

# 3336  
4/27/2021

(R-2021-451)

RESOLUTION NUMBER R- 313522

DATE OF FINAL PASSAGE APR 27 2021

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO DENYING THE APPEAL, AFFIRMING THE  
PLANNING COMMISISON DECISION WITH A  
MODIFICATION, AND GRANTING TENTATIVE MAP NO.  
2413271 FOR CALIFORNIA THEATRE PROJECT - PROJECT  
NO. 657138.

WHEREAS, Caydon San Diego Property LLC, Owner/Permittee, filed an application with the City of San Diego for Tentative Map No. 2413271 a 41-story, 422-foot tall mixed-use development know as California Theatre (Project), located at 1122 Fourth Avenue and legally described as Lots E, F, G, H, & I in Block 16 of Horton's Addition in the City of San Diego, County of San Diego, State of California, according to partition map thereof, made by L.L. Lockling, filed in the Office of the County Recorder of San Diego County, in the Downtown Community Plan area (Downtown), in the Core land use district of the Centre City Planned District Ordinance (CCPDO);

WHEREAS, the Tentative Map proposes the subdivision of a 0.58 acre site into one (1) lot for 336 residential condominium units; and

WHEREAS, the Final Supplemental Environmental Impact Report for the 1122 4<sup>th</sup> Avenue Redevelopment Project was certified by the City Council on April 4, 2017 (Resolution R-311016). 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-310595). The Downtown FEIR and CAP FEIR are both

"Program EIRs" prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The information contained in the Downtown FEIR and the CAP FEIR reflects the independent judgement of the City of San Diego as the Lead Agency. The environmental impacts of the park projects were adequately addressed in the Downtown FEIR and CAP FEIR; the park project are within the scope of the development program described in the Downtown FEIR and CAP FEIR and are adequately described within both documents for the purposes of CEQA; and, none of the conditions listed in CEQA Guidelines Section 15162 exist. Therefore, no further environmental documentation is required under CEQA; and

WHEREAS, the Project complies with the requirements of a geotechnical report pursuant to Subdivision Map Act sections 66490 and 66491(b)-(f) and San Diego Municipal Code section 144.0220; and

WHEREAS, the subdivision is a condominium project as defined in California Civil Code section 4125 and filed pursuant to the Subdivision Map Act. The total number of condominium units is 336; and

WHEREAS, on February 11, 2021, the Planning Commission of the City of San Diego considered Tentative Map No. 2413271, and pursuant to Resolution No. 5128-PC, voted 7-0-0 to approve the Project; and

WHEREAS, on February 25, 2021, Rick Bates on behalf of Unite Here Local 30 appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, under Charter section 280(a)(2), this resolution is not subject to veto by the Mayor because this matter requires City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process of 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 a public hearing on April 27, 2021, 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 Tentative Map No. 2413271:

**1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan.**

The proposed subdivision and Project design are consistent with the objectives of the DCP, Centre City Planned District Ordinance (CCPDO), and the Downtown Design Guidelines (DDG). The Project advances the goals and policies of the DCP by contributing to the orderly growth of the Civic/Core neighborhood with the construction of a mixed-use development with both residential and commercial uses, which adds to the balance of uses in Downtown and advances the goal of the making the Civic/Core neighborhood an intense district with large and tall buildings reflecting Civic/Core's character as San Diego's business and political center, while promoting a mix of uses. Specifically, the Project is adding 336 residential dwelling units (DU), 190 hotel guest rooms, and approximately 3,686 SF of commercial/retail space, providing a neighborhood amenity for surrounding residents and taking advantage of the site's location near a trolley corridor (C Street) to maximize the level of activity with strong transit accessibility per the DCP (7.3-P-1). In the CCPDO, residential and commercial/retail uses are permitted land uses in the Core land use district. Per the DDG, the Project utilizes architectural articulations, provides street level activation, and uses high-quality materials. The building's massing is modulated through the use of glazing, balconies, and varying materials around the Project, which provide visual interest and architectural variation. Therefore, the proposed subdivision and its design/improvement are consistent with the policies, goals, and objectives of the applicable land use plan.

**2. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code, including any allowable deviations pursuant to the Land Development Code.**

The subdivision proposes the creation of 336 residential condominium units in a mixed-use development containing the 336 residential DU, 190 hotel rooms, and 3,686 SF of commercial space. Residential and commercial land uses are permitted in the Core district of the CCPDO.

The requested deviations to the CCPDO development regulations will allow for (1) a reduction in the required width for a two-way drive aisle from 24 feet to 22 feet, (2) a reduction in the required distance from the north property line to the driveway on Third Avenue from three feet to zero feet, (3) an increase in the allowable recessed entry width from 25 feet to 26'-5" and depth from 15 feet to 16'-5" to recreate the historical resource's recessed entry, (4) an increase in the allowable street wall height on Fourth Avenue from 85 feet to 100'-8" and setback on Level 2 on C Street from five feet to seven feet to recreate the historical resource's façade, (5) an increase in the allowable east-west tower floor plate dimension from 130 feet to 150'-5", (6) a reduction in the required number of DU with private open space from 50% (168 DU) to 30% (101 DU), (7) a reduction in the required number of DU with personal storage from 100% (336 DU) to 50% (168 DU), and (8) elimination of the requirement for hotel parking.

The site is constrained by its relatively small lot size in the context of achieving the desired density for a development of this size. With these constraints, buildable space is limited so deviations are requested to allow for the highest use of the site to maximize the Floor Area Ratio (FAR) and number of DU and hotel rooms in the Project to advance the population and employment goals of the DCP by providing as many DU and hotel rooms as feasible in the Project. Two deviations regarding the street wall and the recessed entry are related to the recreation of the original historical resource, the California Theatre (HRB Site No. 291). While the preceding deviations advance the population and intensity goals of the DCP, these deviations advance the historical resource goals of the DCP to incorporate elements of historical buildings in new projects to impart heritage (DCP, 9.2-P-1). The base of the Project is designed to recreate the facades of the original historical resource as close as possible. These deviations do not adversely impact the neighborhood; rather, they contribute to the creation of a unique icon for the neighborhood. These two deviations will contribute to the overall design of the building that will impart history and heritage of the site and the city to both visitors and residents, consistent with the DCP; therefore, it is appropriate at the site.

Deviations from the SDMC are permitted with approval a Neighborhood Development Permit (NDP) pursuant to Section 126.0402(p). Residential and commercial land uses are permitted in the Core land use district of the CCPDO, so with approval of the NDP and compliance with the conditions of approval of the permit, the proposed development is consistent with the SDMC. The Project proposes the creation of 336 residential condominium units and complies with all development regulations of the Land Development Code with approval of SDP/NDP/NUP No. 657138. Therefore, the proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

### **3. The site is physically suitable for the type and density of development.**

The Project proposes a mixed-use development with 336 DU, 190 hotel rooms, and 3,686 SF of commercial/retail space on a 25,101 SF site. The site is located within the Core district of the CCPDO which allows a wide range of land uses, including residential and commercial. The Project contains dwelling units, a hotel, and commercial/retail space, which are permitted in the Core district and is a type of development suitable for the site. The Base

Maximum Floor Area Ratio (FAR) of the site is 10.0, which can be increased up to 20.0 with the utilization of the CCPDO FAR bonus programs. The Project's FAR is proposed to be 18.56, which they are achieving with the 10.0 Base FAR established in the CCPDO, and an additional 2.0 for the provision of three-bedroom DUs, 2.0 for LEED Gold certification, and 4.56 through the Payment Program pursuant to SDMC Section 156.0309(e). The proposed 18.56 FAR is within the allowable range of FAR permitted on the site by the CCPDO and DCP; therefore, the site is physically suitable for the type and density of development.

- 4. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.**

The Project was determined to be consistent with the previously certified Downtown Final Environmental Impact Report (Downtown FEIR) as amended, including the Final Supplemental Environmental Impact Report for the 1122 4<sup>th</sup> Avenue Redevelopment Project certified by the City Council on April 4, 2017 (Resolution R-311016). Therefore, per CEQA Guidelines section 15162, no subsequent or supplemental EIR is required for this project. The Project site is located within an urbanized environment where there are no watercourses or environmentally sensitive lands harboring fish or wildlife on or adjacent to the site. Therefore, the design of the subdivision will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

- 5. The design of the subdivision or the type of improvement will not be detrimental to the public health, safety, and welfare.**

The design of the subdivision will not have a detrimental impact upon the public's health, safety and general welfare. The Project is consistent with the plans for the Civic/Core neighborhood as envisioned in the DCP by contributing to the creation of an intense district with large and tall buildings reflecting Civic/Core's character as San Diego's business and political center, while promoting a mix of uses. The Project will contribute to the neighborhood's vitality by creating new residential units that bring more people and activity to the area. Public improvements include new curb, gutter and sidewalks, reconstruction of existing curb ramps to meet City Standards, and streetscaping around the site. The completion of the specified improvement to the satisfaction of the City Engineer will be required prior to the approval of the Certificate of Compliance to ensure public health, safety and welfare. The Project complies with the DCP and is providing public improvements; therefore, the design of the subdivision or the type of improvement will not be detrimental to the public health, safety, and welfare.

- 6. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.**

The subdivision proposes the creation of 336 residential condominium units and has frontage on C Street, Third Avenue, and Fourth Avenue. The residential lobby is located on Third Avenue. The site does not contain any easements acquired by the public at large for access

through or use of property within the subdivision. An NDP is requested for the construction of private structures within the public right-of-way along Fourth Avenue for the replicated historic canopy/marquee approximately 10 feet over the sidewalk and the corner projecting sign approximately 33 feet over the sidewalk. Both encroachments provide adequate clearances for pedestrian safety and do not impede public access on the sidewalk. Therefore, the design of the subdivision and proposed improvement would not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

**7. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities.**

The subdivision proposes to create 336 residential condominium units for a proposed development within a single lot. Architectural features and techniques are incorporated into the proposed Project which including roofing materials with three-year aged solar reflection and thermal emittance values consistent with the voluntary measures under the California Green Building Standards Code to natural cool the roof and reduce heat absorption, solar-rated windows to reflect heat and open to allow for natural cooling opportunities. Passive cooling opportunities are provided with private exterior balconies in 101 DU (30%) and 3,765 SF of common, landscaped, outdoor open space. Therefore, the design of the proposed subdivision provides sufficient future passive or natural heating and cooling opportunities.

**8. The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources.**


The subdivision proposes to create 336 new residential condominium units. The 0.58-acre site is located on the south side of C Street between Third and Fourth avenues in the Civic/Core neighborhood of the DCP area. Development Impact Fees (DIF), school, water/sewer connection and other impact fees will be required at the building permit issuance. The Project will comply with the City's Inclusionary Housing Ordinance through payment of the in-lieu fee at the time of building permit issuance. The Project is located in an urban, developed neighborhood and served by existing public infrastructure, including improved right-of-way and water and sewer lines. The previously certified Downtown FEIR, with which this Project has been deemed consistent, evaluated the environmental impacts of the Downtown area at full build-out of 90,000 residents including public service needs. The decision maker has reviewed the administrative record including the Project plans, environmental documentation, and public testimony to determine the effects of the proposed subdivision on the housing needs of the region. Those needs were balanced against the needs for public services and the available fiscal and environmental resources and it is found that the addition of seven commercial condominium units is consistent with the housing needs anticipated for Downtown.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that the appeal of Rick Bates on behalf of Unite Here Local 30 is denied; the decision of the Planning Commission is affirmed with a modification to the permits to change the condition for the Affordable Housing Regulations to require the proposed 7 affordable dwelling units on-site; and Tentative Map No. 2413271 is granted to Caydon San Diego Property LLC, Owner/Permittee, under the terms and conditions set forth in the attached conditions which is made a part of this resolution.

APPROVED: MARA W. ELLIOTT, City Attorney

By

  
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Corrine Neuffer  
Chief Deputy City Attorney

CLN:soc

05/06/2021

Or. Dept: Planning

IO#: 24008521

Doc. No.: 2655413

Adopted on: April 27, 2021

Attachment: Tentative Map Conditions



CITY COUNCIL  
CONDITIONS FOR TENTATIVE MAP NO. 2413271  
**CALIFORNIA THEATRE - PROJECT NO. 657138**  
ADOPTED BY RESOLUTION NO. R-313522 ON APRIL 27, 2021

**GENERAL**

1. This Tentative Map will expire on April 27, 2024.
2. Compliance with all of the following conditions shall be completed and/or assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map/Parcel Map, unless otherwise noted.
3. Prior to the recordation of the Final Map/Parcel Map, taxes must be paid on this property pursuant to Subdivision Map Act section 66492. To satisfy this condition, a tax certificate stating that there are no unpaid lien conditions against the subdivision must be recorded in the Office of the San Diego County Recorder.
4. The Tentative Map shall conform to the provisions of Site Development Permit (SDP)/Neighborhood Development Permit (NDP)/Neighborhood Use Permit (NUP) No. 657138.
5. The Subdivider shall defend, indemnify, and hold the City (including its agents, officers, and employees [together, "Indemnified Parties"]) harmless from any claim, action, or proceeding, against the City and/or any Indemnified Parties to attack, set aside, void, or annul City's approval of this Project, which action is brought within the time period provided for in Government Code section 66499.37. City shall promptly notify Subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If City fails to promptly notify Subdivider of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, Subdivider shall not thereafter be responsible to defend, indemnify, or hold City and/or any Indemnified Parties harmless. City may participate in the defense of any claim, action, or proceeding if City both bears its own attorney's fees and costs, City defends the action in good faith, and Subdivider is not required to pay or perform any settlement unless such settlement is approved by the Subdivider.

**ENGINEERING**

6. Compliance with all conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map, unless otherwise noted.
7. The Tentative Map shall comply with the conditions of SDP No. 2397979, NDP No. 2506601, and NUP No. 2397980.
8. The Subdivider shall comply with all current street lighting standards according to the City of San Diego Street Design Manual and Council Policy 200-18. This includes (but is not be limited to) installation of new street light(s), upgrading light from low pressure to high pressure sodium vapor and/or upgrading wattage, per approved Exhibit 'A'.

9. The Subdivider shall underground existing and/or proposed public utility systems and service facilities in accordance with the San Diego Municipal Code (SDMC).
10. The Subdivider shall obtain a Right-of-Way Permit for the shoring proposed for this Project.
11. The Project proposes to export 57,900 cubic yards of material from the Project site. All 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.
12. The drainage system proposed for this development, as shown on the site plan, is private and subject to approval by the City Engineer.
13. The Subdivider shall incorporate any construction Best Management Practices (BMP) necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications.
14. The Subdivider shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance.
15. The Subdivider 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.
16. 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.
17. 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.

#### **MAPPING**

18. This Project proposes the subdivision of 0.58 acre property into 336 residential condominium units and requires a Tentative Map which may be approved, conditionally approved, or denied in accordance with Process 4 pursuant to the City Land Development Code (LDC) Sec. 125.0430.

19. Prior to the expiration of the Tentative Map, if approved, a Final Map to consolidate and subdivide the properties into 336 (residential) condominium units shall be recorded to the County Recorder's office.
20. Prior to the recordation of the Final Map, taxes must be paid or bonded for this property pursuant to section 66492 of the Subdivision Map Act. A current original tax certificate, recorded in the office of the San Diego County Recorder, must be provided to satisfy this condition. If a tax bond is required as indicated in the tax certificate, ensure that it is paid or posted at the County Clerk of the Board of Supervisors Office and supply proof prior to the recordation of the Final Map.
21. The Final Map shall be based on field survey and all lot corners must be marked with durable survey monuments pursuant to Section 144.0311(d) of the City LDC and Subdivision Map Act Section 66495. All survey monuments shall be set prior to the recordation of the Final Map, unless the setting of monuments is deemed impractical due to the proposed improvements and/or grading associated with the Project, in which case, delayed monumentation may be applied on the Final Map in accordance with Se. 144.0130 of the City LDC.
22. All subdivision maps in the City of San Diego are required to be tied to the California Coordinate System of 1983 (CCS83), Zone 6 pursuant to section 8801 through 8819 of the California Public Resources Code.
23. The Final Map shall:
  - a. Use the California Coordinate System for its "Basis of Bearings" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true meridian (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.
  - b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of First Order accuracy. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground shall be shown on the map.
24. Show/plot all existing easements as listed in the title report. Make sure the type of easement, recording information and grantee are also indicated to determine whether the easement is granted for private or public use. Clearly identify and show the limits of all public easements on the exhibit that are being proposed to be vacated. Clearly label and show the limits of all public easements on the exhibit that are being proposed to be dedicated or granted.

**INFORMATION:**

- The approval of this Tentative Map by the City Council of the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC § 1531 et seq.).
- If the Subdivider makes any request for new water and sewer facilities (including services, fire hydrants, and laterals), the Subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.
- Subsequent applications related to this Tentative Map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the Tentative Map, may protest the imposition within ninety days of the approval of this Tentative Map by filing a written protest with the San Diego City Clerk pursuant to Government Code sections 66020 and/or 66021.
- Where in the course of development of private property, public facilities are damaged or removed, the Subdivider shall at no cost to the City, obtain the required permits for work in the public right-of-way, and repair or replace the public facility to the satisfaction of the City Engineer (San Diego Municipal Code § 142.0607).

Internal Order No. 24008521

Passed by the Council of The City of San Diego on APR 27 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<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"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 27 2021.

**(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:

TODD GLORIA  
Mayor of The City of San Diego, California.

(Seal)

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

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 313522