

RESOLUTION NUMBER R- 311373

DATE OF FINAL PASSAGE OCT 17 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO GRANTING SITE DEVELOPMENT PERMIT NO. 1162629, CONDITIONAL USE PERMIT NO. 1162655, AND PLANNED DEVELOPMENT PERMIT NO. 1162654 FOR LEGACY INTERNATIONAL CENTER – PROJECT NO. 332401.

WHEREAS, Morris Cerullo Legacy Center Foundation, LLC filed an application with the City of San Diego for a Site Development Permit, Conditional Use Permit and Planned Development Permit to redevelop the existing Mission Valley Resort property into a mixed-use development consisting of religious, lodging, administrative, recreational, and commercial uses known as the Legacy International Center project; and

WHEREAS, the site is located at 875 Hotel Circle South, and legally described as: Lot 1 of Mission Valley Inn, in the City of San Diego, County of San Diego, State of California, according to map thereof No. 3347, filed in the Office of the County Recorder of San Diego County, December 28, 1955, in the Mission Valley Community Plan area, in the MVPD-MV-M/SP zone, which is proposed to be rezoned to the MVPD-MV-CV zone; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on October 17, 2017, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Site Development Permit No. 1162629, Conditional Use Permit No. 1162655, Planned Development Permit No. 1162654:

**I. Planned Development Permit - Section 126.0604**

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

The Legacy International Center project (Project) will demolish the existing structures and parking lots, and construct a mixed-use development consisting of religious, lodging, administrative, recreational, and commercial uses dispersed among five buildings:

1. A 41,071-square-foot "Legacy Vision Center" building (with a welcome center, a dome theater, a museum, a gallery, and retail uses);
2. A 63,477-square-foot pavilion (with a restaurant, gift shops, learning center, theater, and wellness center);
3. A five-story, 88,120-square-foot Legacy Village building containing 127-room hotel, a restaurant, and a wellness center;
4. A parking structure; and
5. A 7,783-square-foot outdoor plaza;

The Project would include a maximum of 659 parking stalls (435 within a parking structure and 224 surface spaces) where 524 spaces are required. The Project will also include outdoor recreation amenities, hiking trails, a linear park, plazas, a water feature, and other accessory uses and amenities.

The Project would also provide pedestrian plazas and walkways, an amphitheater, prayer garden, wailing wall, and water feature. A linear green space with a pedestrian pathway, shade trees, drought tolerant landscaping, and shaded seating would provide passive recreation opportunities. A pedestrian trail would also be provided along an existing bench that traverses the southern portion of the hillside. This trail would include an overlook area and provide interpretive signage regarding the history of Mission Valley. Signage would also be provided along the project frontage to invite people into the site and direct them to the public amenities (e.g. the pedestrian plazas, hillside trail, and amphitheater area).

The project site, located in the Mission Valley Community Plan area, is designated as Commercial Recreation and zoned MVPD-MV-M/SP (Multiple Use Zone in the Mission Valley Planned District in a Specific Plan). The site is located at 875 Hotel Circle South, San Diego, California. The site is urban and was previously developed for multiple uses within the Atlas Specific Plan, which was approved by the City of San Diego City Council, Resolution Number

R-272571, dated December 13, 1988 (“Atlas Specific Plan”) which permits, among other things, the use of the property for the operation of a hotel. The site is presently used for a 202 room hotel, a 5,300 square foot restaurant, and 1,200 square foot liquor store. An eight pump gas station and a gym were also operated on the site until the spring of 2013. Commercial and hotel developments occur east and west of the Project site and across Interstate 8, north of the Project. Located along Hotel Circle South, the Project site is south of Interstate 8, west of State Route 163, and east of Interstate 805.

The Project is proposing to continue to be designated as Commercial Recreation, but will no longer be governed by the Atlas Specific Plan. The Atlas Specific Plan sets forth a land use and urban design element for properties owned by Atlas Hotels, Inc. to ensure the orderly and integrated development of the affected parcels and sites. Since the Project will demolish the existing hotel, the Project is requesting an amendment to be removed from the Atlas Specific Plan. The land use and development restrictions in the Atlas Specific Plan are specifically related to the hotel uses on the property and are not applicable or appropriate for the Project. Once the site is removed from the Specific Plan, those regulations will no longer apply. However, the Project intends to meet the underlying objectives of the Atlas Specific Plan of balanced circulation with ample opportunities for alternative modes of transportation, including light rail transit, bus, bicycle and pedestrian movement, and improved streetscape design. Improved streetscape design will be achieved through the provision of parks and open spaces, utilizing native, drought resistant plants and trees, and maintaining large portions of the steep hillsides, which will continue to be visible from Interstate 8 and Hotel Circle South.

The Project will implement the policies of the Mission Valley Community Plan intended for the Project site. The objectives for commercial uses in the Mission Valley Community Plan applicable to this Project are: 1) encourage multi-use development in which commercial uses are combined or integrated with other uses; 2) encourage visitor-oriented commercial development; and 3) encourage new commercial development which relates (physically and visually) to existing adjacent development. The Legacy International Center would integrate a variety of uses including lodging, retail, entertainment, and recreational uses. These uses would be connected by open plazas and a pedestrian network. The Project would include visitor-oriented commercial development, such as a 127-room hotel, a restaurant, and a wellness center. The Project would also relate to existing adjacent development made up of hotel and office properties that currently range from two to five stories. It has been designed to be compatible with the scale and massing of existing development in the area.

The primary basis for analyzing development intensity according to the MVCP is trip generation. The MVCP divides the community plan area into 13 Development Intensity Districts (DIDs) and assigns allowable trip generation rates (in terms of trips/acre) to each DID. The project site is located within the “D” DID, which allows for 380 gross trips per acre. Projects that exceed the threshold of 380 ADT per gross acre are required to be processed as a Community Plan Amendment and are required to submit a traffic study identifying the traffic impacts and mitigation required by the project as well as an environmental study prepared in accordance with the California Environmental Quality Act.

The proposed project totals 221 gross trips per acre, which is well below the 380 trip threshold. As such, the project is consistent with the development intensity provisions of the MVCP. Therefore, the proposed development will not adversely affect the applicable land use plan.

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

The Project will not be detrimental to public health, safety and welfare because the permits controlling the development and continued use of the proposed Project for this site contain specific conditions addressing the Project's compliance with the City's codes, policies, regulations and other regional, state, and federal regulations to prevent detrimental impacts to the health, safety and general welfare of persons residing and/or working in the area. Conditions of approval require compliance with several operational constraints and developmental controls such as control of drive aisle and parking space width, provision of Brush Management Zones, and closure of non-utilized driveways. The review of all construction plans and the final construction will comply with all regulations, and will assure the continued health, safety, and general welfare of persons residing or working in the area.

Moreover, the provision of a linear park and the maintenance of steep hillsides through a Covenant of Easement and intersection improvements also function to protect the public health, safety and general welfare. Therefore the proposed development will not be detrimental to public health, safety and welfare.

**3. The proposed development will comply with the regulations of the Land Development Code including any proposed deviations pursuant to Section 126.0602(b)(1) that are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone; and any allowable deviations that are otherwise authorized pursuant to the Land Development Code.**

The proposed development complies with the regulations of the Land Development Code. Pursuant to Section 126.0602(b)(1), a Planned Development Permit is requested to allow for deviations to retaining wall heights. The retaining walls for which deviations are being sought are necessary due to the hillside located to the rear of the property and the grade differential between the site and the adjacent property to the east. The entire site has approximately 45 feet of grade change, so the walls are necessary to make the site function in terms of programs and access. The site cannot be raised to lower the heights of the retaining walls as this would result in exceeding maximum grades for drive isles. Pursuant to Section 142.0340, retaining walls are limited to nine feet within required side and rear yards (in commercial zones) and 12 feet outside of required yards. The Project proposes a total of 16 retaining walls. Of these, only four require deviations.

Two of these walls are located within required setbacks and have maximum heights of 16 feet and 17.5 feet. These walls are located within the rear setback adjacent to a parking lot and are required to avoid impacts to the abutting hillside. It would not be visible from public viewpoints. The 14 foot wall is located in the rear portion of the site within the side setback between the

subject site and the adjacent property to the east. This wall is required due to the significant grade differential between the properties and is necessary to avoid grading encroachments on the adjacent property. The other two walls are located outside of required setbacks and have the following maximum heights: 16.5 feet, and 17.5 feet. These walls are located to the rear of the site and would be obscured from public viewpoints. They are located to the eastern side of the hotel building.

The proposed retaining walls would replace existing walls to minimize the size of the retaining walls and the impact into the adjacent hillside/open space. Extensive efforts have been made to design the site to reduce the heights and visibility of the walls. A majority of the walls will have vines or larger scale planting in front of them to soften their overall appearance. For the walls that do not, the planting behind the walls will grow over the wall to aid in softening the aesthetic.

The requested deviations result in a more desirable project than would be achieved if designed in strict conformance with the regulations. As previously indicated, the site has significant grade changes and cannot be raised. It is also constrained by an existing hillside located behind the proposed development and a significant grade differential between the subject site and the adjacent property to the east. The walls are necessary to avoid additional grading and disturbance into the hillside as well as grading encroachments on the adjacent property. Therefore, the proposed development will comply with the regulations of the Land Development Code including any proposed deviations pursuant to Section 126.0602(b)(1) that are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone; and any allowable deviations that are otherwise authorized pursuant to the Land Development Code.

## **II. SITE DEVELOPMENT PERMIT SECTION 126.0504**

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

The Project would include a maximum of 659 parking stalls (435 within a parking structure and 224 surface spaces) where 524 spaces are required. The Project will also include outdoor recreation amenities, hiking trails, a linear park, plazas, a water feature, and other accessory uses and amenities.

The project site, located in the Mission Valley Community Plan area, is designated as Commercial Recreation and zoned MVPD-MV-M/SP (Multiple Use Zone in the Mission Valley Planned District in a Specific Plan). The project site is located at 875 Hotel Circle South, south of Interstate 8, west of State Route 163, and east of Interstate 805. The site is urban and was previously developed for multiple uses within the Atlas Specific Plan, which was approved by the City of San Diego City Council, Resolution Number R-272571, dated December 13, 1988 ("Atlas Specific Plan") which permits the use of the property for the operation of a hotel. The site is presently used for a 202-room hotel, a 5,300-square-foot restaurant, and 1,200-square-foot liquor store. An eight-pump gas station and a gym were also operated on the site until the spring of 2013. Commercial and hotel developments occur east and west of the Project site and across Interstate 8, north of the Project.

The Project is proposing to continue to be designated as Commercial Recreation, but will no longer be governed by the Atlas Specific Plan. The Atlas Specific Plan sets forth a land use and urban design element for properties owned by Atlas Hotels, Inc. to ensure the orderly and integrated development of the affected parcels and sites. Since the adoption of the Atlas Specific Plan, the Atlas Hotel Group filed for bankruptcy and as a result of that action all seven properties in the Atlas Specific Plan were sold to different owners. With the properties under separate ownership, the realization of the Atlas Specific Plan is no longer financially feasible because the plan relied on the coordinated phasing across the properties to be economically viable. Since the Atlas Specific Plan is no longer financially feasible, the Project is requesting an amendment to be removed from the Atlas Specific Plan. Once the site is removed from the Specific Plan, those regulations will no longer apply.

The Project will implement the policies of the Mission Valley Community Plan intended for the Project site. The objectives for commercial uses in the Mission Valley Community Plan applicable to this Project are: 1) encourage multi-use development in which commercial uses are combined or integrated with other uses; 2) encourage visitor-oriented commercial development; and 3) encourage new commercial development which relates (physically and visually) to existing adjacent development. The Legacy International Center will integrate a variety of uses including lodging, retail, entertainment, and recreational uses. These uses will be connected by open plazas and a pedestrian network. The Project will include visitor-oriented commercial development, such as a 127-room hotel, a restaurant, and a wellness center and has been designed to be compatible with the scale and massing of existing development in the area. The project will relate to existing adjacent development consisting of hotel and office properties currently ranging from two to ten stories in height. Therefore, the proposed development will not adversely affect the applicable land use plan.

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

The proposed development will not be detrimental to public health, safety and welfare because the permits controlling the development and continued use of the proposed Project for this site contain specific conditions addressing the Project's compliance with the City's codes, policies, regulations and other regional, state, and federal regulations related to public health and safety. Conditions of approval require compliance with several operational constraints and developmental controls such as control of drive aisle and parking space width, provision of Brush Management Zones, and closure of non-utilized driveways. Review of all construction plans and the final construction and provision of a linear park and steep hillside maintenance will ensure compliance with all regulations.

The primary basis for analyzing development intensity according to the MVCP is trip generation. The MVCP divides the community plan area into 13 Development Intensity Districts (DIDs) and assigns allowable trip generation rates (in terms of trips/acre) to each DID. The project site is located within the "D" DID, which allows for 380 gross trips per acre. Projects that exceed the threshold of 380 ADT per gross acre are required to be processed as a Community Plan Amendment and are required to submit a traffic study identifying the traffic impacts and

mitigation required by the project as well as an environmental study prepared in accordance with the California Environmental Quality Act.

The proposed project totals 221 gross trips per acre, which is well below the 380 trip threshold. As such, the project is consistent with the development intensity provisions of the MVCP. Therefore the proposed development will not be detrimental to public health, safety and welfare.

**3. The proposed development will comply with the regulations of the land development code including any deviations pursuant to the Land Development Code.**

The Planned Development Permit pursuant to SDMC Section 126.0602(b)(1) will allow a deviation to retaining wall height restrictions set forth in 142.0340(e) which restricts retaining wall heights to nine feet within required yards and 12 feet for walls outside the required yards. Section 142.0340 limits retaining walls to nine feet within required side and rear yards. Two walls are located within required setbacks and have maximum heights of 13.5 feet (Wall 11) and 14.0 feet (Wall 12). These walls are located within the rear setback adjacent to a parking lot and are required to avoid impacts to the abutting hillside and would not be visible from public viewpoints. The proposed retaining wall heights are necessary due to the hillside located at the rear of the site and the grade differential between the project site and the site to the east. The 14-foot (max.) wall is located at the rear portion of the site within the side setback between the subject site and the adjacent property to the east. This wall is required due to the significant grade differential between the properties and is necessary to avoid grading encroachments on the adjacent property. The other two retaining walls are located outside of required setbacks and have the following maximum heights: 17.5 feet (Wall 15), and 16.5 feet (Wall 16). These walls are located to the rear of the site and would be obscured from public viewpoints. They are located to the eastern side of the hotel building. There is a grade change of 45 feet on site and the requested deviations allow for site function and access. Raising the site to lower retaining wall heights would result in exceeding maximum grades for drive isles. The proposed development will comply with all other relevant regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. For additional information see Planned Development Permit Finding No. 3, above.

The Project as proposed complies with required setbacks, parking, landscaping regulations transportation, drainage, and storm water requirements. Therefore, the proposed development will comply with the regulations of the land development code including any deviations pursuant to the Land Development Code.

## **Supplemental Findings Pursuant To Section 126.0504(B) -- Environmentally Sensitive Lands**

### **1. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.**

The Project will re-develop approximately 12.6 acres of an 18.13-acre property located in the Mission Valley community, within a built urban environment. The project site is a previously developed site and is currently zoned MVPD-MV-M/SP (Multiple Use in a Specific Plan). The Project site currently contains a 202-room hotel, a 5,300-square-foot restaurant, and a 1,200-square-foot liquor store, and several additional buildings. An eight-pump gas station and a gym were also operated on the site until the spring of 2013. Commercial and hotel developments exist east and west of the Project site and across Interstate 8, north of the Project. In this setting, the proposed Project functions as development of an infill site; reusing and repositioning buildings with updated structures and portions of the Project will be accessed by the general public. The Project site has convenient access to an existing network of surface streets, freeways, and transit routes (e.g., bus and trolley) and all public utilities are in place to allow connections to serve the Project.

The Project is limited to areas of the site that have been previously graded or disturbed. Technical reports prepared for the Project demonstrate that the site is physically suitable for the proposed development. The Project would have impacts to three sensitive vegetation communities: southern mixed chaparral, disturbed southern mixed chaparral and non-native grassland. Mitigation for impacts to these vegetation communities may be achieved by payment into the City of San Diego Habitat Acquisition Fund. No sensitive plant species were observed within the survey area. No direct impacts to sensitive wildlife species would occur. The project would comply with the Migratory Bird Treaty Act of 1918 and California Department of Fish and Wildlife Code 3503 by avoiding potential direct and indirect impacts to bird species through implementation of pre-construction surveys if work were to be conducted during the breeding season. If nesting birds are identified, then mitigation measures to avoid impacts to these breeding birds would be implemented. A wetland delineation conducted on-site identified non-wetland waters within the southern half of the survey area. The non-wetland waters occur as upland vegetated ephemeral streambeds and impacts would occur to a portion of these ephemeral drainages. Mitigation for impacts to ephemeral waters would be achieved on-site through creation, restoration, and/or enhancement of drainage courses. Permits from the resource agencies would be required in order to authorize impacts to jurisdictional waters. No impacts to wetlands would occur. No grading into areas qualifying as Environmentally Sensitive Lands (ESL) Steep Hillside will occur.

A hotel and other structures exist on the site today and the Project will also provide a new hotel and other structures within the same project footprint. The Project will mitigate environmental impacts and grading will occur in a previously disturbed area of the project site. Therefore, the site is physically suitable for the design and siting of the proposed development and the development will result in the minimum disturbance to environmentally sensitive lands.



**2. The proposed development will minimize alteration of natural land forms and will not result in undue risk from geologic and erosional forces and/or flood and fire hazards.**

The northern section of the site is located within the Special Flood Zone AE of the San Diego River based on Federal Emergency Management Agency (FEMA) Panel No. 06073C1618G, dated May 16, 2012, and portions of the southern section of the site are located within the Special Flood Zone X. The project site and numerous other similarly situated developments are disconnected from the main channel of the San Diego River. Interstate 8 freeway is located between the San Diego River and the project site. In addition, the minimum finished floor elevations of buildings proposed for the Project will be two feet above the maximum water surface elevation adjacent to the project site.

Groundwater is encountered between eight and 33.5 feet below the existing grade which ranges in elevation between 10.5 and 18.5 feet above Mean Sea Level (MSL). Proper surface drainage and dewatering procedures will be implemented for excavations deeper than 10-to-17 feet or below an elevation of 10-to-18 feet above MSL. The site will be graded and maintained such that surface drainage is directed away from structures and a water-proofing system will be used on the wall and joints of basement and building walls retaining landscaping areas.

The project site is not located within a State of California Earthquake Fault Zone. It is not on any known active, potentially active, or inactive fault traces as defined by the California Geological Survey. The soil onsite possesses a "very low" to "low" expansion potential as defined by Building Code Section 1803.5.3. The relatively flat developed section of the property consists of surficial soils consisting of undocumented fill and alluvium, overlying Stadium Conglomerate. The sloped area at the southern portion of the property consists of Stadium Conglomerate. Based on an analysis in the Geological Report prepared for the project, the planned improvements can be supported by Stadium Conglomerate, with remedial grading required for the undocumented fill and sections of alluvium below the water table that are susceptible to liquefaction. Liquefiable soils are generally in the northern portion of the property and not present in the southern section of the property. The Project will implement measures to avoid potential liquefaction as a result of seismic activity, such as ground improvement of surficial soils, placement of deep foundations to support the planned garage and buildings, and/or structural design of improvements.

Slope stability, erosion control, water quality, and landform preservation will be minimally affected by the grading proposed for the Project. The cut and fill slope ratio requirement of 2:1 for slopes greater than eight (8) feet in height shall be satisfied; no landslides are known to exist on the property or at a location that would impact the proposed development; and the Project will not destabilize or result in settlement of the adjacent property or any rights of way. The existing slope possesses favorable geologic conditions that will not negatively affect the planned development as all slopes will be planted, drained, and properly maintained to reduce erosion. Adequate site drainage will be installed to reduce the potential for differential soil movement, erosion and subsurface seepage. Retaining walls will be installed at the base of a majority of the slopes and concrete brow ditches will be installed above the retaining walls, which will help prevent drainage, erosion and shallow failure from being deposited to the buildings.

The Project is within the San Diego Very High Fire Hazard Severity Zone. However, the Project is designed to meet City standards for fire protection and reduce the risk of fire hazards. Pursuant to SDMC Section 142.0412 brush management on the Project premises is designed to reduce fire hazard while simultaneously minimizing the impact on undisturbed native or naturalized vegetation. Brush management will be achieved by thinning and pruning trees and plants, controlling plants, and maintaining irrigation systems as well as utilizing non-combustible and/or fire resistant building materials whenever practicable. All brush management Zone 1 and Zone 2 areas for the proposed Project are outside the Multi-Habitat Planning Area at more than 100 feet away; thus, minimizing impacts to protected species to the maximum extent possible. Therefore, the proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards. Implementation of these measures will further increase the fire safety of the surrounding built environment.

**3. The proposed development will be sited and designed to minimize adverse impacts on adjacent environmentally sensitive lands.**

The Project has been designed to preserve significant environmental resources and steep hillsides by conforming, to the maximum extent, to the current development footprint. The proposed development will occur within essentially the same development footprint as the existing Mission Valley Inn project. The proposed bulk and scale of the new development is compatible with other existing developments located along the south side of Hotel Circle South, such as the Courtyard Marriott and Double Tree hotels.

To minimize any grading and to blend the finished Project with the existing adjacent topography, all graded, disturbed or eroded areas that will not be permanently paved or covered by structures will be permanently re-vegetated and irrigated in accordance with the standards in the Land Development Code. In addition, graded, disturbed, or eroded areas that will not be permanently paved, covered by structure, or planted for a period over ninety (90) calendar days will be temporarily revegetated with a non-irrigated hydroseed mix, ground cover or equivalent material. Temporary irrigation systems may be used to establish the vegetation. All required revegetation and erosion control will be completed within ninety (90) calendar days of the completion of grading or disturbance. Therefore, the proposed development will be sited and designed to minimize any adverse impacts on adjacent environmentally sensitive lands.

**4. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program ("MSCP") Subarea Plan.**

Mitigation is required for project impacts that are considered significant under CEQA, including impacts to sensitive or listed species and sensitive vegetation communities. The proposed Project would have impacts to three sensitive vegetation communities: southern mixed chaparral, disturbed southern mixed chaparral, and non-native grassland. The total mitigation acreage required for the project is 0.12-acre, which will be satisfied through payment to the City's Habitat Acquisition Fund, as set forth in the Biological Resources Report for the Legacy International Center, San Diego, California, prepared by RECON Environmental, Inc., RECON, dated December 8, 2016 (Biological Report).

The proposed Project may also have direct and indirect impacts on nesting birds (i.e., Cooper's hawk) if construction is to occur during typical bird breeding season, which currently occurs between February 1st and September 15th. The Project intends to comply with the Migratory Bird Treaty Act of 1918 and the California Department of Fish and Wildlife Code Section 3503 to avoid and/or mitigate impacts on the breeding birds. The Project is required by permit condition, to perform, to the greatest extent feasible, any and all grading in the proposed area of disturbance outside of the breeding season. However, if that is not feasible, pre-construction surveys will be performed and, if nesting birds are identified, mitigation measures will be implemented to avoid impact to the breeding birds.

The Project is within the San Diego Very High Fire Hazard Severity Zone. Pursuant to Section 142.0412 of the SDMC, brush management is required to be performed on the Project premises to reduce fire hazard. However, all brush management for Zone 1 and Zone 2 areas for the proposed Project are outside and over one hundred (100) feet away from the Multiple Habitat Planning Area. Thus, impacts to covered species will be minimized.

A wetland delineation conducted on-site identified non-wetland waters within the southern half of the survey area. The non-wetland waters occur as upland vegetated ephemeral streambeds and impacts would occur to a portion of these ephemeral drainages. Mitigation for impacts to ephemeral waters would be achieved on-site through creation, restoration, and/or enhancement of drainage courses. Permits from the resource agencies would be required in order to authorize impacts to jurisdictional waters. No impacts to wetlands would occur.

Given these project feature and mitigation requirements, the proposed development will be consistent with the City of San Diego's MSCP Subarea Plan.

**5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.**

The proposed Project will implement water quality measures and best management practices to prevent adverse impacts to environments downstream from the site. These measures will aid in protecting public beaches and local shoreline sand supply. In addition, the Project site is approximately 2.5 miles from the Pacific Ocean and beaches. Therefore, the proposed Project will not contribute to the erosion of public beaches and/or adversely impact local shoreline sand supply.

**6. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.**

The proposed Project will implement mitigation procedures to protect against potential impacts to biological resources, traffic, archeological and historic resources, and paleontological resources as well as prevent potential noise impacts and structure instability due to liquefiable soils.

To prevent impacts to biological resources, the Project will comply with the City of San Diego Multi-Habitat Planning Area (MHPA)-Land Use Adjacency Guidelines, avoid disturbance during the raptor breeding season (or, if that's not feasible, will conduct preconstruction surveys and establish avoidance buffers if nesting birds are detected), and purchase 0.12 mitigation credits through the City's Habitat Acquisition Fund Program.

The Project results in a direct impact to the Hotel Circle South/I-8 eastbound ramps intersection. This will be mitigated through full-width dedication along the project frontage and construction of an additional eastbound and westbound lane with appropriate transitions to meet existing conditions at the western and eastern limits of the site. The Project results in a cumulative impact to the Hotel Circle North/I-8 westbound ramps. This would be mitigated through assuring the construction of a traffic signal in 2035 at this intersection.

According to the Archaeological Resources Survey of the Legacy International Center, City of San Diego, prepared by RECON Environmental, Inc., RECON Number 6919, dated May 29, 2014 (the Archaeological Report), there have been some archaeological investigations and 27 cultural resources have been discovered within a one (1) mile radius of the proposed Project. There is a potential for subsurface prehistoric or historic deposits. Therefore, mitigation procedures, such as archaeological and Native American monitoring will be implemented to alleviate any potential negative impacts created by the proposed Project. These mitigation measures are tailored to the potential impacts of the Project.

To prevent noise impacts, an acoustical study of proposed mechanical equipment will be prepared and appropriate mitigation measures implemented to ensure compliance with the City's noise ordinance.

### **III. CONDITIONAL USE PERMIT SECTION 126.0305**

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

The Project would include a maximum of 665 parking stalls (435 within a parking structure and 224 surface spaces) where 524 spaces are required. The Project will also include outdoor recreation amenities, hiking trails, a linear park, plazas, a water feature, and other accessory uses and amenities.

The project site, located in the Mission Valley Community Plan area, is designated as Commercial Recreation and zoned MVPD-MV-M/SP (Multiple Use Zone in the Mission Valley Planned District in a Specific Plan). The project site is located at 875 Hotel Circle South, south of Interstate 8, west of State Route 163, and east of Interstate 805. The site is urban and was previously developed for multiple uses within the Atlas Specific Plan, which was approved by the City of San Diego City Council, Resolution Number R-272571, dated December 13, 1988 ("Atlas Specific Plan") which permits the use of the property for the operation of a hotel. The site is presently used for a 202-room hotel, a 5,300-square-foot restaurant, and 1,200-square-foot liquor store. An eight-pump gas station and a gym were also operated on the site until the spring

of 2013. Commercial and hotel developments occur east and west of the Project site and across Interstate 8, north of the Project.

The Project is proposing to continue to be designated as Commercial Recreation, but will no longer be governed by the Atlas Specific Plan. The Atlas Specific Plan sets forth a land use and urban design element for properties owned by Atlas Hotels, Inc. to ensure the orderly and integrated development of the affected parcels and sites. Since the adoption of the Atlas Specific Plan, the Atlas Hotel Group filed for bankruptcy, and as a result of that action all seven properties in the Atlas Specific Plan were sold to different owners. With the properties under separate ownership, the realization of the Atlas Specific Plan is no longer financially feasible because the plan relied on the coordinated phasing across the properties to be economically viable. Since the Atlas Specific Plan is no longer financially feasible, the Project is requesting an amendment to be removed from the Atlas Specific Plan. Once the site is removed from the Specific Plan, those regulations will no longer apply.

The Project will implement the policies of the Mission Valley Community Plan intended for the Project site. The objectives for commercial uses in the Mission Valley Community Plan applicable to this Project are: 1) encourage multi-use development in which commercial uses are combined or integrated with other uses; 2) encourage visitor-oriented commercial development; and 3) encourage new commercial development which relates (physically and visually) to existing adjacent development. The Legacy International Center will integrate a variety of uses including lodging, retail, entertainment, and recreational uses. These uses will be connected by open plazas and a pedestrian network. The Project will include visitor-oriented commercial development, such as a 127-room hotel, a restaurant, and a wellness center and has been designed to be compatible with the scale and massing of existing development in the area. The project will relate to existing adjacent development consisting of hotel and office properties currently ranging from two to ten stories in height. Therefore, the proposed development will not adversely affect the applicable land use plan.

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

The proposed development will not be detrimental to public health, safety and welfare because the permits controlling the development and continued use of the proposed Project for this site contain specific conditions addressing the Project's compliance with the City's codes, policies, regulations and other regional, state, and federal regulations related to public health and safety. Conditions of approval require compliance with several operational constraints and developmental controls. Review of all construction plans and the final construction and provision of a linear park and steep hillside maintenance will ensure compliance with all regulations.

The primary basis for analyzing development intensity according to the MVCP is trip generation. The MVCP divides the community plan area into 13 Development Intensity Districts (DIDs) and assigns allowable trip generation rates (in terms of trips/acre) to each DID. The project site is located within the "D" DID, which allows for 380 gross trips per acre. Projects that exceed the threshold of 380 ADT per gross acre are required to be processed as a Community Plan Amendment and are required to submit a traffic study identifying the traffic impacts and

mitigation required by the project as well as an environmental study prepared in accordance with the California Environmental Quality Act.

The proposed project totals 221 gross trips per acre, which is well below the 380 trip threshold. As such, the project is consistent with the development intensity provisions of the MVCP. Therefore the proposed development will not be detrimental to public health, safety and welfare.

**3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code; and**

The Planned Development Permit pursuant to SDMC Section 126.0602(b)(1) will allow a deviation to retaining wall height restrictions set forth in 142.0340(e) which restricts retaining wall heights to nine feet within required yards and 12 feet for walls outside the required yards. Section 142.0340 limits retaining walls to nine feet within required side yard and rear yards. Two walls are located within required setbacks and have maximum heights of 13.5 feet (Wall 11) and 14.0 feet (Wall 12). These walls are located within the rear setback adjacent to a parking lot and are required to avoid impacts to the abutting hillside and would not be visible from public viewpoints. The proposed retaining wall heights are necessary due to the hillside located at the rear of the site and the grade differential between the project site and the site to the east. The 14-foot (max.) wall is located at the rear portion of the site within the side setback between the subject site and the adjacent property to the east. This wall is required due to the significant grade differential between the properties and is necessary to avoid grading encroachments on the adjacent property. The other two retaining walls are located outside of required setbacks and have the following maximum heights: 17.5 feet (Wall 15), and 16.5 feet (Wall 16). These walls are located to the rear of the site and would be obscured from public viewpoints. They are located to the eastern side of the hotel building. There is a grade change of 45 feet on site and the requested deviations allow for site function and access. Raising the site to lower retaining wall heights would result in exceeding maximum grades for drive isles. The proposed development will comply with all other relevant regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. For additional information see Planned Development Permit Finding No. 3, above.

The Project as proposed complies with required setbacks, parking, landscaping regulations transportation, drainage, and storm water requirements. Therefore, the proposed development will comply with the regulations of the land development code including any deviations pursuant to the land development code.

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


The Project will re-develop approximately 12.6 acres of an 18.1-acre property located in the Mission Valley community, within a built-out urban environment. The Project site is a previously developed site and is currently zoned MVPD-MV-M/SP (Multiple Use in a Specific Plan). The Project site currently contains a 202 room hotel, a 5,300 square foot restaurant, and a 1,200 square foot liquor store, and several additional buildings. An eight pump gas station and a gym were also operated on the site until in or around the spring of 2013. Commercial and hotel

developments occur east and west of the Project site and across Interstate 8, north of the Project. In this setting of existing development, the proposed Project functions as development of an infill site; reusing and repositioning obsolete and underutilized buildings with updated, aesthetically pleasing buildings with large portions of the Project to be used and enjoyed by the general public. The Project site has convenient access to an existing network of surface streets, freeways, and transit routes (e.g., bus and trolley); and all public utilities are in place to allow easy connections to serve the Project.

The theater is proposed within the Legacy Vision Center and would be within a completely enclosed building. It would not; therefore, interfere with the activities occurring on adjacent properties. The closest residential uses are located at the top of the steep hillsides to the south of the site. The use would not impact these residences. All parking would be provided on-site and there are no routes to get to the site from the residential neighborhood located at the top of the hill. The residential uses would continue to be isolated from the activities occurring within the valley below. Therefore, the proposed use is appropriate at the proposed location.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the City Council of the City of San Diego, Site Development Permit No. 1162629/Conditional Use Permit No. 1162655 /Planned Development Permit No. 1162654 is hereby GRANTED by the City Council of the City of San Diego to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit Nos. 1162629, 1162655, 1162654, a copy of which is attached hereto and made a part hereof, contingent upon final passage of R- **311371** approving amendments to the General Plan, Mission Valley Community Plan, and Atlas Specific Plan and O- **20872** rezoning the project site to the MVPC-MV-CV zone.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
\_\_\_\_\_  
Corrine L. Neuffer  
Deputy City Attorney

CLN:dkr  
August 16, 2017  
October 20, 2017 Rev. Copy  
Or.Dept:Planning  
Doc. No.: 1561588\_2

ATTACHMENT: Site Development Permit/Conditional Use Permit/Planned Development Permit

**RECORDING REQUESTED  
BY  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
PERMIT INTAKE, MAIL  
STATION 501**

**WHEN RECORDED MAIL  
TO  
CITY CLERK  
MAIL STATION 2A**

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INTERNAL ORDER NUMBER: 24003955SPACE ABOVE THIS LINE FOR RECORDER'S  
USE

SITE DEVELOPMENT PERMIT NO. 1162659/  
CONDITIONAL USE PERMIT NO. 1162655/PLANNED DEVELOPMENT PERMIT NO.  
1162654

**LEGACY INTERNATIONAL CENTER, PROJECT NO. 332401, MMRP**

CITY COUNCIL

This Site Development Permit No. 1162629/Conditional Use Permit No. 1162655/Planned Development Permit No. 1162654 is granted by the City Council of the City of San Diego to Morris Cerullo Legacy Center Foundation, LLC, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 143.0302, 126.0303 and 126.0306. The 18.13-acre site is located at 875 Hotel Circle South in the MVPD-MV-M/SP zone of the Mission Valley Community Plan. The project site is legally described as: Lot 1 of Mission Valley Inn, in the City of San Diego, County of San Diego, State of California, according to map thereof No. 3347, filed in the Office of the County Recorder of San Diego County, December 28, 1955.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to demolish the Mission Valley Resort Hotel and construct a congregation/museum space, a training center, executive offices, and a 127 room hotel as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated \_\_\_\_\_, on file in the Development Services Department.

The project shall include:

- a. Demolition of the existing structures and parking lots.
- b. Five buildings: 1) a 63,477-square-foot pavilion with a restaurant, gift shops, learning center, theater, and offices); 2) a 41,071-square-foot "Legacy Vision Center" building (with a welcome center, a dome theater, a museum, a gallery, and retail uses); 3) a 7,783-square-foot outdoor plaza; 4) a five story 88,120-square foot Legacy Village building containing 127-room hotel, a restaurant, and a wellness center; and 5) a parking structure. The Project would include a minimum of 524 parking stalls with up



to 659 parking stalls (435 within a parking structure and 224 surface spaces) provided at the discretion of the Owner/Permittee.

- c. Deviations for over height retaining walls: Wall 11-13.5 feet maximum; Wall 12-14.0 feet maximum; Wall 15-17.5 feet maximum; and Wall 16-16.5 feet maximum.
- d. Landscaping (planting, irrigation and landscape related improvements);
- e. Off-street parking
- f. Retaining walls, pedestrian plazas, walkways, amphitheater, prayer garden, wailing wall, water feature and pedestrian trail; and
- g. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by October 17, 2020.
2. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
4. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

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

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

## **ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

11. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program [MMRP] shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.

12. The mitigation measures specified in the MMRP and outlined in **Environmental Impact Report** No. 332401 SCH No. 2014081053, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

13. The Owner/Permittee shall comply with the MMRP as specified in **Environmental Impact Report** No. 332401 SCH No. 2014081053, to the satisfaction of the Development Services Department and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

Land Use, Biological, Traffic, Archeological/ Paleontological, Noise

14. Prior to the issuance of any building permits, the Owner/Permittee shall provide a copy of the signed agreement [DS-503] and show certification on the building plans verifying that the structures do not require Federal Aviation Administration [FAA] notice for Determination of No Hazard to Air Navigation, or provide an FAA Determination of No Hazard to Air Navigation as specified in Information Bulletin 520.

15. The Owner/Permittee shall comply with The Climate Action Plan (CAP) Consistency Checklist stamped as Exhibit "A." Prior to issuance of any construction permit, all CAP strategies shall be noted within the first three (3) sheets of the construction plans under the heading "Climate Action Plan Requirements."

16. The Climate Action Plan strategies as identified on Exhibit "A" shall be enforced and implemented to the satisfaction of the Development Services Department.

## **ENGINEERING REQUIREMENTS:**

17. Site Development Permit No. 1162629/Planned Development Permit No. 1162654/Conditional Use Permit No. 1162655 shall comply with all the Conditions of the Final Map for the Vesting Tentative Map No. 1162656.

18. The drainage system proposed for this development, as shown on the site plan, is Public and private and all subject to approval by the City Engineer.

19. Prior to the issuance of any building permits, the Owner/Permittee shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to the requirements of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

20. Prior to the issuance of any building permits, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement, from the City Engineer, for the private storm drain connections into the Public storm drain system.
21. Prior to the issuance of any building permits, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement, from the City Engineer, for the private improvements encroaching into the Public storm drain easements.
22. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of two current City Standard 26-foot and 30-foot wide driveways, adjacent to the site on Hotel Circle South, satisfactory to the City Engineer.
23. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to construct curb, gutter and sidewalk, adjacent to the site on Hotel Circle South, satisfactory to the City Engineer.
24. Prior to the issuance of the first certificate of occupancy, the Owner/Permittee shall dedicate and improve an additional 2-35 feet on Hotel Circle South to provide a 43-foot centerline to property-line distance, satisfactory to the City Engineer.
25. Prior to the issuance of the first certificate of occupancy, the Owner/Permittee shall grant to the City of San Diego a 5-foot-wide Public Access Easement, adjacent to the site on Hotel Circle South, satisfactory to the City Engineer.
26. Prior to the issuance of the first certificate of occupancy, the Owner/Permittee shall grant to the City of San Diego Public Storm Drain and Drainage easements, per approved Exhibit 'A', satisfactory to the City Engineer.
27. Whenever street rights-of-way, utility easements, and Public Access easements are required to be dedicated, it is the responsibility of the Owner/Permittee to provide the right-of-way and easements free and clear of all encumbrances and prior easements. The Applicant must secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.
28. Prior to the issuance of any building permit, per the City of San Diego Street Design Manual-Street Light Standards, and Council Policy 200-18, the Owner/Permittee shall assure, by permit and bond to install new street lights adjacent to the site on Hotel Circle South, satisfactory to the City Engineer.
29. Prior to the issuance of any construction permit, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.
30. Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

31. The owner/permittee shall enter into an agreement to indemnify, protect and hold harmless City, its officials and employees from any and all claims, demands, causes or action, liability or loss because of, or arising out of flood waters.
32. Fill placed in the SFHA for the purpose of creating a building pad must be compacted to 95% of the maximum density obtainable with the Standard Proctor Test Fill method issued by the American Society for Testing and Materials (ASTM Standard D-698). Granular fill slopes must have adequate protection for a minimum flood water velocity of five feet per second.
33. The Owner/Permittee shall denote on the final map and the improvement plans "Subject to Inundation" all areas lower than the base flood elevation plus 2 feet.
34. The Owner/Permittee shall enter into an agreement with the City waiving the right to oppose a special assessment initiated for the construction of flood control facilities and their perpetual maintenance.
35. This project proposes to construct nonresidential structures within the flood fringe of a Special Flood Hazard Area (SFHA) for the San Diego River as shown on Flood Insurance Rate Map panel 06073C1968 F. No work is allowed within the regulatory floodway. All structures built within the SFHA must be constructed with the lowest floor elevated a minimum of two feet above the base flood elevation (BFE) at that location. Otherwise, the structures must be floodproofed to a minimum of two feet above the BFE.
36. If the structures will be elevated on fill, such that the lowest adjacent grade is at or above the BFE, the applicant must obtain a Letter of Map Revision based on Fill (LOMR-F) prior to occupancy of the building. The Owner/Permittee must provide all documentation, engineering calculations, and fees which are required by FEMA to process and approve the LOMR-F.
37. If the structures will be floodproofed, they must be constructed to meet the requirements of the Federal Insurance Administration's Technical Bulletin 3-93. Additionally, a registered civil engineer or architect must certify prior to occupancy that those requirements have been met.
38. The project proposes to import material to the project site. Any excavated material listed to be exported, shall be exported to a legal disposal site in accordance with the Standard Specifications for Public Works Construction (the "Green Book"), 2015 edition and Regional Supplement Amendments adopted by Regional Standards Committee.
39. Prior to the issuance of any construction permit, the applicant shall submit a Technical Report that will be subject to final review and approval by the City Engineer, based on the Storm Water Standards in effect at the time of the construction permit issuance.
40. The Owner/Permittee shall assure, by permit, bond and As-built completion, the removal of portions of the existing Public Storm Drain system and construction of a current City Standard Public Storm Drain system per approved Exhibit "A," adjacent to the site on Hotel Circle South and in the City of San Diego Storm Drain Easements, satisfactory to the City Engineer.

41. Development of this project shall comply with all storm water construction requirements of the State Construction General Permit, Order No. 2009-0009DWQ, or subsequent order, and the Municipal Storm Water Permit, Order No. R9-2013-0001, or subsequent order. In accordance with Order No. 2009-0009DWQ, or subsequent order, a Risk Level Determination shall be calculated for the site and a Storm Water Pollution Prevention Plan (SWPPP) shall be implemented concurrently with the commencement of grading activities.

42. Prior to issuance of a grading or a construction permit, a copy of the Notice of Intent (NOI) with a valid Waste Discharge ID number (WDID#) shall be submitted to the City of San Diego as a proof of enrollment under the Construction General Permit. When ownership of the entire site or portions of the site changes prior to filing of the Notice of Termination (NOT), a revised NOI shall be submitted electronically to the State Water Resources Board in accordance with the provisions as set forth in Section II.C of Order No. 2009-0009-DWQ and a copy shall be submitted to the City.

43. Retaining Wall No. 16 to be located behind the proposed hotel shall not be constructed unless the hotel is constructed to ensure no visual impact from a standalone retaining wall.

44. Prior to issuance of the first certificate of occupancy, the Owner/Permittee shall ensure shade and weather protection for public transit riders by working with the Metropolitan Transit System (MTS) to develop an architectural canopy structure for the bus stop located along the southern side of Hotel Circle South adjacent to the project site, satisfactory to the City Engineer.

#### **LANDSCAPE REQUIREMENTS:**

45. Prior to issuance of any engineering permits for grading, the Owner/Permittee shall submit complete construction documents for the revegetation and hydroseeding of all disturbed land in accordance with the City of San Diego Landscape Standards, Stormwater Design Manual, and to the satisfaction of the Development Services Department. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit 'A,' on file in the Office of the Development Services Department.

46. Prior to issuance of any engineering permits for right-of-way improvements, the Owner/Permittee shall submit complete landscape construction documents for right-of-way improvements to the Development Services Department for approval. Improvement plans shall show, label, and dimension a 40-square-foot area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

47. Prior to issuance of any construction permits for structures (including shell), the Owner/Permittee shall submit complete landscape and irrigation construction documents consistent with the Landscape Standards to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Office of the Development Services Department. Construction plans shall provide a 40-square-foot area around each tree that is unencumbered by hardscape and utilities unless otherwise approved per LDC 142.0403(b)5.

48. In the event that a foundation only permit is requested by the Owner/Permittee, a site plan or staking layout plan shall be submitted to the Development Services Department identifying all landscape areas consistent with Exhibit "A," Landscape Development Plan, on file in the Office of the Development Services Department. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as "landscaping area."

49. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements shown on the approved plans, including in the right-of-way, consistent with the Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity.

50. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit.

51. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, the Owner/Permittee shall repair and/or replace in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Certificate of Occupancy.

**BRUSH MANAGEMENT PROGRAM REQUIREMENTS:**

52. The Owner/Permittee shall implement the following requirements in accordance with the Brush Management Program shown on Exhibit "A" Brush Management Plan on file in the Office of the Development Services Department.

53. The Brush Management Program shall be based on a standard Zone One of 35 feet in width and Zone Two of 65 feet in width, extending out from the structure towards the native/naturalized vegetation, consistent with the Brush Management Regulations of the Land Development Code, section 142.0412, exercising zone reduction provisions under 142.0412(f) and (i). Where the full defensible space cannot be provided, alternative compliance measures shall be applied to harden the structure beyond CBC 7A requirements to include upgraded openings with dual-glazed, dual-tempered panes.

54. Prior to issuance of any Engineering Permits for grading, landscape construction documents required for the engineering permit shall be submitted showing the brush management zones on the property in substantial conformance with Exhibit "A."

55. Prior to issuance of any Engineering Permits for grading, landscape construction documents required for the engineering permit shall be submitted showing the brush management zones on the property in substantial conformance with Exhibit "A."

56. Within Zone One, combustible accessory structures (including, but not limited to decks, trellises, gazebos, etc.) shall not be permitted while accessory structures of non-combustible, one-hour fire-rated, and/or heavy timber construction may be approved within the designated Zone One area subject to Fire Marshal's approval.

57. The following note shall be provided on the Brush Management Construction Documents: "It shall be the responsibility of the Owner/Permittee to schedule a pre-construction meeting on site with the contractor and the Development Services Department to discuss and outline the implementation of the Brush Management Program."

58. In Zone One, plant material shall be selected to visually blend with the existing hillside vegetation. No invasive plant material shall be permitted as jointly determined by the Landscape Section and the Environmental Analysis Section.

59. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's Landscape Standards.

**PLANNING/DESIGN REQUIREMENTS:**

60. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

61. Two view corridors identified on Exhibit "A" Site Plan as VC-1 and VC-2 shall be protected through the dedication of an air space easement. The view corridors shall be demonstrated with eye level at five feet having view access southwest from either Hotel Circle South or Interstate-8 freeway measuring 92 feet in width. View access directly south of Hotel Circle South shall measure at 117 feet in width.

62. Prior to the issuance of any construction permits, the Owner/Permittee shall execute and record a Covenant of Easement which ensures preservation of the Environmentally Sensitive Lands that are outside the allowable development area on the premises as shown on Exhibit "A" for Sensitive Biological Resources and Steep Hillside, in accordance with SDMC section 143.0152. The Covenant of Easement shall include a legal description and an illustration of the premises showing the development area and the Environmentally Sensitive Lands as shown on Exhibit "A."

63. The Owner/Permittee shall maintain 10 percent of all electric vehicle charging stations as fast-charging stations and add another 15 fast-charging stations within five years of project implementation.

64. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or City-wide sign regulations.

65. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

**TRANSPORTATION REQUIREMENTS:**

66. All automobile, motorcycle and bicycle parking spaces must be constructed in accordance with the requirements of the SDMC. All on-site parking stalls and aisle widths shall be in



compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the appropriate City decision maker in accordance with the SDMC.

67. Prior to issuance of the first certificate of occupancy, the Owner/Permittee shall provide and maintain all elements of the Transportation Demand Management Plan listed in the CAP checklist including bikesharing, 50% subsidized transit passes, free private shuttle service to/from major attractions in San Diego, electric vehicle charging stations, on-site shower facilities, and preferential carpool/vanpool parking, satisfactory to the City Engineer.

68. Prior to issuance of the first certificate of occupancy, the Owner/Permittee shall relocate, upgrade, and maintain the transit stop located on Hotel Circle South fronting the project (served by MTS Route 88), which includes a bus shelter, concrete bus pad, seating, lighting, and any other amenities in coordination with MTS, satisfactory to the City Engineer.

69. Prior to issuance of any building permits, the Owner/Permittee shall assure by permit and bond the construction of an additional eastbound and westbound travel lane along the project frontage on Hotel Circle South, satisfactory to the City Engineer. These improvements shall be completed and accepted by the City Engineer prior to issuance of first occupancy permit.

70. Prior to issuance of the first building permit, the Owner/Permittee shall assure by permit and bond the improvement of the project frontage along Hotel Circle South, with curb, gutter and five foot wide noncontiguous sidewalk, and the construction of two driveways consistent with current City Standards, satisfactory to the City Engineer. All improvements shall be completed and accepted by the City Engineer prior to first occupancy.

71. Prior to issuance of the first building permit, the Owner/Permittee shall assure by permit and bond the closure of all non-utilized driveways along the project's frontage on Hotel Circle South with current City Standard curb and gutter, satisfactory to the City Engineer. All improvements shall be completed and accepted by the City Engineer prior to first occupancy.

72. Permittee shall provide and maintain signage at both entrances to the onsite parking structure indicating through access to all areas of the site without having to use Hotel Circle South, satisfactory to the City Engineer.

73. In order to ensure the project's trip generation adheres to the trips analyzed in the environmental document, Owner/Permittee shall perform annual driveway counts for a period of five years (in years 1, 3 and 5) following the Certificate of Occupancy, satisfactory to the City Engineer. If counts indicate higher trip generation than those analyzed in the environmental document, Owner/Permittee shall adjust the hours of operation and/or programming of the project's component uses to reduce trips and/or shift trips out of the commuter peak hours, satisfactory to the City Engineer, including subsequent driveway counts to demonstrate consistency with the trips analyzed in the environmental document for the project.

74. Events held in the 500-seat theater, which exceed 200 attendees on non-holiday weekdays Monday through Friday, shall not start, or conclude, between 7:00 a.m. – 9:00 a.m. or between 4:00 p.m. – 6:00 p.m.

**GEOLOGY REQUIREMENTS:**

75. The Owner/Permittee shall submit a geotechnical investigation report or update letter that specifically addresses the proposed construction plans. The geotechnical investigation report or update letter shall be reviewed for adequacy by the Geology Section of Development Services prior to the issuance of any construction permit.

76. The Owner/Permittee shall submit an as-graded geotechnical report prepared in accordance with the City's "Guidelines for Geotechnical Reports" following completion of the grading. The as-graded geotechnical report shall be reviewed for adequacy by the Geology Section of Development Services prior to grading permit close-out.

**PUBLIC UTILITIES DEPARTMENT REQUIREMENTS:**

77. Prior to the issuance of any construction permit, the Owner/Permittee shall assure, by permit and bond the design and construction of all public water and sewer facilities as shown on the approved Exhibit "A", in a manner satisfactory to the Public Utilities Director and the City Engineer.

78. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond the design and construction all public sewer facilities as required in the accepted sewer study for this project in a manner satisfactory to the Public Utilities Director and the City Engineer. Sewer facilities, as shown on the approved Exhibit "A", may require modification based on the accepted sewer study and final engineering.

79. The Owner/Permittee shall be responsible for any damage caused to City of San Diego water and sewer facilities in the vicinity of the project site, due to the construction activities associated with this project, in accordance with Municipal Code section 142.0607. In the event that any such facility loses integrity then, the Owner/Permittee shall repair or reconstruct any damaged public water and sewer facility in a manner satisfactory to the Public Utilities Director and the City Engineer.

80. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water and sewer service(s) outside of any driveway or drive aisle and the abandonment of any existing unused water and sewer services within the right-of-way adjacent to the project site, in a manner satisfactory to the Public Utilities Director, the City Engineer.

81. Prior to the issuance of any building permits, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device(s), on each water service (domestic, fire and irrigation), in a manner satisfactory to the Public Utilities Director and the City Engineer. BFPDs shall be located above ground on private property, in line with the service and immediately adjacent to the right-of-way.

82. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any sewer facilities and five feet of any water facilities.

83. The Owner/Permittee shall design and construct all proposed public water and sewer facilities, in accordance with established criteria in the current edition of the City of San Diego Water and Sewer Facility Design Guidelines and City regulations, standards and practices.

**INFORMATION ONLY:**

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on OCT 17 2017 and Approved Resolution No. R-311373.

Site Development Permit No. 1162629  
Conditional Use Permit No. 1162655  
Planned Development Permit No. 1162654  
Date of Approval: OCT 17 2017

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

\_\_\_\_\_  
Morris E. Dye  
Development Project Manager

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

\_\_\_\_\_  
**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of  
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

**Morris Cerullo Legacy Center  
Foundation. LLC**  
Owner/Permittee

By \_\_\_\_\_  
Jim Penner  
Executive Director

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**

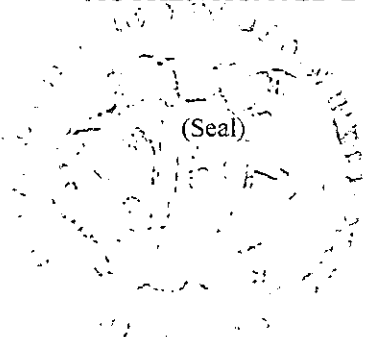
Passed by the Council of The City of San Diego on OCT 17 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 17 2017

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:



KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California  
**311373**  
Resolution Number R-\_\_\_\_\_