacts associated with this issue.</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>(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.</p>	X	X				
<p>(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 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</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						
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 16.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 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. Implementation of the mitigation measures identified in the FEIR would reduce some significant impacts; however, the impacts would remain significant and inmitigable. Cumulative impacts		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						
would not be greater than those identified in the FEIR.						
(c) <i>Does the Project have environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly?</i> As described elsewhere in this study, the Project would result in significant and unmitigated impacts. Those impacts associated with air and noise could have substantial adverse effects on human beings. However, these impacts would be no greater than those assumed in the FEIR. Implementation of the mitigation measures identified in the FEIR would mitigate many, but not all, of the significant impacts.	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

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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>			

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Significant Impact(s)	Mitigation Measure(s)	Implementation		
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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

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		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). 			

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	<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 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. (b) Potentially Significant Impacts If the PI determines that a potentially significant impact has occurred to a historical resource, the procedures detailed under Section III - During 			

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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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	<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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	<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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	<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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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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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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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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	<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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	<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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	<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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Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<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 CSVr 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>			

**Downtown FEIR/SEIR
Mitigation Monitoring and Reporting Program**

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>			

**Downtown FEIR/SEIR
Mitigation Monitoring and Reporting Program**

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

**Downtown FEIR/SEIR
Mitigation Monitoring and Reporting Program**

Significant Impact(s)	Mitigation Measure(s)	Implementation		
		Time Frame	Responsibility	Verification Responsibility
	<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>			

**Downtown FEIR/SEIR
Mitigation Monitoring and Reporting Program**

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 7

**PLANNING COMMISSION
RESOLUTION NO. PC-XXXX
CENTRE CITY DEVELOPMENT PERMIT
CENTRE CITY PLANNED DEVELOPMENT PERMIT
NEIGHBORHOOD USE PERMIT
NO. 2015-60**

WHEREAS, 7th and Island, LLC, Owner, and J Street Development, Inc., Permittee, filed an application for Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit (CCDP/CCPDP/NUP) No. 2015-60 on October 16, 2015 with Civic San Diego (“CivicSD”) for the construction of a hotel with 324 hotel guest rooms and 137 valet parking spaces, commonly referred to as 7th & Island Hotel (“Project”);

WHEREAS, a 27,500 square-foot (SF) site located on the northwest corner of Seventh and Island avenues in the East Village neighborhood of the Downtown Community Plan (DCP) area and within the Centre City Planned District (CCPD), and legally described in Exhibit A;

WHEREAS, on September 28, 2016, the CivicSD Board of Directors (CivicSD Board) held a duly noticed public hearing to consider CCDP/PDP/NUP 2015-60, including a staff report, permit 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. 2016-21 granting CCDP/CCPDP/NUP 2015-60 for the Project;

WHEREAS, on October 11, 2016, Sergio Gonzalez filed an appeal application regarding the approval of CCDP/CCPDP/NUP 2015-60 by the CivicSD Board on September 28, 2016;

WHEREAS, on November 3, 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 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 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 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; that the project is within the scope of the development program described in the Downtown FEIR and CAP FEIR and is 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 November 3, 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:

- Supporting the vision for the area which encourages the development of a multi-use district with a regional entertainment and cultural focus;
- Maintaining the prominence of Petco Park while reinforcing the evolving high-intensity Market Street corridor;
- Transitioning between the shopping and entertainment district of the Gaslamp/Horton neighborhood and the residential developments of the East Village; and,
- Permitting 100% commercial projects, including hotels.

In addition, with approval of CCDP/CCPDP/NUP No. 2015-60, 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 consistent with the objectives of the DCP, CCPDO, and the DDG in that the Project provides appropriate mass and scale to the existing block and provides an appropriate use for the location. The hotel use is appropriate for the location near the

Horton/Gaslamp neighborhood and East Village's residential uses and Petco Park. The valet-only and tandem parking deviation will provide an efficient use of a limited site area and has been granted in other Downtown hotel projects. The shorter loading dock will allow for the proper servicing of the hotel's needs, while ensuring that the loading dock door remains closed to avoid pedestrian views into the service area while maximizing the efficiency of the ground floor of the hotel.

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. The valet parking spaces exceed the required number of parking spaces providing the necessary capacity to accommodate parking needs. The loading dock design will allow for efficient hotel services while not interfering with safe pedestrian access on the public sidewalk.

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 CCPDP. The valet-only parking deviation is appropriate for the hotel use and is an efficient use of the space on a smaller lot. The loading dock deviation for depth will accommodate the service needs of the hotel operations while maximizing the efficiency of the hotel's ground floor.

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

The proposed Project is consistent with the DDG and will provide for a contemporary architectural design with unique design elements consistent with the architecture and massing of the surrounding neighborhood. The use of upgraded materials on the entire building base and throughout the tower provides interest and enhances the skyline of the neighborhood.

NEIGHBORHOOD USE PERMIT FINDINGS

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 Project will not adversely affect the land use plan and will enhance the East Village neighborhood by providing a rooftop dining area and a sidewalk café that will add to the pedestrian activity, vitality and commercial offerings in the area. There will be no live entertainment with potential for loud noise generating uses on the rooftop or on the ground floor.

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

The Project will not create any sidewalk hazards from the sidewalk café nor will it create lighting or noise issues from the rooftop dining area. These rooftop dining and sidewalk café uses will add to the amenities offered in the community without being a detriment to the surrounding area and the public health, safety, and welfare.

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

The Project will comply to the maximum extent feasible with the LDC with approval of the NUP for a sidewalk café and public outdoor use on the rooftop. The dining area on the rooftop will provide for a unique dining and gathering space that will comply with the development standards.

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 Project is appropriate at the proposed location as it proposes a sidewalk café and a rooftop dining area in an area promoting pedestrian activity and a wide array of cultural uses and destinations. These uses augment the offerings of the hotel and will activate the area by providing gathering spaces and commercial attractions to all users in the area.

BE IT FURTHER RESOLVED that, based on the findings, hereinbefore adopted by the Planning Commission, the appeal is denied and CCDP/CCPDP/NUP No. 2015-60 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. 2015-60, a copy of which is attached hereto and made part hereof.

Steven Bossi
Associate Planner
Civic San Diego

Date

Attachment: Exhibit A – Legal Description

Adopted on: November 3, 2016