



## MEMO

TO: City of San Diego Planning Commission

FROM: Aaron Hollister, Senior Planner  
Brad Richter, Vice President, Planning

DATE: March 7, 2017

SUBJECT: 1122 4<sup>th</sup> AVENUE (commonly known as the California Theatre) – Amendments to Downtown Community Plan, Centre City Planned District Ordinance and Local Coastal Program for the Removal of the Employment Overlay from the project site and Centre City Development Permit/Site Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit No. 2014-76 – PROCESS 5

The subject item was continued by the Planning Commission at its meeting of February 23, 2017 to March 16, 2017. In the interim period a revised Statement of Overriding Considerations (Attachment B of the Addendum Memo) was drafted and is intended to supersede the previously circulated Statement of Overriding Considerations that was circulated under Attachment B (the Supplemental Environmental Impact Report) of the staff report dated February 16, 2017 for the item. Also attached for convenience and clarity are the Supplemental Environmental Impact Report Findings (Attachment A of the Addendum Memo) that have not changed since the materials for the item were originally circulated.

No other project materials have changed in the interim period including staff recommendations to the Planning Commission. Please find the aforementioned Findings and Statement of Overriding Considerations attached as follows:

Attachments: A – Supplemental Environmental Impact Report Findings  
B – Revised Statement of Overriding Considerations

**SUPPLEMENTAL CANDIDATE FINDINGS OF FACT FOR THE CITY COUNCIL OF  
THE CITY OF SAN DIEGO CERTIFYING THE FINAL SUPPLEMENTAL  
ENVIRONMENTAL IMPACT REPORT FOR THE 1122 4TH AVENUE  
REDEVELOPMENT PROJECT**

City of San Diego

SCH 2015111076

Section 21081(a) of the California Environmental Quality Act (CEQA) and Section 15091(a) of the State CEQA Guidelines (Guidelines) require that no public agency shall approve or carry out a project for which an environmental impact report (EIR) has been certified identifying one or more significant effects on the environment that would occur if the project is approved or carried out, unless such public agency makes one or more of the following findings:

- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects on the environment;
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, can or should be adopted by that other agency; or
- (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

CEQA also requires that the findings made pursuant to Section 15091 of the Guidelines be supported by substantial evidence in the record (Section 15091(b) of the Guidelines). Under CEQA, substantial evidence means enough relevant information has been provided (and reasonable inferences may be derived from this information)) that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Substantial evidence must include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts (Section 15384 of the Guidelines).

The Candidate Findings included herein have been submitted by Civic San Diego to the City Council of the City of San Diego (“City Council”) as Candidate Findings to be made by the decision-making body. It is the exclusive discretion of the decision maker certifying the EIR to determine the adequacy of the proposed Candidate Findings. It is the role of staff to independently evaluate the proposed Candidate Findings and to make a recommendation to the decision-maker regarding their legal adequacy.

## **1.0 INTRODUCTION**

The purpose of this document is to supplement prior Findings of Fact (Findings) and Statement of Overriding Considerations (SOC) made on March 14, 2006 in accordance with Section 15091 of the Guidelines (14 Cal. Code Regulations Sections 15000 et seq.) by the City Council and the Redevelopment Agency of the City of San Diego (“Redevelopment Agency”) (2006 Findings/SOC). The 2006 Findings/SOC were adopted at the time of certification of the Final Program Environmental Impact Report (FEIR) prepared for the Downtown Community Plan, Centre City Planned District Ordinance and the 10th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project (Downtown FEIR). In the 2006 Findings/SOC, the City Council/Redevelopment Agency identified significant effects of the then proposed Downtown Community Plan, Centre City Planned District Ordinance, and the 10th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project, including those effects which would not be mitigated to below a level of significance. As further required by the Guidelines, the City Council/Redevelopment Agency balanced the benefits of the proposed plans and ordinance against the identified unavoidable environmental risks (Section 15093 of the CEQA Guidelines) and adopted the SOC, which states the specific reasons why the benefits of the proposed plans and ordinance outweigh the unavoidable adverse environmental effects of the proposed plans and ordinance, and explains that the unavoidable environmental effects are considered acceptable.

The Supplemental Findings presented herein are made relative to the specific conclusions of the Final Supplemental Environmental Impact Report (FSEIR) for the proposed project. As explained in Chapter 3.0 of the FSEIR, the proposed project would provide a multiuse residential development to promote social, civic and economic vitality along a blighted area of the C Street corridor, as well as amending the DCP and CCPDO to remove the Employment Overlay from the project site. The Lead Agency determined that the proposed project involved new information of substantial importance and that the project could have one or more significant effects not discussed in the Downtown FEIR. Therefore, the FSEIR was completed pursuant to Section 15163(a) of the Guidelines to provide an updated analysis necessary to make the Downtown FEIR adequate. Likewise, these Findings and SOC are intended to update the 2006 Findings/SOC. The following documents are incorporated by reference: 2006 FEIR, 2006 Findings/SOC, and the FSEIR for the proposed project.

The following Supplemental Findings are hereby adopted by the City in its capacity as the CEQA Lead Agency. The Guidelines also require that the City Council balance the benefits of the proposed project against the unavoidable environmental effects identified in the FSEIR in determining whether to approve the proposed project. The City Council has carefully considered the benefits of the proposed project. The FSEIR identifies significant environmental effects which could remain significant even with the implementation of the identified mitigation measures. Therefore, the City Council hereby also adopts the SOC, which states the specific

reasons why the benefits of the proposed project, each of which standing alone, is sufficient to support approval of the proposed project, outweigh the unavoidable adverse environmental effects of the proposed project, and explains that the unavoidable environmental effects are considered acceptable.

## **2.0 DESCRIPTION OF THE PROPOSED PROJECT**

The proposed development includes the construction of a new 40-story high-rise tower residential building in the center of the project site, which would be 420 feet tall and would consist of 282 units, with street level retail, lobby, associated residential amenities, three levels of underground parking, and four levels of above grade parking. On the south and east sides of the property, the façade of the existing 9-story office building will be re-created, and will coincide with the proposed floor-by-floor program. Specific project features include 22 affordable housing units, replication of the corner blade sign (“California”) and the entry marquee, open urban space terraces and green rooftop, a roof terrace on the north side of the tower includes a pool, spa, steam room, sauna, recreation rooms, and fitness center, and a sloped roof for photovoltaics. Three street level retail spaces would be made available along C Street and 4th Avenue. There would be a total of 314 parking spaces in both above grade and below grade levels of parking. The proposed development covers a total gross area of approximately 391,650 square feet with 309,569 square feet of above grade gross floor area and 70,000 square feet below grade (parking). The proposed project would require the demolition of all existing structures onsite, including the California Theatre and 9-story office building. Details of the project description are included in Chapter 3 of the FSEIR.

## **3.0 RECORD OF PROCEEDINGS**

For purposes of CEQA and these Findings and SOC, the Record of Proceedings for the proposed project consists of the following documents and other evidence, at a minimum:

- The Notice of Preparation and all other public notices issued by Civic San Diego in conjunction with the proposed Project;
- The Draft SEIR;
- The FSEIR;
- All written comments submitted by agencies or members of the public during the public review comment period on the Draft SEIR;
- All written and verbal public testimony presented during a noticed public hearing for the proposed project at which such testimony was taken;

- The Mitigation Monitoring and Reporting Program (“MMRP”);
- The technical reports incorporated by reference to the Draft SEIR;
- The Ordinances and Resolutions adopted by the Council/Agency in connection with the proposed project, and all documents incorporated by reference therein;
- Matters of common knowledge to the City Council, including but not limited to federal, state and local laws and regulations;
- Any documents expressly cited in these Findings and SOC; and
- Any other materials required to be in the record of proceedings by Section 21167.6(e) of CEQA.

The documents and other materials that constitute the record of proceedings upon which the City Council’s decision is based are located at the City of San Diego, 202 C Street, San Diego, CA 92101, and at Civic San Diego, 401 B Street, Fourth Floor, San Diego, CA 92101. Copies of all these documents, are, and have been, available upon request at the above addresses. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and 14 California Code of Regulations Section 15091(e). The City Council has relied on all the documents listed above in reaching its decision on the proposed project, even if each document was not formally presented to the City Council or City Council staff as part of files generated in connection with the proposed project. These documents are either in the proposed project files, reflect prior planning or legislative decisions of which the City Council was aware in approving the proposed project, or influenced the expert advice provided to the City Council staff or consultants, who then provided advice to City Council. For that reason, these documents form part of the underlying factual basis for the City Council’s decisions relating to the adoption of the proposed project.

#### **4.0 GENERAL FINDINGS**

The City Council hereby finds as follows:

- The foregoing statements are true and correct;
- The FSEIR was completed in compliance with CEQA as a supplement to the 2006 PEIR and is intended to complement and refine said document;
- The FSEIR reflects the City Council’s independent judgment;
- A MMRP (Chapter 7.0 of the FSEIR) has been prepared for the proposed project, which the City Council has adopted or made a condition of approval of the proposed project.

That MMRP has been incorporated herein by reference and is considered part of the record of proceedings for the proposed project;

- The MMRP designates responsibility and anticipated timing for the implementation of mitigation;
- In determining whether the proposed project has a significant impact on the environment, and in adopting these Supplemental Findings pursuant to Section 21081 of CEQA, the City Council has complied with Sections 21081.5 and 21082.2 of CEQA;
- The impacts of the proposed project have been analyzed to the extent feasible at the time of certification of the FSEIR;
- The City Council has made no decisions related to approval of the proposed project prior to certification of the FSEIR, nor has the City Council previously committed to a definite course of action with respect to the proposed project; and
- Copies of all the documents incorporated by reference in the FSEIR are and have been available upon request at all times at Civic San Diego, custodians of record for such documents or other materials.

## **5.0 SUMMARY OF IMPACTS**

The Downtown FEIR analyzed cumulative effects that may occur from development in accordance with the proposed DCP in Chapter 6.0 of the Downtown FEIR. The Downtown FEIR identified cumulative impacts to five different resources and provided mitigation for these impacts; however, mitigation would not reduce the cumulative impacts to below a level of significance; therefore, these impacts are considered cumulatively significant and potentially unmitigable. The Downtown FEIR identified historical resources as one of these resources. In the Mitigation Monitoring and Reporting Program (MMRP adopted with the certification of the Downtown FEIR), there is a distinction made between historic resources located on the local San Diego Register and those resources that were listed on, or eligible for, the NRHP or CRHR. The Downtown FEIR recognized that resources listed on the San Diego Register may be demolished due to development anticipated in the DCP, but that any demolition would have to comply with all applicable City regulations for substantial alterations to historic resources including the approval of a Site Development Permit. However, the potential loss of historic resources was considered a cumulative impact that could not be mitigated and therefore the City Council made certain Findings and adopted a Statement of Overriding Considerations when certifying the Downtown FEIR. However, the DCP and MMRP state that historical resources that are listed on, or eligible for listing on, the NRHP or CRHR are to be retained on site and rehabilitated.

Therefore, the proposed demolition of the California Theater was not considered by the Downtown FEIR or MMRP and is subject to further review under CEQA.

A FSEIR has therefore been prepared in accordance with CEQA which evaluates the impacts of the demolition of the building. The FSEIR evaluated only those issue areas where changes were necessary to make the Downtown FEIR adequate. The FSEIR therefore included an analysis of Historical Resources. All other issue areas remain as previously analyzed in the Downtown FEIR. The FSEIR concludes that implementation of the proposed project would have new or substantially increased significant impacts related to Historical Resources, some of which would not be mitigated to below a level of significance. No new impacts have been identified to other issue areas addressed by the Downtown FEIR.

## **6.0 FINDINGS OF FACT**

CEQA and the Guidelines require that the environmental impacts of a project be examined before a project is approved. Specifically, regarding findings, Guidelines Section 15091 provides:

- (a) No public agency shall approve or carry out a project for which an Environmental Impact Report has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
  - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FSEIR.
  - 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
  - 3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FSEIR.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The findings in subdivision (a)(2) shall not be made if the agency making the findings has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The findings in subdivision (a)(3) shall describe

the specific reasons for rejecting identified mitigation measures and project alternatives.

- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for monitoring and/or reporting on the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.
- (e) The agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

The “changes or alterations” referred to in Guidelines Section 15091(a)(1) above, that are required in, or incorporated into, the project which mitigate or avoid the significant environmental effects of the project, may include a wide variety of measures or actions as set forth in Guidelines Section 15370, including:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Having received, reviewed, and considered the FSEIR for the proposed project, as well as all other information in the record of proceedings on this matter, the following Supplemental Findings are hereby adopted by the City Council in its capacity as the Lead Agency. These Supplemental Findings set forth the environmental basis for current and subsequent discretionary actions to be undertaken by the City of San Diego and responsible agencies for the implementation of the proposed project.



For the unmitigated impacts set forth below, Supplemental Findings are made that there are no other feasible mitigation measures that would mitigate the impact to below a level of significance and that specific economic, social, technological, or other considerations make infeasible any alternatives considered in the Downtown FEIR. As described in the SOC, the City Council has determined that unmitigated impacts are acceptable because of specific overriding considerations.

**6.1 FINDINGS REGARDING SIGNIFICANT IMPACTS MITIGATED TO BELOW A LEVEL OF SIGNIFICANCE (CEQA GUIDELINES 15091 (A)(1))**

As discussed in Section 5.0 above, the FSEIR evaluated only those issue areas where changes were necessary to make the Downtown FEIR adequate. The FSEIR therefore addressed only Historical Resources, as this was the only issue area not addressed by the Downtown FEIR for the proposed project. No significant effects mitigated to below a level of significance were identified in the FSEIR.

**6.2 FINDING REGARDING MITIGATION THAT IS WITHIN THE RESPONSIBILITY AND JURISDICTION OF ANOTHER PUBLIC AGENCY (CEQA GUIDELINES 15091 (A)(2))**

There are no changes or alterations that are within the responsibility and jurisdiction of another public agency and not the agency making the finding.

**6.3. FINDINGS REGARDING SIGNIFICANT AND UNAVOIDABLE IMPACTS (CEQA GUIDELINES 15091 (A)(3))**

**Historical Resources Impact HIST-A.1-1** (Impacts to significant architectural structures Downtown): As discussed in Section 5.0 above, and in Chapter 4.0 of the FSEIR, the proposed project would result in significant and unavoidable impacts to the California Theatre, a designated historical resource.

**Finding:** Pursuant to Section 21081(a)(3) of CEQA and Section 15091(a)(3) of the Guidelines, the City Council finds that there are no feasible mitigation measures, including a less environmentally damaging alternative, that would mitigate the following impacts to below a level of significance and that specific economic, social, technological or other considerations make infeasible the mitigation measures and alternatives identified in the Downtown FEIR. The impacts are considered significant and unavoidable. A deviation from standard protective historical resource regulations is the minimum necessary to afford relief and accommodate the development and all feasible measures to mitigate for the loss of any portion of the historical resource have been provided by the applicant. The denial of the proposed development would result in economic hardship to the owner. For the purpose of this finding, “economic hardship” means there is no reasonable beneficial use of a property and it is not feasible to derive a reasonable economic return from the property.

**Facts in Support of Finding:** The Historical Resources Technical Report for the FSEIR identified historical resources that would be significantly adversely impacted by the proposed project. There are no feasible measures, including a less environmentally damaging alternative, that can further minimize the potential adverse effects to the designated historical resource. Although the FSEIR identified mitigation measures that would mitigate the impacts, these measures do not mitigate to below a level of significance. As discussed in Chapter 6.0 of the SEIR, the alternatives considered, aside from the full rehabilitation alternative, would not avoid significant impacts to historical resources. The full rehabilitation alternative (Section 6.1.1) was considered for its avoidance of significant impacts to historical resources, and rejected for not meeting the project objectives, is further rejected herein for being economically infeasible.

The following mitigation measures would partially mitigate historical resources impacts associated with the proposed project; however, impacts to the California Theatre would remain significant and unavoidable:

- Mitigation Measure HR-1: Recording the Resource: The City of San Diego’s Land Development Manual – Historical Resources Guidelines identifies preferred mitigation measures to avoid impacts, including avoidance of a significant resource through project redesign or relocation of the significant resource. Since the proposed project includes the full or partial demolition of the California Theatre, a full recording of the building, to the standards of a Historic American Building Survey (HABS), should be prepared so that a record of the significant resource is maintained.
- Mitigation Measure HR-2: Architectural Salvage: Architectural Salvage: Prior to demolition, the project applicant’s qualified historic preservation professional (QHPP) shall make available for donation architectural materials from the site to museums, archives, and curation facilities; the public; and nonprofit organizations to preserve, interpret, and display the history of the California Theatre.
- Mitigation Measure HR-3 Interpretative Display: In concert with HABS-level documentation, the applicant will create a display and interpretive material to the satisfaction of the HRB staff for public exhibition concerning the history of the California Theatre.

These mitigation measures are described fully in Chapter 7.0 of the FSEIR. No mitigation measure was identified that could reduce significant impacts to below a level of significance. The “no project alternative” would avoid impacts to the California Theatre altogether, but would not achieve any of the project goals and objectives. Therefore, no feasible mitigation measures exist to reduce impacts to the California Theatre to below a level of significance, and impacts would remain significant and unavoidable.

**Facts in Support of Finding:** The SEIR identifies Alternatives 2, 3 and 4 as the environmentally superior alternatives, as they lessen the severity of the historical impact by retaining the ground floor C Street façade of the California Theatre and existing office building, and recreating the

wall signs on the northern façade of the office building. Alternatives 2, 3 and 4 would meet the objective of paying homage to the historical nature of the California Theatre by retaining character-defining features associated with the office building and theater, while meeting project objectives to provide potential new housing and business opportunities to the area, and reducing impacts to historical resources. Although these alternatives would lessen the severity of impacts to historical resources, they would not reduce impacts to less than significant, as they each require the demolition of the California Theatre.

An economic alternatives analysis was completed by the London Group (The London Group 2015) that analyzed the economic feasibility of each project alternative. A peer review of the London Group economic alternatives analysis was also completed by Keyser Marston Associates (KMA October 2016). The KMA October 2016 peer review further analyzed conclusions of the London report with rate of return figures based on the London report. The economic analyses contained both the London Group 2015 report and the KMA October 2016 peer review demonstrated that these three alternatives are not economically feasible, as described below.

Alternative 2 would include the demolition of the existing California Theatre. It would lessen the severity of the historical impact through the retention and rehabilitation of the existing nine-story office tower along with the construction of a new 40-story mixed-use tower (as included in the proposed project). The rehabilitated nine-story building would have four levels of above ground parking, one main residential lobby entrance, and one level of amenities for the residential units. The 40-story mixed-use tower design is the same as the proposed project and includes 310,651 square feet of net saleable residential (282 for-sale condominiums) with 10,900 square feet of retail. The total gross square footage, including parking, is 607,000 square feet.

The total estimated net sales revenue derived from Alternative 2 is the same as the proposed project at \$201.5 million. However, the estimated construction costs are increased by \$11.6 million to a total of \$187.1 million. \$216.2 million. The result is a project loss of \$14.5 million. This is a reduction in total profit of 156%, or 40.6 million, compared to the proposed project. Alternative 2 achieves a margin on gross revenue of 8.7%, which is below the 10% threshold required for financing.

Alternative 3 assumes a new mixed use development with the C Street façade retained and rehabilitated and the 9-story office tower retained and rehabilitated. The project design is the same as the proposed project and includes 310,651 square feet of net saleable residential (282 for-sale condominiums) with 10,900 square feet of retail. The total square footage, including parking, is 607,000 square feet.

The total estimated net sales revenue is the same as the proposed project at \$201.5 million. However, the estimated construction costs are increased by \$11.6 million to a total of \$187.1 million. The resulting net profit is calculated at \$14.4 million. This is a reduction in total profit of

44.6% or 11.6 million, compared to the proposed project. Alternative 3 achieves a margin on gross revenue of 7%, which is below the 10% threshold required for financing.

Alternative 4 assumes a new mixed use development with the C Street façade retained and rehabilitated or reconstructed if necessary with retail on the ground floor and the 9-story office tower retained and rehabilitated or reconstructed if necessary. This alternative also includes a 20-foot wide galleria between the 9-story tower and any new construction to the west of that galleria. This project design comprises a total of 647,000 square feet and includes seven levels of underground parking, with 310,923 square feet of net saleable residential (282 for-sale condominiums) with 10,900 square feet of retail.

The total estimated net sales revenue is the same as the proposed project at \$201.5 million. However, the estimated construction costs are increased to \$216.2 million. The result is a project loss of \$14.5 million. This is a reduction in total profit of 156% or 40.6 million, compared to the proposed project. Alternative 4 achieves a margin on gross revenue of -7%, which is below the 10% threshold required for financing.

The economic analyses for these three alternatives add an order-of-magnitude higher costs that result in single-digit returns (Alternative 4 is negative). These alternatives result in a project that is not economically feasible, nor financeable. There is not enough profit margin or financial “cushion” for private investors or other sources of capital to achieve their required minimum rates of return. Nor does it give investors and lenders a comfort level that the development could sustain cost overruns or revenue corrections (e.g. lower sales prices). The London Group’s analysis concludes that a mixed-use redevelopment project requires the margin on gross revenue to exceed 10 percent for a project to qualify for project financing. Alternatives 2, 3 and 4 do not achieve a margin on gross revenue of 10 percent and, as a result, are not considered economically feasible alternatives. As demonstrated by the Economic Feasibility Analysis only the proposed project is economically feasible, resulting in a net profit of \$24 million, which would be realized over a three year investment period.

The proposed project’s impacts are equivalent to those identified for Alternative 1 in the SEIR. The proposed project would develop a 40-story, 420-foot-tall mixed-use development of 282 residential units, with street level retail, lobby, associated residential amenities, three levels of underground parking, and four levels of above grade parking. The proposed development would have a total gross area of approximately 373,546 sf with 279,544 sf of above grade gross floor area and 70,000 sf below grade with 314 parking spaces. On the east and west side of the property, the existing 9-story office building façade will be replicated, and will coincide with the proposed floor-by-floor program. Alternative 1 differs from the Base Project in that the Base Project proposed a faux replication of the office tower, while Alternative 1 proposes a replication of the office tower based on measured drawings by a historic architect. The replication of these building facades will lessen the impact to historic resources, but not below a level of significance. The total estimated net sales revenue is \$201.5 million. However, the estimated

construction costs are \$177.5 million. The result is a project profit of \$24 million. The proposed project achieves a margin on gross revenue of 11.6%, which is above the 10% threshold required for financing.

The proposed project was determined to be financeable and economically feasible. As a result of the design review process, the project will be effectively implementing Alternative #1 since the design of the replicated office tower will be based on measured drawings rather than a faux approximation as was originally proposed by the Base Project.

**Facts in Support of Finding:** The full renovation alternative (Alternative 5) would renovate both the California Theatre and the existing 9-story office building. In this scenario, the buildings are restored to their original uses as an approximately 2,000 seat theater, 29,350 square feet of office and 4,640 square feet of retail. Total costs of rehabilitation and construction are estimated at \$40.8 million.

Research conducted by the Economic Feasibility Analysis (The London Group 2015) on the reuse and rehabilitation of the former theater portion for theater purposes demonstrates that operation of the rehabilitated theater, not counting the cost of rehabilitation, would result in, at best, a break-even proposition, since most theaters struggle to cover their operating costs and these locations depend largely on donations to cover their deficits, and the building rehabilitation and construction costs at this site have been estimated at \$40.8 million. Therefore, a developer who would invest in rehabilitating the theater would not receive any value or significant income to recover the money spent on rehabilitation.

The analysis of the office component demonstrates a value of \$4.9 million for 29,350 square feet of space at \$168 per square foot. These rents and sale value are in-line with what is being achieved for better quality Class B office space in downtown San Diego. The retail component is estimated to have a value of approximately \$2.1 million for the 4,640 square foot space at \$446 per square foot. These rents and sale values are in line with better quality, and located, retail in downtown San Diego.

With these values combined, the full renovation alternative has a total value of approximately \$7.0 million, which is based solely on the office and retail components. Based on the estimated construction costs of \$40.8 million, the result is a loss of negative \$33.8 million. Alternative 5 is therefore infeasible.

**Facts in Support of Finding:** A No Project Alternative would avoid impacts to historical resources altogether, but would not achieve any of the project objectives. Although the No Project Alternative would avoid impacts to the California Theatre, the structure is in dilapidated physical condition and would continue to degrade.

The subject property has been determined to present a public safety hazard of significant proportions. In October of 2009, a Preliminary Structural Study of the property was prepared by

Tony Court of A.B. Court & Associates in response to a request from the San Diego City Attorney's Office. The findings of that report were as follows:

The entire facility is in poor, dilapidated and deteriorating condition. The roofing system is in poor condition and leaks extensively, resulting in excessive damage to the interior finishes, particularly in the theater spaces and rental spaces. Power and water systems are not functional.

The concrete cover over the exposed roof trusses at the auditorium is heavily cracked and spalled, contributing to heavy rusting of the roof structure over the auditorium and resulting in a potentially critical long-term safety issue. The wood framing at the roof and second floor of the retail spaces is rotted in various locations.

Several external features are deteriorated to the point of presenting significant near term falling hazards. These elements include the cast stone ornamentation, delaminating stucco plaster, the marquee, the water tank at the roof of the office tower, the URM parapets at the retail space and the lights structures and other appendages around the building.

After the Easter earthquake in April of 2010, new damage was visible on the property and the engineering firm of Flores Lund was retained to provide an updated structural evaluation on the property. That report, dated March 11, 2011, found that "The majority of the building complex contains deterioration due to elements exposed to the environment and damage due to previous earthquakes. This structure has the maximum potential for collapse." As the result of these evaluations and other factors, this entire building complex has been ordered vacated, closed and secured pursuant to orders from the City's public safety officials.

The denial of the proposed project could also result in economic hardship to the owner and the City of San Diego if the collapse predicted by the structural engineers occurs before the building can be removed.

Without the proposed project and demolition of the historic resource, the owner would be unable to develop the property and would suffer loss of investment and great economic hardship. There is no reasonable beneficial use of the property that preserves the historic resource.

## **7.0 FINDINGS REGARDING ALTERNATIVES**

In accordance with Section 15126.6(a) of the Guidelines, an EIR must contain a discussion of "a range of reasonable alternatives to a project, or the location of a project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." Section 15126.6(f) further states that "the range of alternatives in an EIR is governed by the 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice." Because the proposed project would cause unavoidable significant impacts, the City Council must consider the feasibility of any environmentally superior alternative to the proposed

project, evaluating whether these alternatives could avoid or substantially lessen the unavoidable significant environmental effects while achieving most of the objectives of the proposed project. An alternatives evaluation is included in Chapter 6.0 of the FSEIR. Discussed therein, five project alternatives were considered. However, none of the project alternatives avoided significant impacts to historical resources, or reduced impacts to less than significant. Also included in that discussion, a “full rehabilitation alternative” was evaluated for its potential to reduce/avoid significant environmental impacts while attaining most of the basic objectives of the project. The FSEIR rejects the full rehabilitation alternative, though avoiding new significant environmental impacts not addressed by the Downtown FEIR, would not attain most of the basic objectives of the project, and, as discussed herein, would be economically infeasible.

## **8.0 ENVIRONMENTAL ISSUES DETERMINED NOT TO BE SIGNIFICANT**

The environmental analysis contained in the FSEIR did not identify effects, other than impacts to historic resources discussed above, that would result from the proposed project that are not addressed by the Downtown FEIR. Therefore, the environmental analyses within the Downtown FEIR of other environmental issue areas remain applicable to the proposed project. The FSEIR includes all previously identified mitigation that would be necessary to carry forward under the proposed project to maintain the same conclusions concerning the significance of impacts with mitigation incorporated as the Downtown FEIR. Any new feasible mitigation measures that could be utilized to avoid or minimize the proposed project’s significant environmental impacts, or where previous mitigation measures are proposed for modification, are summarized in FSEIR Chapter 7.0, Mitigation Monitoring and Reporting Program.

## **9.0 FINDINGS REGARDING SIGNIFICANT IRREVERSIBLE ENVIRONMENTAL CHANGES**

Section 15126.2(c) of the Guidelines indicates that “uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely.” The Guidelines also indicate that that “irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.” This Finding remains the same as the Downtown FEIR. The proposed project would not have any significant irreversible impacts on biological, agricultural or mineral resources, as the Downtown area is already substantially developed in an urban state and such resources are not significantly located in the area.

## **10.0 FINDINGS REGARDING OTHER CEQA CONSIDERATIONS**

The City of San Diego is the Lead Agency for the proposed project evaluated in the FSEIR. The City Council finds that the Draft SEIR and the FSEIR were prepared in compliance with CEQA

and the CEQA Guidelines. The City Council finds that it has independently reviewed and analyzed the Draft SEIR and FSEIR for the proposed project, that the Draft SEIR which was circulated for public review reflected its independent judgment, and that the FSEIR reflects the independent judgment of the City Council. The Notice of Preparation of the Draft SEIR was published on November 27, 2015. It requested that responsible agencies respond as to the scope and content of the environmental information germane to that agency's specific responsibilities. Two 45-day public review periods for the Draft SEIR began on August 8, 2016 and October 6, 2016. A Notice of Availability of Draft SEIR was filed with the County Recorder/County Clerk on October 17, 2016 and a Notice of Completion of Draft SEIR was submitted to the State Clearinghouse on August 8, 2016. The 45-day public review and comment period ended on November 21, 2016. On February 7, 2017, Civic San Diego distributed the FSEIR and provided proposed written responses to the responsible agencies. This was at least fourteen calendar days prior to certification of the FSEIR.

The City Council finds that the FSEIR provides objective information to assist the decision makers and the public at large in their consideration of the environmental consequences of the proposed project. The public review period provided interested jurisdictions, agencies, private organizations, and individuals the opportunity to submit comments regarding the Draft SEIR. The FSEIR was prepared after the review period and responds to comments made during the public review period. Civic San Diego evaluated comments on environmental issues received from persons who reviewed the Draft SEIR. In accordance with CEQA, written responses were prepared describing the disposition of significant environmental issues raised. The FSEIR provides adequate, good faith and reasoned responses to the comments. The City Council reviewed the comments received and responses thereto and has determined that neither the comments received nor the responses to such comments add significant new information regarding environmental impacts to the Draft SEIR. The City Council, as lead agency, has based its actions on full appraisal of all viewpoints, including all comments received up to the date of adoption of these Findings, concerning the environmental impacts identified and analyzed in the FSEIR.

All of the significant environmental impacts of the proposed project were identified in the text and summary of the FSEIR. The mitigation measures which have been identified for the proposed project were identified in the text and summary of the FSEIR. The final mitigation measures are described in the MMRP, Chapter 7.0 of the FSEIR. Each mitigation measure identified in the MMRP is incorporated into the proposed project. The City Council finds that the impacts of the proposed project have been mitigated to the extent feasible by the mitigation measures described in the FSEIR and identified in the MMRP.

Textual refinements and errata were compiled and presented to the decision-makers for review and consideration. Civic San Diego staff has made every effort to notify the decision makers and



the interested public/agencies of each textual change in the various documents associated with the review of the proposed project.

The City Council finds that the FSEIR was presented to the City Council, and that the City Council reviewed and considered the information contained in the FSEIR prior to taking action on the proposed project and certification of the FSEIR. CEQA requires the lead agency approving a project to adopt a MMRP for the changes to the project which it has adopted or made a condition of project approval in order to ensure compliance with project implementation. The MMRP included in the SEIR as certified by the City Council serves that function. The MMRP includes all of the mitigation measures identified in the Downtown FEIR and has been designed to ensure compliance during implementation of the proposed project. In accordance with CEQA, the MMRP provides the measures to ensure that the mitigation measures are fully enforceable. The City Council is certifying a FSEIR for, and is approving and adopting Findings for, the entirety of the actions described in these Findings and in the FSEIR as comprising the proposed project. There may be a variety of actions undertaken by other state and local agencies (who might be referred to as “responsible agencies” under CEQA). Because the City Council is the Lead Agency for the proposed project, the FSEIR along with the Downtown FEIR, is intended to be the basis for compliance with CEQA for each of the possible discretionary actions by other state and local agencies to carry out the proposed project.

STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE CITY COUNCIL OF THE CITY OF SAN DIEGO CERTIFYING THE FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR THE 1122 4TH AVENUE REDEVELOPMENT PROJECT

The City Council of the City of San Diego (“City Council”) adopts and makes this Statement of Overriding Considerations (SOC) concerning the unavoidable significant impacts of implementing the Final Supplemental Environmental Impact Report (FSEIR) for the proposed 1122 4th Avenue Project, a proposal to demolish the existing California Theatre building and construct a 40-story (approximately 422-foot tall) mixed-use development comprised of 282 dwelling units, approximately 11,000 square feet of commercial space, and 325 automobile parking spaces (“Project”). Unavoidable significant impacts to historical resources have been identified in the FSEIR and the Supplemental Findings made by the City Council in connection with the FSEIR, all of which are incorporated into this SOC by this reference. Additionally incorporated by reference are the 2006 Downtown Program Final Environmental Impact Report (Downtown FEIR) and associated Findings and SOC prepared for the Downtown Community Plan, Centre City Planned District Ordinance, and the 10th Amendment to the Center City Redevelopment Project (2006 Plan).

Development as prescribed in the 2006 Plan will bring substantial benefits to the City of San Diego. As such, the proposed Project and redevelopment of the Project site will also bring substantial benefits to the C Street corridor. These benefits include strengthening C Street as a regional residential and commercial center for the Downtown area; ensuring that intense development is complemented with livability through a focus on transit-oriented development and the redevelopment of C Street; and the removal of a structurally unstable and unusable building and construction of an economically viable project that will bring residents and patrons to the C Street corridor.

The City Council acknowledges the unavoidable significant impacts associated with the 2006 Plan, and the overriding considerations adopted for impacts from the 2006 Plan. As discussed in the FSEIR for the proposed Project, no feasible alternatives or mitigation exist that do not entail demolition of the California Theatre building that would reduce impacts to historical resources to less than significant. Specifically Impact HIST-A.1 of the 2006 Plan Mitigation Monitoring and Reporting Program cannot be implemented due to the proposed demolition of the California Theatre. Furthermore, the City Council finds that the proposed Project’s unavoidable significant impacts beyond those identified in the 2006 Plan subject to the 2006 SOC are acceptable in light of the proposed Project’s benefits. Each benefit set forth below constitutes an overriding consideration warranting approval of the proposed Project, independent of the other benefits and despite each and every unavoidable impact. The SOCs adopted in 2006 continue to represent the same beneficial outcome of implementing the proposed Project and are supplemented below relative to the proposed Project.

Project’s Benefits:

### **Revitalizes C Street**

The 2006 Plan identifies conditions that contribute to making the C Street corridor complicated and/or uncomfortable. Notable among these conditions is a streetscape that is uncomfortable and unattractive due to vacant retail and the “backs” of buildings lining the street. The 2006 Plan notes that security concerns along the C Street corridor have resulted in low levels of commercial activity. The Project site plays a role in the continued challenges that face the C Street corridor due the Project site’s vacant status of the last 25-plus years. The proposed Project will address these conditions by activating a long-vacant site and by providing inviting ground-floor retail spaces with gracious ceiling heights at a key intersection along the corridor. This will rejuvenate commercial activity along the C Street corridor, enhance C Street’s position as a connection between neighborhoods and land uses, and will help achieve the plan goal to make C Street a comfortable and pleasant route for vehicles, pedestrians, and transit riders.

### **Activates a Prominent Site in Downtown San Diego**

The Project area is in close proximity to the historic Balboa Theatre, the San Diego Civic Theater, and the Spreckels Theatre. As such, the subject property has been unable to be economically sustained as a functioning theater and has fallen into disrepair. The economic infeasibility of a renovated theater is a barrier to redevelopment of this property. However, the redevelopment of the Project area as a mixed use residential/retail property would meet many of the goals and overriding considerations of the 2006 Plan, while revitalizing C Street.

### **Alevites a Public Safety Hazard and Visual Blight**

The subject property has been determined to present a public safety hazard of significant proportions and is unusable in its current condition as it has been found to be structurally unsound and unfit for habitation since 1990. In 2009 the property was determined to be at risk of collapse in a seismic event. As the result of structural stability evaluations and other factors, the entire building complex has been ordered vacated, closed and secured pursuant to orders from the City of San Diego public safety officials. During this period the property has continued to deteriorate and has been vandalized and has been the repeated target of graffiti. The continually uninhabited building has led to a state of disrepair and visual blight at the prominent C Street location, adjacent to the Civic Center. The Project would demolish a current public safety hazard and activate the prominent, blighted site that has been uninhabited for 25-plus years.

### **Imparts Downtown’s Heritage**

The 2006 Plan provided a benefit by integrating historical resources into the downtown plan. Redevelopment in the downtown area has already preserved and reused several historic buildings that appear on the National, State, and Local Registries. As such, the proposed Project area is within close proximity to the historic Balboa Theatre and Spreckels Theatre building located two blocks to the south of the Project site. The proposed Project includes design elements that will pay homage to the California Theatre, and thus, supports the 2006 Plan overriding considerations by communicating downtown's heritage. A public art component that will pay homage to the California Theatre building will be located at the podium level of the C Street frontage. Salvaged building material displays will also be required to be located on-site. The C Street and Fourth Avenue facades of the office building portion of the California Theatre building will be replicated based on Historic American Building Survey plans. Additionally, the historic "California" blade sign located at the intersection of C Street and Fourth Avenue will be re-created, as will the historic movie marquee on Fourth Avenue.

### **Promotes City of Villages Strategy**

The DCP implements the City of Villages strategies of the City's General Plan by directing growth in limited areas served by transit as an efficient use of urban land that reduces the need to develop outlying areas while creating opportunities for realistic alternatives to automobile travel. Furthermore, the 2006 Plan provided a benefit to develop downtown as the primary urban center for the region. The 2006 Plan re-focused the residential development efforts on specific, comprehensive neighborhood centers including shops, services, employment and recreational opportunities, open spaces and transit facilities, all of which would be located within walking distance of the residential developments. The proposed Project coordinates mobility-related facilities as well as efficient and beneficial use of the unused property.

### **Buildout and Activation of the Civic/Core Neighborhood**

Currently, land use in the Civic/Core neighborhood (Project area) is mostly office (employment), civic, cultural, and commercial use. The Civic/Core neighborhood also contains significant uses including the Civic Center, the County Complex, and performing arts theatres such as the Civic Theatre, Symphony Hall, and Spreckels Theatre. The 2006 plans notes that even with these significant features, Civic/Core lacks a defining center or node. In addition, there is little activity outside of weekday working hours or special theatre circuits. The 2006 Plan envisions the Civic/Core built environment developed with intense developments with large and tall buildings. By further enhancing residential and retail opportunities via an intense, 40-story high-rise structure in a district of downtown that offers employment, civic and cultural opportunities, the proposed Project will provide for a greater overall balance of uses in

the neighborhood and will foster a richer mix of uses in the neighborhood. Furthermore, the proposed Project will add vitality to the Civic/Core neighborhood by activating the surrounding streets with ground-floor retail and residents that would both offer enhanced activation as compared to the current conditions of the Civic/Core neighborhood.

### **Produces Affordable Housing**

A total of 22 of the Project's 282 residential units would be affordable housing units. This provision of affordable residential units would assist in the achievement of the City's affordable housing goals and the 2006 Plan's goal to achieve a downtown resident population characterized by diverse incomes via the promotion and production of affordable housing in all of downtown's neighborhoods and districts.

### **Provides a Range of Housing Opportunities Suitable for Urban Environments**

In addition to the providing 22 units of affordable housing on-site, the Project would provide a mix of residential units that includes 126 one-bedroom units, 99 two-bedroom units, and 57 three-bedroom units, or 20% of the 282 total residential units. By providing a mix of unit types, the Project will provide housing for a diverse range of Downtown's population, particularly families, who are more likely to occupy the three-bedroom units.

### **Promotes a Rich Mix of Uses**

The 2006 Plan provided a benefit to develop full-service, walkable neighborhoods linked to the assets downtown offers. The 2006 Plan recognized that parts of downtown are already characterized by built-out neighborhoods, while others areas were just beginning to undergo the transformation. Under the 2006 Plan, all neighborhoods in the downtown area would be designed to require no more than a 10-minute walk from one end (or side) of the district to the other. All neighborhoods would have residential units, retail, employment opportunities, civic or cultural resources, open spaces and local services components. Furthermore, the 2006 Plan emphasizes the development of full-service residential neighborhoods that will attract commercial and retail operations. The proposed Project would support this 2006 Plan overriding consideration by bringing residents and business patrons to a transit-oriented street of downtown.

### **Promotes Sustainability**

The Project will promote sustainability measures and the City's Climate Action plan via LEED Silver Certification, the inclusion of green, eco-roofs in the Project, and by promoting an intense residential project in a walkable, transit-rich area of downtown.