



REPORT NO. PC-17-013

DATE ISSUED: February 16, 2017

ATTENTION: Planning Commission, Agenda of February 23, 2017

SUBJECT: 1122 4th 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

APPLICANT: 1122 4th Avenue, LLC

SUMMARY

Issues: Should the Planning Commission ("Commission") make a recommendation to the City of San Diego ("City") City Council to approve amendments to 1) the Downtown Community Plan (DCP) for the Employment Required Overlay area; 2) the Centre City Planned District Ordinance (CCPDO) Employment Overlay Zone; and, 3) the Local Coastal Program for amendments to the boundaries of the Employment Overlay areas to remove the project site from such designation? Additionally, should the Commission make a recommendation to the City Council to approve Centre City Development Permit/Site Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit No. 2014-76?

Staff Recommendation: Civic San Diego ("CivicSD") staff recommends that the Commission recommends the following project actions to the City Council:

Planning Commission Actions:

1. Recommend **Certification** of the Final Supplemental Environmental Impact Report (FSEIR) prepared for the project and **Adoption** of the Findings and a Statement of Overriding Considerations;
2. Recommend **Approval** of a resolution and an ordinance, respectively, amending the DCP and CCPDO to remove the project site from the Employment Overlay;
3. Recommend **Approval** of the Site Development Permit for demolition of a historic resource;
4. Recommend **Approval** of the Centre City Development Permit;
5. Recommend **Approval** of the Planned Development Permit with requested Deviations; and,

6. Recommend **Approval** of the Neighborhood Use Permit for the Comprehensive Sign Plan and outdoor seating associated with an eating and drinking establishment.

Community Planning Group Recommendation: On January 18, 2017, the Downtown Community Planning Council (DCPC) voted 19-1 to support staff's recommendation.

Civic San Diego Board Recommendation: On January 25, 2017, the Civic San Diego ("CivicSD") Board voted 8-1 to support staff's recommendation.

Historic Resources Board Recommendation: On January 26, 2017, the Historic Resources Board voted 5-3 to recommend that the SDP findings could not be made (please refer to the end of the Staff Report for a fuller discussion).

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.

Pursuant to Section 15163 of the CEQA Guidelines, a SEIR is required if there is potential for substantial increase in significant impacts not discussed in the Final EIR for the San Diego DCP, CCPDO, and 10th Amendment to the Redevelopment Plan for the

Centre City Redevelopment Projects (SCH No. 2003041001). The SEIR only addresses probable environment effects as they relate to historical/cultural resources.

A SEIR (see Attachment B) has been prepared that has concluded that the proposed project would result in a substantial increase in significant environmental impacts to historical resources that were not analyzed under the previously certified Final EIR with the proposed demolition of the California Theatre, a building individually eligible for listing in the National Register of Historic Places (NRHP) and the California Register of Historic Resources (CRHR). The Draft SEIR was circulated for public review for a 45-day review period from August 8, 2016 to September 22, 2016. A total of four comment letters were received during public review period including letters from SANDAG, the San Diego International Airport, the San Diego County Archaeologic Society, and the State Public Utilities Commission. The public comment period for the Draft SEIR was re-opened for an additional 45 days between October 6, 2016, and November 21, 2016, to allow for adequate posting at the San Diego County Clerk and to allow for further public comment. The Final SEIR can be found at the offices of Civic San Diego located at 401 B Street, Suite 400, San Diego, 92101, and on the Civic San Diego website at: <http://www.civicsd.com/planning/environmental-documents.html>. A copy of the Final SEIR is also available for review at the Central Library located at 330 Park Boulevard, San Diego, CA, 92101.

The SEIR concluded that a direct and cumulative significant and unavoidable historical resources impact was found to result from implementation of the proposed Project due to the full demolition of the California Theatre. Demolition is not consistent with the FEIR Mitigation Measure Hist-A.1-1 requiring projects to meet the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 Code of Federal Regulations part 68) and their applicable guidelines because the historical character of the historical resource would not be retained or preserved. As the potential impacts associated with the proposed project were not mitigated consistent with Mitigation Measure Hist-A.1-1 of the Downtown FEIR, the SEIR considers five project alternatives that would have less of an impact on historical resources in comparison to the proposed project. Except for Alternative 1, all of the alternatives were rejected due to project economic infeasibility. See below SDP section for further discussion of project feasibility and the economic analysis of each alternative.

The considerations and conclusions contained within the SEIR will ultimately need to be considered by the City Council. The City Council will need to make new Findings and adopt a new Statement of Overriding Considerations as part of the SEIR during its consideration of potential SEIR certification in order to approve the Project.

The Downtown FEIR is available at this link:
www.civicsd.com/planning/environmental-documents.html

The CAP FEIR is available at this link:

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

Fiscal Impact Statement: None at this time.

Code Enforcement Impact: None

Housing Impact Statement: None

BACKGROUND

Requested Actions

1122 4th Avenue, LLC (“Applicant”) is requesting approval of Centre City Development Permit/Site Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit (CCDP/SDP/PDP/NUP) No. 2014-76 for the demolition of the existing historic California Theatre building and construction of a mixed-use development comprised of a 40-story tower (approximately 422 feet tall) and podium located on a 25,000 square-foot (SF) site on the north side of C Street between Third and Fourth avenues in the Civic/Core neighborhood of the DCP area (“Downtown”). The Project is comprised of 282 dwelling units (DU), approximately 11,000 SF of retail space, and 325 automobile parking spaces. Amendments to the DCP and CCPDO are also proposed for the removal of the Employment Overlay from the Project site.

More specifically, the following permits and actions would need to be approved by the City Council for the Project:

- CCDP approval for the construction of more than 50 DU, 100,000 SF of gross floor area, and 85 feet in height.
- SDP is required for a significant impact to a designated historic resource – specifically, the demolition of the historic California Theatre building.
- CCPDP is required for deviations from the CCPDO to provide flexibility in the application of development regulations for projects where strict application of these regulations would restrict design options and result in a less desirable project. The deviations being requested for this Project are from the following development regulations:
 - 1. Maximum East/West Tower Dimension;
 - 2. Streetwall Setback;
 - 3. Maximum Streetwall Height; and,
- NUP is required for the proposed Comprehensive Sign Plan and Outdoor Eating and Drinking area.

In addition, the Final SEIR must be certified by, and certain Findings and a Statement of Overriding Considerations must be made by, the City Council prior to approving any other actions regarding this Project.

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 City Council in accordance with a Process Five review. The decision of the City Council will be final.

California Theatre History

When the California Theatre was opened in 1927, it was the largest movie complex of its kind in San Diego. With 2,200 seats and a 9-story office building, the California Theatre was considered a movie palace. It operated as a vaudeville stage until vaudeville became obsolete and was discontinued in 1937. The theater continued operation as a movie theater until 1976, and remained a venue for special performances until the 1980s. The building underwent its last renovation in 1988. Architectural surveys that took place in 1990 deemed the building vulnerable to seismic activity, and that the structural system needed to be strengthened to meet minimum safety standards. The building was subsequently closed to the public. Designated in 1990, the California Theatre is currently listed in the City of San Diego Register of Historical Resources as HRB #291 (Resolution Number R – 901024) as a local historic resource.

There are also several signs located on the exterior of the building that have been considered for designation as local historic resources. One sign is painted on the north wall of the 9-story office building. This sign advertises the Barbary Coast, a tavern located within the building in the 1970s. Two additional signs are painted on the south and west sides of the theater's stage fly structure. These signs date to 1962–1963 and advertise the Caliente racetracks in Tijuana, Baja Mexico. Although significantly faded, the signs are still legible. The Historic Resources Board (HRB) considered local designation of these signs in June 2016, but ultimately voted not to designate the signs.

The California Theatre has been determined eligible for listing in the NHRP and in the CRHR at the local level of significance under NRHP Criterion A and CRHR Criterion 1 for its association with the booming development of downtown San Diego in the 1920s, and under NRHP Criterion C and CRHR Criterion 3 for its local significance as a good example of a Spanish Colonial Revival-style building.

CEQA Review of Historic Buildings under the Downtown FEIR

In 2006, the City adopted the DCP which included goals and policies for significant future growth, including policies for historic preservation (see Attachment G). A program environmental impact report was prepared to evaluate cumulative impacts that would occur from Downtown's significant growth.

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.

The SEIR concluded that a direct and cumulative significant and unavoidable historical resources impact was found to result from implementation of the proposed Project due to the full demolition of the California Theatre. As mentioned in the above Environmental Review section, the SEIR considered five project alternatives that would have less of an impact on historical resources in comparison to the proposed project. A full description of the Project Alternatives can be found both in the SDP analysis section of this staff report and in the SEIR document (Attachment B). Except for Alternative 1, all of the alternatives were rejected due to project economic infeasibility. Staff will be ultimately recommending the implementation of Project Alternative 1 as the design described in Project Alternative 1 is reflective of the current Project design. Project Alternative 1 differs from the Base Project in that Project Alternative 1 would feature a true replication of the office tower facades on C Street and Fourth Avenue, based on Historic American Buildings Survey (HABS) drawings prepared by a historical architect. The Base Project proposed a faux replication of the aforementioned office tower facades. Ultimately, the SEIR concludes that Project Alternative 1 would have an equivalent environmental impact as compared to the Base Project.

The considerations and conclusions contained within the SEIR will ultimately need to be considered by the City Council. In order to certify the SEIR, the City Council will need to make new Findings and adopt a new Statement of Overriding Considerations as part of the SEIR during its consideration of potential SEIR certification in order to approve the Project. Staff is recommending that the Findings can be made and that the Statement of Overriding Considerations can be adopted based on a number of Project benefits including economic development, improvement to neighborhoods, and the development of the Core neighborhood. The Findings and the new Statement of Overriding Considerations have also been included in Attachment B.

Neighborhood Context

The Civic/Core neighborhood is a compact district, extending just over one-half mile in the east-west direction and serves as the center of Downtown, both physically and functionally, where Federal, State, County, and City government offices combine with office, cultural, hotel, and some residential activity. Planning focuses on reinforcing this role, while improving civic spaces to invigorate the public realm. Ultimately, Civic/Core is projected to contain up to 5,000 residents and 35,000 employees.

The Civic/Core neighborhood contains significant uses including the Civic Center, the County Complex, and performing arts theatres such as the Civic Theatre, Symphony Hall, and Spreckels Theatre. 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.

Site Description

The Project site is an approximately 25,000 SF premises located on the north side of C Street between Third and Fourth avenues in the Civic/Core neighborhood of Downtown. The site generally slopes down in elevation from west to east by approximately six feet of elevation change. The site is currently occupied by an approximate 5,000 SF surface parking lot at the northeast corner of the site, while the remainder of the site is occupied by the historic California Theatre building. The California Theatre building is a locally designated historic structure that was last utilized in 1990. The existing structure has also been determined to be eligible for listing on both the National Register of Historic Places and the California Register of Historical Resources as a significant historic resource. Surrounding land uses include:

- North – Low-Rise Commercial; Surface Parking Lots
- South – Mid-Rise Hotel (The US Grant)
- West – Mid- and High-Rise Institutional/Government Buildings (Civic Center)
- East – Mid- and High-Rise Commercial

The land use district for the site is Core (C). This district serves as a high-intensity office and employment center. The district operates as a center of regional importance and as a primary hub for businesses, communications, offices, and hotels with fewer restrictions on building bulk and tower separation than in other districts. Mixed-use development is accommodated as an important component of the area's vitality. Retail, educational, entertainment, residential, civic, governmental, and cultural uses are permitted.

Two overlay zones apply to this Project site. The Commercial Street (CS) Overlay applies to the C Street frontage only and requires a minimum 60% active commercial uses along C Street. The Employment Overlay (EO) requires that at least 50% of the gross floor area within each development in the E overlay district be dedicated to employment uses such as professional office, education, cultural uses, retail, hotel, or similar commercial uses. Residential uses in this district shall not exceed 50% of the gross floor area counted against the Base Maximum (10.0) floor area ratio (FAR). The E Overlay has been proposed for removal from the Project site in order to allow residential uses to exceed 50% of the Base Maximum gross floor area.

Development Team

ROLE	FIRM / CONTACT	OWNERSHIP
Applicant	1122 4 th Avenue, LLC Cyrus Sanandaji	See Attachment J (Privately Owned)
Property Owner	Sloan Capital Partners, LLC Faramarz Yousefzadeh	See Attachment J (Privately Owned)
Architect	Martinez + Cutri Corporation Joseph Martinez	Joseph Martinez Anthony Cutri
Relations Consultant	Bartell & Associates Jim Bartell	Jim Bartell
Historic Consultant	Marie Burke Lia	Marie Burke Lia
Legal Counsel	Seltzer/Caplan/McMahon/Vitek James Dawe	See Attachment J (Privately Owned)
Environmental Consultant	AECOM Michelle Fehrensen	See Attachment J (Publicly Owned)

DISCUSSION

Project Description

This Project proposes the demolition of the existing California Theatre building and construction of a 40-story tower (approximately 422 feet tall) and is comprised of 282 DUs (22 affordable units, 260 market-rate units), approximately 11,000 SF of ground-floor retail space, and 325 parking spaces. Three levels of subterranean parking and four levels of above-grade parking are proposed. The Project's common open space and other amenity areas will be located on the rooftops of the podium (seventh level) and the tower (40th level).

Above-grade parking will be screened, but not enclosed or encapsulated, by the podium-level building walls and by a combination of a perforated metal screen and metal panel system. Provisions of the CCPDO require that the Project's above-grade parking levels are shielded from view by a solid wall or headlight-obscuring screen a minimum of 42 inches in height. The CCPDO does not require a minimum of 50% encapsulation of the above-grade parking encapsulation since the Project site is less than 30,000 SF in area. The above-grade parking areas will be naturally ventilated. Vehicular ingress/egress to the Project's below-grade parking is provided on the Fourth Avenue frontage, while vehicular ingress/egress for the above-grade parking is provided from the Third Avenue frontage.

Podium/Mid-Rise Section

A seven- to nine-story mid-rise podium will occupy the entire Project site. The podium will contain ground-floor retail, four levels of above-grade parking and a residential storage area on the fourth floor parking level. The podium level will be topped with a variety of indoor amenity spaces and common outdoor open areas including a pool terrace and passive green roof space.

The nine-story portion of the podium level at the southeast corner of the site will be developed to approximate the dimensions, scale, and features of the historic California Theatre building. The plans for this part of the Project will be based on drawings provided by the Project's historic preservation architect, Heritage Architecture. The material of this portion of the building is Exterior Insulation and Finish System (EIFS) to help match the materials of the historic building.

Tower Section

The tower portion of the Project will start on the eighth level and reach 40 stories in height, with rooftop open space and amenity space located on the roof of the tower. The residential tower will contain the Project's residential units, with the affordable units located on levels 10, 11, and 12. The tower will feature contemporary materials with large expanses of glass and a regular pattern of metal mullions located within the glass system. Balconies and recessed terraces are prominent features on all four sides of the residential tower with each unit in the project containing private open space with either a balcony or a recessed terrace. The balconies and terraces provide visual interest and shadow on the buildings facades and help express its residential nature. LED lights will be located in the floor slabs on the eastern portion of the south elevation (see plan pages A2.1 and A3.6). The slab lights would be operated on a computer-programmed system to allow color variations in the lighting.

Street Level

C Street is a Commercial Street requiring 60% active commercial uses along its frontage. The ground floor will be activated by gracious ground-floor heights over 20 feet in height and by the approximately 11,000 SF of ground-floor commercial retail space. An outdoor seating area for potential future eating and drinking establishments has been proposed on the C Street frontage. The outdoor seating area requires approval of an NUP. Staff is recommending approval of the outdoor seating area as it would add much-needed street-level vitality to this block of C Street. NUP Findings supporting the NUP of the Outdoor Seating Area have been included in Attachment M, the Draft City Council Resolution.

A letter has been sent by the Civic Theatre regarding the Project and has been attached in Attachment D. The Civic Theatre has voiced concerns that Project construction and the above-grade parking access area on Third Avenue will have conflicts with their loading/unloading activities that occur on Third Avenue. The applicant and CivicSD staff both met with Civic Theatre representatives to discuss a construction plan that would not affect the loading activities of the Civic Theatre. Condition No. 26 of the draft development permit (see Attachment L)

stipulates that all construction staging and associated pedestrian passageway along Third Avenue must be contained within the sidewalk area on the Third Avenue frontage so as to maximize the maneuvering area of trucks loading and unloading at the Civic Theatre. Civic Theatre staff indicated that this condition would alleviate their concerns with theatre loading activities. Additionally, the Civic Theatre does not have a dedicated legal loading zone along the Project site's Third Avenue frontage. All legal loading activities are to occur on the west side of Third Avenue adjacent to the Civic Theatre. Most loading activities for the theatre occur during the early morning hours with completion of loading activities typically ending by 4:00 a.m.

DCP/CCPDO Employment Overlay Amendments

Staff has conducted a review of the EO overlay zone and its regulations over the past year in response to three different applications for the removal of certain properties from the designation. Staff not only examined the three applications, but conducted an analysis of the EO overlay in its totality which can be found in the Staff Report to the September 14, 2016 meeting of the CivicSD Real Estate Committee, which can also be found at: http://www.civicsd.com/images/stories/Sept_2016_REC_Item_6_-_101_Ash_Amendments.pdf.

Staff concluded that the EO is still a valid and necessary planning tool based on the goals and policies of the SANDAG Regional Comprehensive Plan, the San Diego General Plan, and the DCP. By reserving land for employment uses, the EO simultaneously reduces the cost of land that would otherwise be in high-demand for residential development. The EO also incentivizes the development of dense office space that typically contains higher paying employment opportunities. In other words, the EO makes locating in the Core of the regional employment center more financially attractive than it would otherwise be if the EO were removed and allowed primarily residential development. Conversely, the consequence of removing the EO would likely be markedly higher land prices that would discourage office investment in the area. Therefore, staff has determined that any significant changes to the EO, either by its removal, significant change in boundaries, or significant relaxation in its regulations are not warranted nor desired.

At its January 2017 meeting, the CivicSD Board voted 8-1 to recommend that there are unique circumstances affecting this particular property that warrant the removal of the EO from the site. The existing building on the site, while historic, has not been occupied for over 25 years and contributes to the challenges associated with the C Street corridor including, but not limited to, the lack of economic investment, the prevalence of the homeless population, and increased crime activity, thus warranting removal of the EO from the Project site to facilitate a development project that will activate the C Street corridor.

Site Development Permit for Demolition of Historic Resources

Chapter 9 of the DCP establishes the strategy for meaningful preservation of historic resources as part of Downtown's continued growth and development. Historic Buildings are identified under a well-defined, three-tiered system based on their classification. The NHRP – representing the highest level of designation, and marking resources contributing to the nation's history – bestows

the greatest protection. Listing on the CRHR also establishes substantial protections in recognition of contributions to state heritage. The third tier, the San Diego Register of Historical Resources, includes properties deemed to have contributed significantly to regional history and culture.

The DCP identifies the integration of pieces of the past, while facilitating the dynamics of an evolving, contemporary high-intensity center as some of the most exciting opportunities and challenges facing Downtown. The DCP's direction for historic preservation is premised on maintaining National Register sites as Downtown anchors and integrating buildings of state historic significance into the Downtown fabric. The strategy for conserving downtown historic qualities largely relies on the established process through National Register, California Register, and Local Register designations of individual properties. Each designation is associated with preservation goals and development restrictions. Specifically, Chapter 9 of the DCP calls for the following preservation goals as they relate to historic designations for national and state-eligible buildings:

NHRP Eligible – Evaluate and encourage listing in the National Register through the State Office of Historic Preservation or the National Park Service. Resources determined eligible by either agency shall have the same protection status as individually-listed resources in the National Register. Retention of NHRP buildings on-site is a preservation goal, and furthermore, any improvements, renovation, rehabilitation, and/or adaptive reuse should facilitate preservation consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties and Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings.

CRHR Eligible - Evaluate and encourage listing in the California Register through the State Office of Historic Preservation. Resources determined eligible by either agency shall have the same protection status as individually-listed resources in the California Register. Retention of NHRP buildings on-site is a preservation goal, and furthermore, any improvements, renovation, rehabilitation, and/or adaptive reuse should facilitate preservation consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties and Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings.

As previously outlined in the Background section of the staff report, demolition of NHRP and CRHR-Eligible buildings (such as the California Theatre) was not considered by the Downtown FEIR or MMRP and is subject to further review under CEQA under a SEIR. Furthermore, the MMRP stipulates that all applications for construction and development permits where historical resources are present shall be evaluated pursuant to the Historical Resources Regulations of the SDMC. The Project proposes a substantial alteration (demolition) of a designated historic resource, the California Theatre, which would require the Project to meet a number of specific findings required for a SDP (see Attachment G for the Applicant's SDP Findings) including findings that require analysis of less environmentally damaging alternatives that could further minimize the potential adverse effects on the designated historical resource. After consultation with CivicSD and City Historical Resources Staff, the Applicant has analyzed less damaging project alternatives in both the Draft SEIR and in the SDP application as follows:

1. Project Alternative 1 would remove all existing improvements on the site as proposed in the Base Project, construct the Base Project's 40-story mixed-use tower, and construct a connected new nine-story tower with two reconstructed facades replicating the Fourth Avenue and C Street facades of the existing office tower. The project design is now reflective of Alternative 1, and as such, Alternative 1 is now the Project rather than the Base Project.
2. Project Alternative 2 would remove all existing improvements on the theater portion of the site, construct the Base Project's 40-story mixed-use tower at the location of the demolished theater portion of the building, and retain and rehabilitate the nine-story office tower building.
3. Project Alternative 3 would remove all existing improvements on the theater portion of the site with the exception of the ground floor C Street facade and the decorative elements above it, which would be rehabilitated. This alternative would also construct the Base Project's 40-story mixed-use tower at the location of the demolished theater portion of the building, and retain and rehabilitate the nine-story office tower building.
4. Project Alternative 4 would remove all existing improvements on the theater portion of the site with the exception of the ground floor C Street facade and the decorative elements above it, which would be rehabilitated. This alternative would also construct the Base Project's 40-story mixed-use tower at the location of the demolished theater portion of the building, and retain and rehabilitate the nine-story office tower building. This alternative differs from Alternative 3 by creating a 20-foot-wide galleria running north-south between the nine-story tower and any new construction to the west of the galleria, creating an open space from the ground level through the ninth floor.
5. Project Alternative 5 would rehabilitate all existing improvements on the site in accordance with the Secretary of the Interior's Standards for adaptive re-use as a theater and office building and would maintain the 5,000 SF parking lot. No additional area would be added and no changes in the building's massing would occur.

The SDP contains further findings that evaluate if the denial of the proposed development would result in economic hardship to the owner. For purposes 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.

The Applicant has contended that the Base Project and Alternative 1, which do not propose retention of any features of the historic building, are the only Project options that would be economically viable and able to obtain financing based on gross revenue (Alternative 1 is marginally financeable). The Applicant has also contended that all other Project alternatives (Alternatives 2-5) that propose retention and/or rehabilitation would not generate enough predicted gross revenue to obtain financing to complete the Project as indicated by an economic analysis prepared by the London Group (see Attachment E). In the London Group's analysis, only the Base Project and Alternative 1 were able to achieve a minimum 10% return on investment, which according to the report, is typically the minimum return on investment that would need to be demonstrated to lenders to obtain financing.

During the Design Review process, the Project design has effectively morphed into Alternative 1 and the Project design now reflects Alternative 1 rather than the Base Project. Staff will be recommending that Alternative 1 is accepted over the Base Project. The Base Project was based on a faux re-creation of the office tower portion, while Alternative 1 would feature a true replication of the office tower facades on C Street and Fourth Avenue, based on HABS drawings prepared by a historical architect.

Staff retained Keyser Marston Associates (KMA) to complete a peer review of the Applicant's economic analysis of the Project alternatives (please see Attachment F). The KMA report estimated the Base Project will only result in a 6.7% return as a percentage of value or a 7.4% return as a percentage of cost; thus, making the Base Project not financeable. This was a result of KMA's more conservative approach to establishing construction costs and project value. Each of the Project's alternatives were deemed less financially feasible, confirming the London Group analysis. It is also KMA's experience that a minimum 15% return on investment may be needed to finance a project in Downtown. Given the return on investment numbers that were generated in both reports, only the Base Project and Alternative 1 appear economically viable. Denial of the proposed development would, therefore, result in economic hardship to the owner. Accordingly, findings supporting the SDP request have been included in Attachment M. Immediately below are two tables from the KMA report that compare the project returns as analyzed by both the London Group and KMA.

Table III 4 – Developer Profit – London						
	Base Case	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5
London						
Net Sales Proceeds	\$201.5 M	\$201.5 M	\$201.5 M	\$201.5 M	\$201.7 M	\$7.0 M
(Less) Development Costs	(\$175.4) M	(\$177.5) M	(\$183.6) M	(\$187.1) M	(\$216.2) M	(\$40.8) M
Developer Profit	\$26.1 M	\$24.0 M	\$17.9 M	\$14.4 M	(\$14.5) M	(\$33.8) M
% of Cost	14.9%	13.5%	9.8%	7.7%	(6.7%)	(82.8%)
% of Value	12.6%	11.6%	8.7%	7.0%	(7.0%)	(1,634%)

Table III 5 – Developer Profit – KMA Adjustments						
	Base Case	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5
KMA						
Net Sales Proceeds	\$188.4 M	\$188.4 M	\$188.4 M	\$188.4 M	188.6 M	\$11.7 M
(Less) Development Costs	(\$175.4) M	(\$177.5) M	(\$183.6) M	(\$187.0) M	(\$216.2) M	(\$57.1) M
Developer Profit	\$13.0 M	\$10.9 M	\$4.8 M	\$1.4 M	(\$27.6) M	(\$45.4) M
% of Cost	7.4%	6.2%	2.6%	0.7%	(12.8%)	(79.5%)
% of Value	6.7%	5.7%	2.5%	0.7%	(14.3%)	(2,194.7%)

While the DCP's policies cited above call for the preservation and rehabilitation of NHRP and CRHR eligible buildings, it also encompasses economic development, improvement to neighborhoods, and the development of the Core neighborhood as goals and policies. 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 years. Both the London Group and the KMA economic analysis have identified theatre structures as particularly difficult rehabilitation projects related to project feasibility. According to the KMA analysis, a project that proposes rehabilitation of the California Theatre building would result in a developer profit of -\$45.4 million, a scenario which has contributed to the continued and likely vacant status of the structure.

The SDP Findings found in the Draft City Council Resolution (see Attachment M) have concluded that the required SDP findings can be made and supported for the Project. Therefore, staff is recommending approval of the requested SDP for the significant alteration (demolition) of the California Theatre building.

Affordable Housing Density Bonus Law

Pursuant to implementing the State of California Density Bonus Law provisions, the San Diego Municipal Code (SDMC) provides for the following when a project includes affordable housing:

1. Floor Area Ratio (FAR) Bonus;
2. Reduced Parking Requirements; and,
3. Development Incentives.

The Applicant is proposing to restrict 10% of the Base Maximum FAR residential units to persons qualifying as low income residents, or those earning less than or equal to 80% of the Area Median Income (AMI). Based on the provision of affordable housing, the Project is entitled to the following:

1. A 35% FAR Bonus; and
2. One incentive from development standards.

The purpose of the Affordable Housing Density Bonus regulations is to incentivize developers to provide affordable housing and reduce the burden of providing costly parking in areas served by transit.

The Applicant has stated that the Project may be a for-sale condominium project or may be a rental apartment project. Under the San Diego Municipal Code (SDMC) and CCPDO provisions for FAR bonuses, the CCPDO offers a more aggressive bonus program for the provisions of affordable housing within the project. Based on the 22 units provided, the 35% FAR bonus is available for either a) rent restrictions based on low-income levels, equivalent to 80% Area Mean Income (AMI) restricted for 55 years or b) for-sale restrictions based on moderate-income levels, equivalent to 120% AMI restricted for 45 years. The City has experienced significant difficulty enforcing and maintaining for-sale restrictions for the long term. Typically for-sale affordability

restrictions are based on the initial buyers and then there is an equity sharing agreement with the Housing Commission based on how long the initial buyer occupies the unit. Because of this difficulty, the CCPDO allows the 10% qualifying units to be either rental or for-sale regardless of whether the market-rate units are for sale or rental. Staff and the Housing Commission would prefer that long-term restrictions be applied to rental units only. The SDMC allows for the initial buyer restrictions for an FAR bonus, but only grants a 5% FAR bonus rather than the 35% the Project is proposing. Therefore, staff is recommending that the affordable units in the Project be rental units restricted for 55 years, regardless of whether the market rate units are rental or for sale.

Per SDMC Section 143.0740, the applicant is requesting that one incentive be used for a deviation from the requirement for underground parking for the Project. The section states that an incentive can mean a deviation to a development regulation. The Section further states that: *"Upon an applicant's request, development that meets the applicable requirements of Sections 143.0720 and 143.0725 shall be entitled to incentives pursuant to Section 143.0740 unless the City makes the a written finding of denial based on substantial evidence, of any of the following:*

- (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053;*
- (B) The incentive would have a specific adverse impact upon public health and safety as defined in Government Code section 65589.5, the physical environment, including environmentally sensitive lands, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low income and moderate income households;*
- (C) The incentive would be contrary to state or federal law. Requested incentives shall be analyzed in compliance with the California Environmental Quality Act as set forth in Chapter 12, Article 8, and no incentive shall be granted without such compliance."*

Thus, if the findings for applicable sections A-C above cannot be made, the incentives must be granted. Staff did not find any substantial evidence that the incentive would (1) not be required to provide for affordable costs; (2) adversely affect public health or safety; and (3) would be contrary to State of Federal law. The incentive is requested for the following deviation from development standard:

SDMC Section 142.0560(c) requires the proposed off-street parking areas to contain drive aisles of at least 24 feet in width adjacent to perpendicular parking spaces. The Project proposes to provide 22-foot-wide drive aisles rather than the minimum required width of 24 feet throughout the parking garage due to the design of the building core and the general 100-foot width of the garage. Staff supports the incentive based on the inability to make the findings cited above.

Planned Development Permit Deviations

The Applicant is proposing three deviations to development standards of the CCPDO, all of which have design implications for the Project. The following sections will analyze the three deviation requests.

CCPDO 156.0310(d) (3) (B) Maximum Tower Dimensions: The maximum East-West Tower Floor Plate Dimension in the Core Land Use District is 130 feet.

The overall tower dimensions and form of the tower largely remains the same as the tower rises from the ground with an east-west tower dimension of 150 feet and a north-south tower dimension of 85 feet. The east-west tower dimension exceeds the maximum 130-foot east-west tower dimension allowed in the Core district. If the E Overlay was not proposed for removal, an east-west tower dimension deviation would not be required as the CCPDO allows a maximum 150-foot east-west tower dimension in this overlay zone. Given the tower's location in relationship to other towers and development in the area, the 150-foot-wide east-west dimension is compatible with the neighborhood, especially with other towers that are bulkier than the proposed tower, as many of these towers were constructed prior to the current bulk regulations of the CCPDO.

CCPDO 156.0310(d) (1)(C) Streetwall Setback: The street wall shall be located within five feet of the property line adjoining any street.

CCPDO 156.310(d)(1)(E) Streetwall Height: A maximum street wall height of 85 feet may be provided within five feet of a property line adjoining any street in the Core Land Use District.

The re-creation of the office portion of the California Theatre building also creates the need for two deviations. One deviation would result in a streetwall deviation to exceed the maximum streetwall height of 85 feet at 90 feet in height. The Project proposes a recessed entry that would not meet the maximum streetwall setback allowances (or exemptions) by creating a recessed entry 31 feet wide and eight feet deep exceeding the CCPDO maximum dimensions of 25 feet in width and 15 feet in depth.

The Planned Development Permit Findings found in the Draft City Council Resolution (see Attachment M) have concluded that the required findings can be made and supported for the Project. Therefore, staff is recommending approval of the requested PDP with the aforementioned three deviation requests.

NUP/Comprehensive Sign Plan

The purpose and intent of the Comprehensive Sign Plan is to allow some flexibility to the signage regulations, provided the modifications are complementary to, and in scale with, the buildings on which they are placed. Three proposed signs in the Project require approval of a NUP for a Comprehensive Sign Plan – the proposed tower sign on the north tower elevation, the replicated California Theatre projecting sign located at the corner of Fourth Avenue and C Street and the faux movie marquee that will be located above the recessed entry on the re-created office tower.

The re-created California Theater corner projecting sign would require a Comprehensive Sign Program to exceed the following sign limitations:

- The CCPDO limits signage on residential buildings to 65 feet above the sidewalk. The projecting sign extends to approximately 83 feet above the sidewalk.

- The SDMC limits corner projecting signs located 16 feet or greater above the sidewalk to a projection of six feet, four inches. The projecting sign extends eight feet from the corner of the building.
- The SDMC limits the projecting double-sided sign to 100 SF of sign area. Six hundred total square feet of sign area has been proposed.

The SDMC further specifies that movie theater marquees are subject to the approval of a NUP. Since the marquee will be effectively re-creating a moving marquee, an NUP will be required. The size of a movie marquee is not specified in the SDMC, but rather, the size of the marquee is a discretionary decision under the NUP.

The CCPDO limits signage on residential buildings to 65 feet above the sidewalk. Logos may not be used on the upper tower of a building where more than 50 percent of the building is for residential use. At approximately 410 feet in height on a residential building, the proposed tower sign would require approval of an NUP to exceed 65 feet above the sidewalk. The sign would feature letters a maximum of five feet in height and all sign areas will be back-lit.

Both of the signs subject to the NUP/Comprehensive Sign Program have been included to approximate former signs that were located on the historic building. Staff believes that the two signs subject to the Comprehensive Sign Program will be supportable with permit conditions that limit the sign copy to the design that has been proposed in the plans. Staff is concerned that, if left without conditions, future commercial tenants could have access to large sign areas. However, if the office building is not constructed to truly replicate the historic facade, staff could not support these signs as they would again draw attention to a faux replication of the building.

Although high-rise signs are not allowed by the CCPDO on residential towers (located over 65 feet above the sidewalk), staff believes that the tower sign can be supported given that it is in scale with the building on which it will be placed and will be similar in scale or smaller than other recently approved tower signs in the Core neighborhood such as the Manchester Financial Group at 101 W Ash Street (five-foot-tall letters and 735 square feet of tower sign area per sign) and the Procopio tower signs at 525 B Street (five-foot-tall letters and 351 square feet of tower sign area per sign). At approximately 250 square feet with five-foot-tall letters, the proposed tower sign occupies less area than other approved tower signs in the area.

Furthermore, due to the commercial nature of the surrounding neighborhood, the tower sign on the residential building is not expected to cause conflicts with surrounding residential uses (e.g. light and glare) and is a feature that can often be found on commercial towers in the neighborhood and in greater Downtown.

The required Findings for a Comprehensive Sign Plan under the SDMC have been included in the Draft City Council Resolution (see Attachment M). Staff is recommending approval of the NUP for the Comprehensive Sign Program as all required findings can be made and supported.

Permit Findings

Permit Findings for all requested permits have been included in Attachment N, Draft City Council Resolution for CCDP/SDP/CCPDP/NUP No. 2014-76. Staff is recommending approval of all permit requests (SDP, PDP with Deviations, NUP for Comprehensive Sign Plan and Outdoor Seating Area) as staff believes that all of the required findings for the permit requests can be made and supported.

Historic Resources Board

Before consideration of an SDP by the Commission, a recommendation is made by the HRB. The Project was presented to the HRB on January 26, 2017. Historic Staff's findings can be found in the HRB Staff Report (Attachment L). The HRB did not approve the Historic Staff's recommendation that the City Council adopt the mitigation measures and findings associated with the SDP, but voted 5-3-0 to approve the following motions:

1. Motion made by Chair Coyle that the HRB does not concur that the SDP findings have been substantiated due to an alternatives analysis that should contain further alternatives, including an adaptive re-use option.
2. In the instance that the City Council approves the Project, the HRB recommended that additional mitigation measures are added to the MMRP including the following:
 - a. The art display that is proposed to screen the above-grade parking areas shall reference the historic California Theatre, and furthermore, shall be reviewed by the HRB.
 - b. The salvage displays that are required as part of the MMRP shall be required to be reviewed by the HRB.

The original motion on the floor of the January 2017 HRB meeting was a motion to recommend Historic Staff's recommendation. This motion failed on a vote of 4-4-0. In regards to the passed HRB motion, staff has the following responses:

1. The Alternatives Analysis prepared for the SDP and SEIR contained five project alternatives that explored a number of options that were less environmentally damaging than the Base Project, including Alternative 5, which contemplated a complete re-habilitation and re-use of the California Theatre consistent with the Secretary of Interior's Standards. CivicSD staff's full responses to the six required SDP findings are included in the attached resolution (Attachment M) and conclude that the findings can be made for the SDP based upon the financial infeasibility of executing any of the alternatives.
2. A condition of the Development Permit (see condition 11(d) in Attachment L) requires that the CivicSD Board to review the art installation, and furthermore, requires that the art installation shall pay homage to the California Theatre building. Since the art installation would be reviewed by the CivicSD Board, the HRB review would be somewhat redundant and would add further time and complication to the building permit review.
3. Staff believes, as proposed, the proposed mitigation measure regarding the salvage displays is adequate given that City Historic staff will be required to review and approve the salvage display. Historic staff-level review is typical of such mitigation measures. Similar to the art installation mitigation measure recommendation, adding HRB review of

the salvage display will add a redundant review and will add time to the building permit review.

Conclusion:

That the Planning Commission recommends that the City Council Certifies the SEIR implementing Project Alternative 1 described in the SEIR and adopts the Findings and Statement of Overriding Considerations. It is recommended that the Planning Commission recommends approval to the City Council of Amendments to the Downtown Community Plan, Centre City Planned District Ordinance and the Local Coastal Program for the Removal of the Employment Overlay from the Project site. Furthermore, it is recommended that the Planning Commission recommends to City Council approval of Centre City Development Permit/Site Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit No. 2014-76.

Respectfully submitted:

Concurred by:



Aaron Hollister
Senior Planner



Reese A. Jarrett
President



Brad Richter
Vice President, Planning

Attachments: A – Project Data Sheet
B – Supplemental Environmental Impact Report
C – Architectural Narrative (provided by Applicant)
D – Public Correspondence
E – London Group Analysis (provided by the Applicant)
F – Peer Review of Economic Alternatives Analysis by KMA
G – SDP Findings (provided by the Applicant)
H – DCP/CCPDO Employment Overlay Figures
I – DCP Historic Preservation Goals and Policies
J – Ownership Disclosure Statement
K – HRB Staff Report dated January 2017
L – Draft CCDP/SDP/CCPDP/NUP No. 2014-76.
M – Draft City Council Resolution for CCDP/SDP/CCPDP/NUP No. 2014-76.
Basic Concept/Schematic Drawings dated December 7, 2016