

DATE ISSUED: October 7, 2009

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Docket of October 13, 2009

ORIGINATING DEPT.: Centre City Development Corporation

SUBJECT: Ballpark Village (southeast corner of Park Boulevard and Imperial Avenue) – First Implementation Agreement to the Owner Participation Agreement with Ballpark Village LLC – East Village Redevelopment District of the Expansion Sub Area of the Centre City Redevelopment Project

COUNCIL DISTRICTS: 2 and 8

REFERENCE: None

STAFF CONTACT: John W. Collum, Senior Project Manager, 619-533-7124

REQUESTED ACTION: That the Redevelopment Agency of the City of San Diego (“Agency”) make certain findings related to the environmental review of the proposed First Implementation Agreement (FIA) to the Owner Participation Agreement (OPA) between the Agency and Ballpark Village LLC for the Ballpark Village mixed-use project, and approve the proposed FIA and the First Amendment to the Agreement to be Recorded Affecting Real Property attached as Exhibit 1 to the proposed FIA.

STAFF RECOMMENDATION:

That the Agency:

- Find that, consistent with the analysis contained in an Environmental Secondary Study dated July 15, 2009, the effects of the proposed activity were adequately addressed in previously certified environmental documents, and pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15162 and 15168, no further environmental documentation is required;
- Approve the FIA to the OPA and the First Amendment to the Agreement to be Recorded Affecting Real Property attached as Exhibit 1 to the FIA; and

- Authorize the Agency Executive Director, or designee, for and on behalf of the Agency to execute the FIA and Exhibit 1, and all other documents necessary and appropriate to carry out and implement the FIA according to its terms, and to administer the Agency's obligations, responsibilities and duties to be performed under the FIA.

SUMMARY: The Agency approved the OPA with Ballpark Village LLC ("Participant") on October 18, 2005 and executed it on January 13, 2006. The OPA and its accompanying Master Plan provide development standards and controls for two sites owned by the Participant on either side of Imperial Avenue (Parcels C and D), just east of Park Boulevard and within the Ballpark sub-district of the East Village neighborhood. The two sites are collectively known as Ballpark Village ("Site" and shown on Attachment A).

Since the OPA approval, the Participant has been actively marketing the Site for development in accordance with the OPA and Master Plan, including a proposed convention hotel by Marriott International, Inc. on a portion of the Site, which was ultimately withdrawn in August 2008 by Marriott citing turbulence and uncertainty in the capital markets. The Centre City Development Corporation Board voted in January 2009 to terminate negotiations with the Participant on an implementation agreement related to the proposed Marriott hotel. The Participant requested initiation of new discussions with staff regarding the Site in February 2009. In light of current market conditions, JMIR-Ballpark Village LLC (managing member of the Participant) is seeking to restructure its loan for the Site and is facing deadlines in partnership and lender agreements requiring that changes to two key OPA terms be approved through a proposed FIA or face financial or management consequences. The changes would also make the Site more marketable as development-ready land and attractive to capital markets. The OPA terms involve the transfer of excess density from the Ballpark site and Ballpark event parking.

The OPA permits the transfer of density or floor area ("FAR") from the Ballpark site to the Site. Pursuant to the OPA and terms of the Master Plan, the transfer of approximately 1.2 million gross square feet (GSF) from the Ballpark site will expire within five years following the date of execution of the OPA (or January 13, 2011) absent the issuance of Centre City Development Permits for the parcels. The Participant has requested that the date be extended by five years from 2011, making January 13, 2016 the new effective date by which the additional density would expire for the Site.

The OPA also obligates the Participant to provide 267 parking spaces dedicated for Ballpark event parking, and allows the Participant the ability to provide the spaces as part of the development of the Site or at a location permitted by and in full compliance with the Final Subsequent Environmental Impact Report (FSEIR) completed in 1999 as part of the overall approval of the Ballpark project. The Participant has requested, as part of the proposed FIA, additional language to clarify the Participant's flexibility in the dedicated Ballpark parking location in order to allow the Participant to determine which option best fits future development scenarios while ensuring that the dedicated Ballpark parking is provided in compliance with the

FSEIR. The adjacent Metropolitan Transit System garage is proposed as an additional site where all or any of the parking spaces may be located and has been determined to comply with the FSEIR requirements. Staff suggests that if the proposed FIA is approved, the dedicated Ballpark parking spaces should be tracked by location and monitored for compliance with the FSEIR and OPA as they may be moved to different locations.

The changes proposed by the FIA to the OPA are not project specific, and would be applicable to any future development on the Site. The Participant is considering submitting plans for another convention hotel on the Site's Parcel D and a request for a second implementation agreement in fall 2009, pending approval of the proposed FIA.

FISCAL CONSIDERATIONS: To the extent there are any financial obligations imposed by the proposed FIA, they are Participant financial obligations. There would be no fiscal impact to the Agency.

CENTRE CITY DEVELOPMENT CORPORATION RECOMMENDATION: On July 22, 2009, the Centre City Development Corporation Board voted unanimously to recommend that the Agency approve the staff recommendation for this item.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: On July 15, 2009, the Centre City Advisory Committee (CCAC) voted 17 in favor, 3 opposed (with 1 recusal) and the Project Area Committee (PAC) voted 16 in favor, 2 opposed (with 1 recusal) to recommend to the Corporation approval of the terms of the proposed FIA to the OPA.

The Corporation has received or been copied on four letters regarding the requested action from three different organizations (see Attachment C). One letter (dated July 14, 2009) is from the Center on Policy Initiatives and declares that it is supportive of the proposed FIA. Another letter (dated September 21, 2009) is from the San Diego-Imperial Counties Labor Council AFL-CIO and encourages the approval of the proposed FIA.

The other two letters are from Adams Broadwell Joseph & Cardozo on behalf of UNITE HERE Local 30. The first letter (dated July 7, 2009) requests that the Corporation continue or hold any action on the proposed FIA to the OPA until a specific development proposal for the Site is submitted by the Participant later this year, and the proposal can be considered in conjunction with the requested terms of the proposed FIA. The second letter (dated July 20, 2009) requests that the Corporation investigate potential violations of Government Code Section 1090 and the Political Reform Act with respect to the making of the OPA and that the proposed FIA is premature because the Participant has not submitted any specific project proposal to enable the Corporation to consider the risks, benefits, and environmental impacts of changes to the OPA in context.

As detailed by Agency Special Counsel at the July 22, 2009, Corporation Board meeting, such an investigation has already been thoroughly researched and completed by the Corporation, clearly demonstrating that the OPA is not subject to invalidation either under Government Code Section 1090, the Political Reform Act or any other conflict of interest provision. This investigation and report, dated September 22, 2008, was conducted for the Corporation by James P. Lough, Esq., a conflict of interest and municipal law expert, and publicly presented to the Corporation Board on that date. Mr. Lough thoroughly researched all applicable provisions of law and all relevant Corporation records, and interviewed and questioned all involved officials, staff and consultants. He reported that all Corporation actions were taken on the OPA months before former Corporation President Nancy Graham commenced her employment with the Corporation and that former Corporation Corporate Counsel Helen Peak was not involved and did not participate in nor influence in any way the negotiation, drafting or approval of the OPA.

As to Ms. Graham, the Corporation Board completed its work on the OPA by recommending approval to the Agency on May 25, 2005, months before either the public announcement of Ms. Graham's appointment as Corporation President (October 26, 2005) or her date of hire (December 1, 2005). The OPA was approved by the Agency on October 18, 2005, also prior to either of such dates. Although the OPA was not officially executed until January 13, 2006, there were no Corporation decisions involved after the May 25, 2005 Corporation Board action. After the October 18, 2005 Agency approval of the OPA, staff was only ministerially involved in revising the OPA to include the changes directed and required by the Agency as part of its approval. Ms. Graham was not involved in such efforts and did not approve or execute the OPA.

As to Ms. Peak, there were no legal services required or given by her in connection with the preparation, negotiation, drafting or approval of the OPA. She was not involved and did not participate in any discussions or negotiations regarding the OPA, and did not draft or revise the OPA. Although Ms. Peak attended the May 25, 2005 Corporation Board Meeting, there were no issues involving Corporate Counsel in connection with the OPA consideration and there was no legal advice requested or given by Ms. Peak on the OPA at the meeting. Therefore, given her lack of participation and lack of influence over the OPA, under applicable statutes and regulations any conflict involving Ms. Peak did not cause the OPA to be void or invalid.

As to the proposed FIA being premature or that action on the proposed FIA should be held until the Participant has submitted a specific project proposal, the OPA's approval in 2005 was not based upon a specific project, but upon development standards and controls and a Master Plan that would govern future development of the Site. Likewise, the changes proposed by the FIA to the OPA are not project specific, and would be applicable to any future development on the Site.

PARTICIPANT/DEVELOPMENT TEAM

ROLE/FIRM	CONTACT	OWNED BY
Property Owner / Participant Ballpark Village LLC Capital Members: JMIR-Ballpark Village LLC (JMIR-BPV) (Managing Member) Lennar Homes of California, Inc.	Jim Chatfield, VP – Construction Kevin Farr – Division President	JMIR-BPV is owned by JMIR Investments LLC (Ballpark Village Series) (93.125% owned by JMI Holdings LLC (Ballpark Village Series), which, in turn, is entirely owned by the John Jay Moores and Rebecca Ann Moores Family Trust; 1.5625% owned by JMI Realty, Inc.;; 1.5625% owned by Kratzer Family Trust; 1.5625% owned by Bryant Burke; 1.5625% owned by Charles E. Noell, III; 0.625% owned by Gregory W. Clay and Martha H. Clay Family Trust) U.S. Home Corporation Lennar Land Partners Sub II, Inc. Lennar Land Partners Sub, Inc., all owned by Lennar Corporation
Ballpark Village LLC's lender is iStar FM Loans LLC		

BACKGROUND:

Among many others, the Ballpark Village OPA and Master Plan advance the Visions and Goals of the Downtown Community Plan and the Objectives of the Centre City Redevelopment Project by:

- guiding the Ballpark sub-district's evolution into a multi-use district with a regional entertainment and cultural focus, as well as residential uses;
- including employment-oriented and mixed-use development as part of downtown's overall economic development strategy;
- protecting public views of the San Diego Bay by establishing view corridors with appropriate development standards;
- maintaining a high overall intensity to use land efficiently and permit population and employment targets to be met; and
- promoting the production of affordable housing.

Development of the Site is governed by the OPA, which was approved on October 18, 2005 and executed on January 13, 2006. The OPA includes the Master Plan for two development sites on either side of Imperial Avenue (Parcels C and D), just east of Park Boulevard and the Ballpark. The Master Plan details development envelopes, design criteria and guidelines, vehicular/pedestrian circulation, and land uses for the development of the parcels. Among other terms, the OPA includes special provisions for several items related to the future development of the Site, including the transfer of excess density from the Ballpark, the Harbor Drive Pedestrian Bridge and plaza adjacent to the Site, Ballpark event parking, extension of the Pedestrian Linear Park (also known as the Martin Luther King Promenade), public art, and affordable housing. A summary of all of the major terms of the OPA/Master Plan is attached (Attachment B).

The negotiation of the OPA took almost two years with close oversight by the Corporation Board's Real Estate Committee, and engendered extensive public, Agency and City Council discussion over several hearings with respect, most particularly, to land use requirements, including retail, office, hotel and affordable housing. The development envelopes for the Site's parcels were carefully reviewed, and comments provided to staff in the determination of the final Master Plan by the Library Commission and its consultants (due to potential shading of the proposed Main Library public plaza and a primary public viewing opportunity from the Reading Room), as well as other members of the public were incorporated.

Since the OPA approval, the Participant has been actively marketing the Site for development in accordance with the OPA and Master Plan. Major focus has been on a proposed convention hotel on Parcel D, which would ultimately require its own implementation agreement. The Participant and the Corporation started negotiating such an agreement in good faith in March 2007. In August 2008, Marriott announced its withdrawal from the project citing "turbulence and uncertainty in the capital markets." After receiving a written request from the Participant requesting that negotiations be terminated due to Marriott's decision not to proceed, the Corporation Board voted to terminate negotiations in January 2009. Also earlier this year, the St. Vincent de Paul organization opened the 134-unit 16th & Market housing project, which was developed through an arrangement with the Participant as part of the OPA's affordable housing requirements.

In February the Participant requested initiation of discussions with staff on proceeding with changes to the OPA that would advance some of the lessons learned from the Marriott project, as well as assist the Participant in restructuring its loan for the Site in light of current market conditions. The changes are intended to make the Ballpark Village project more marketable as development-ready land and more attractive to capital markets in an effort to capture the first dollars available when markets recover from the current economic downturn. The Participant provided staff with written evidence of approaching deadlines in partnership and lender agreements requiring that changes to two key terms be approved or face financial or management consequences. Staff and the Participant have agreed on the changes to the terms, which are related to the OPA's time limitations on the transfer of density from the Ballpark site and the

location(s) of dedicated Ballpark event parking. The terms are not project specific, and would be applicable to any future development on the project site.

The Participant is requesting that the terms be approved through the proposed FIA and would precede any specific development proposals for the Site. The Participant has indicated in writing to staff that it intends to focus on pursuing a mixed-use project of predominantly residential land use as opposed to a hotel development on Parcel D. Approval of the changes to the two OPA terms is important to avoid changes to the project's current management structure and a lender-imposed payment that could jeopardize the viability of the project, and additionally help market interest in a mixed-use project that may include any combination of uses permitted by the OPA and Master Plan. The proposed changes to the OPA terms do not preclude the Participant from submitting plans for a hotel use on either parcel at a future date.

DISCUSSION

Project Description

Terms and Conditions of the Proposed FIA – Staff has been negotiating the proposed FIA terms with the Participant over the past several months. The following proposed FIA terms are applicable to any proposed land use on either Parcel C or D. Specific language is included in the proposed FIA draft (Attachment D).

1. Transfer of Excess Ballpark FAR (OPA Section 701):

The OPA permits the transfer of excess density or development floor area from the Ballpark site into the Ballpark Village project. Pursuant to the OPA and terms of the Master Plan, the transfer of approximately 1.2 million GSF from the Ballpark site will expire within five years following the date of the execution of the OPA (or January 13, 2011) absent the issuance of Centre City Development Permits for the parcels. The density transfer would be over and above the 6.5 Floor Area Ratio (FAR) otherwise permitted by the Centre City Planned District Ordinance (PDO), an increase in development entitlement to 3.212 million square feet. The Participant has requested that the date be extended by five years from 2011, making January 13, 2016 the new effective date by which the additional density would expire for the Site.

Since approval of the OPA and the density transfer provision, values of San Diego homes have experienced significant multi-year declines, inventories due to foreclosures have continued at high levels over the past year, unemployment has risen to 10.1 percent, and the county, state and country are experiencing an unprecedented tightening of the credit markets and financial institution instability. Further, the lessons learned since approval of the OPA by the Participant in designing, and the Corporation in reviewing, the large, complex development program envisioned by the OPA and Master Plan for the Site, along with the complex real estate and financial negotiations necessary to bring the

appropriate resources together for such a large development, warrant consideration of an extended term for the transfer of density to become effective.

In consideration of the current real estate and capital market conditions and other complexities surrounding the Ballpark Village development program, staff recommends an extension of the date by an additional five years (to January 13, 2016). While staff recognizes the current softening of the market, it also considers the build-out of the Master Plan to be paramount to achieving downtown's economic development goals and completing the vision of the Ballpark sub-district.

2. Ballpark Event Parking (OPA Section 704):

The OPA obligates the Participant to be responsible for providing 267 parking spaces dedicated for Ballpark event parking ("dedicated Ballpark parking"). The OPA provides the ability for the Participant to provide the dedicated Ballpark parking as part of the development of the Site, or at a location other than the Site permitted by the "Final Subsequent Environmental Impact Report to the Final Master EIR for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents for the proposed Ballpark and Ancillary Development Projects, and Associated Plan Amendments," dated September 13, 1999, and any Addenda (collectively the FSEIR), and only to the extent such location is in full compliance with the overall requirement to provide 2,383 overall parking spaces for the Ballpark pursuant to the FSEIR.

The Participant has requested, as part of the proposed FIA, additional language to clarify the Participant's flexibility in where the dedicated Ballpark parking would be located in order to allow the Participant to determine which option best fits future development scenarios while ensuring that the dedicated Ballpark parking is provided in conjunction with the FSEIR. The description of the location options through which the Participant would satisfy the obligation to provide all or any portion of the dedicated Ballpark parking is proposed to be expanded to include:

- a. On the undeveloped Site or as part of the development of the Site; and/or
- b. In the parking garage owned by Metropolitan Transit System (MTS), which is located at the corner of Imperial Avenue and 11th Avenue, pursuant to the "Lease Agreement for Parking Spaces – James R. Mills Building Parking Garage" by and between the San Diego Regional Building Authority, County of San Diego and MTS, collectively as lessors, and Padres L.P. as lessee; and/or
- c. In another location permitted by the FSEIR, and only to the extent such location is in full compliance with the overall requirement to provide 2,383 parking spaces for the Ballpark pursuant to the FSEIR.

The Participant has confirmed that the current location of the dedicated Ballpark parking is on the Site, and more specifically on Parcel C. However, the Participant has indicated that it would like to relocate all or any portion of the dedicated Ballpark parking to the James R. Mills Building Parking Garage ("MTS Garage") under the lease agreement noted above through whatever process may be required through the FIA's terms and conditions. To ensure that the dedicated Ballpark parking is adequately monitored for compliance with the FSEIR and OPA, to track the actual location(s) of the dedicated Ballpark parking in the future, and to respond to the Corporation's comments during its review of this item, staff has proposed that additional steps be taken by the Participant and Agency and other conditions be added through the FIA to govern the various options, including:

- i. If the Participant decides to provide the dedicated Ballpark parking at a location other than the Site, the Participant shall submit a "Ballpark Event Parking Spaces Notice" ("Notice") for the Agency Executive Director's or designee's review and approval and which identifies:
 - a. where each of the dedicated spaces is located as of the date of the Notice;
 - b. supporting documentation that all spaces are provided in full compliance with the OPA, FIA and FSEIR; and
 - c. any contractual agreement required to be submitted as further described in the FIA.
- ii. A new Notice must be submitted to the Agency for review and approval for any subsequent change to the location of the dedicated Ballpark parking.
- iii. If any of the dedicated Ballpark parking spaces will be provided through a contractual agreement, then the Participant shall submit the contractual agreement along with the Notice for the Agency Executive Director's or designee's review and written approval. Any approval shall only be effective so long as the contractual agreement remains in full force and effect substantially in the approved form. In the event the contractual agreement expires, is terminated, is substantially modified or is amended in any way, the Participant shall submit a new Notice for Agency review and approval.
- iv. Participant shall also submit to the Agency Executive Director or designee any other information or documentation reasonably requested by the Agency Executive Director or designee related to the Participant's dedicated Ballpark parking obligations, including current estoppel certificates for any contractual agreements approved by the Agency as part of a Notice.
- v. The dedicated Ballpark parking spaces may be made available for other uses, provided that such users or the owners of the Site (or, as applicable, owners of other property) enter into parking agreements or covenants with the Participant

- stating that such uses will not conflict with Ballpark events and the availability of such parking during Ballpark events.
- vi. Nothing within the FIA and the changes it proposes to the OPA is intended to or shall be deemed to nor shall grant any property rights in the MTS Garage or any parking spaces therein.
 - vii. A First Amendment to Agreement to be Recorded Affecting Real Property shall be executed and recorded to memorialize the additional steps and conditions related to the dedicated Ballpark parking.

Staff has reviewed the proposed location options and determined that they comply with the FSEIR requirements and the original intent of OPA Section 704, including that the MTS Garage is a location permitted by the FSEIR to provide all or any portion of the dedicated Ballpark parking and it was not previously counted as dedicated or available parking for the Ballpark. Staff believes that as long as the dedicated Ballpark parking spaces are tracked by location and monitored for compliance with the FSEIR and OPA as they may be moved to different locations, that the Participant's proposed changes are acceptable. The Participant is in agreement with additional terms and conditions set forth for monitoring and compliance. Staff recommends approval of the proposed OPA revisions related to the dedicated Ballpark parking to be embodied within the FIA.

Project Benefits – The OPA and Master Plan, while providing a level of certainty to the Participant with respect to the transfer of excess Ballpark FAR, also provide an opportunity to the Agency to achieve certain objectives and benefits not otherwise possible if individual Centre City Development Permits were processed for each parcel or sub-parcel over time. These objectives and benefits include the certainty of development standards and controls provided through the OPA and Master Plan (beyond those provided within the PDO) governing the Site for the duration of the build-out, including minimum and maximum uses and densities on the Site; affordable housing production requirements; public art; and implementation by the Participant of, or payment by the Participant toward, certain infrastructure improvements that would otherwise be the responsibility of public agencies (such as extension of the Martin Luther King, Jr. Promenade pedestrian linear park, a portion of the costs of the Harbor Drive Pedestrian Bridge, and the public plaza at the pedestrian bridge's landing adjacent to the Site).

The ultimate development of the Site consistent with the OPA and Master Plan serves a broader economic development purpose for the Agency and City of San Diego as it will generate new jobs and tax revenues. The proposed OPA changes included within the FIA will not change the Agency's opportunity to achieve the objectives and benefits noted above. Further, the proposed FIA would provide the Participant with terms that allow it to restructure its financing and make the Ballpark Village project more marketable as development-ready land and attractive to capital markets in an effort to capture the first dollars available when markets recover from the current economic downturn, and therefore assisting the Agency to realize its opportunity more quickly.

Environmental Impact – In accordance with the Agency’s Guidelines for Implementation of the CEQA, an Environmental Secondary Study (SS) dated July 15, 2009 was prepared for the proposed activity. The SS concluded that the proposed activity is covered under the following previously certified environmental documents: the FSEIR; the 2005 Final Addendum to the FSEIR; the 2006 Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Redevelopment Plan for the Centre City Project; and, the 2007 Addendum to the FEIR for the 11th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project, Amendments to the San Diego Downtown Community Plan, Centre City Planned District Ordinance, Marina Planned District Ordinance, and Mitigation, Monitoring and Reporting Program of the FEIR for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and the Redevelopment Plan for the Centre City Redevelopment Project (collectively “the Environmental Documents”).

The following findings were derived from the environmental review documented by the SS and Environmental Documents:

- Consistent with the analysis contained in the SS, the effects of the proposed activity were adequately addressed in the Environmental Documents and the proposed activity is within the scope of the project described therein;
- Based on the SS and Environmental Documents:
 - no substantial changes are proposed in the project which will require major revisions to the Environmental Documents due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
 - no substantial changes have occurred with respect to the circumstances under which the project is to be undertaken which will require major revisions to the Environmental Documents due to involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
 - no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time of adoption and certification of the Environmental Documents shows the project would result in new or substantially more severe significant environmental impacts not covered in the previous Environmental Documents or that mitigation measures or alternatives found to be infeasible would in fact be feasible or that there are considerably different mitigation measures or alternatives that would substantially reduce one or more significant effects of the project; no Negative Declaration, Subsequent Environmental Impact Report (EIR) or Supplement or Addendum to EIR is necessary or required; and the proposed action will have no significant effect on the environment, except as identified and considered in the Environmental Documents and the SS; and

- Pursuant to CEQA Guidelines Sections 15162 and 15168, no further environmental documentation is required.

CONCLUSION

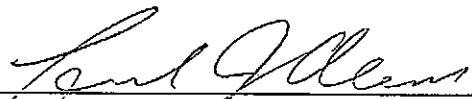
Staff recommends that the Agency make certain findings related to the environmental review of the proposed FIA. Staff further recommends approval of the proposed FIA to the OPA between the Agency and the Participant for the Ballpark Village mixed-use project and the First Amendment to Agreement to be Recorded Affecting Real Property attached as Exhibit 1 to the proposed FIA. Finally, Staff recommends that the Agency authorize the Agency Executive Director, or designee, on behalf of the Agency to execute the FIA and Exhibit 1, and all other documents necessary and appropriate to carry out and implement the FIA according to its terms, and to administer the Agency's obligations, responsibilities and duties to be performed under the FIA.

Respectfully submitted,

Concurred by:



John W. Collum, AICP
Senior Project Manager


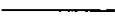






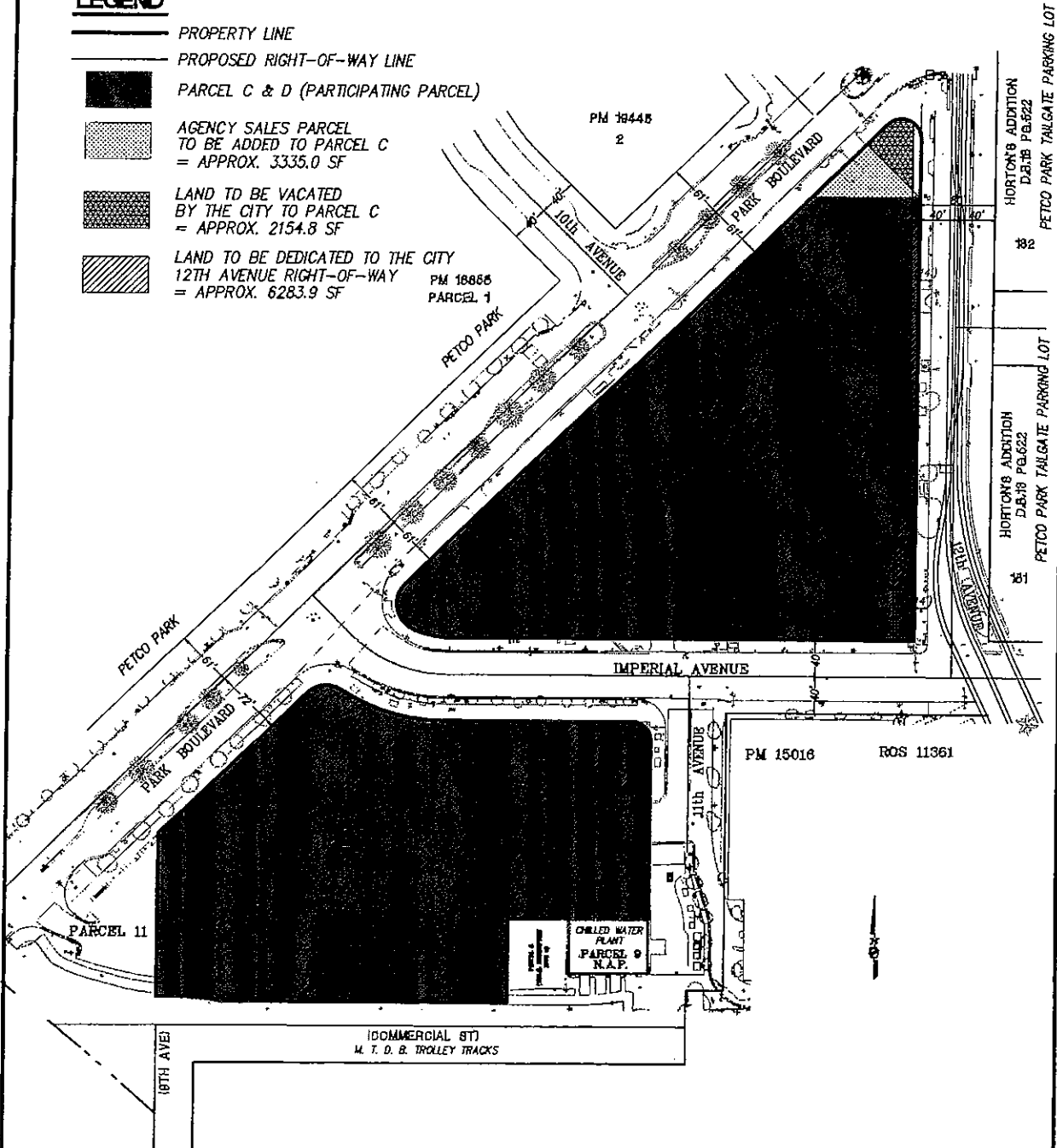
Frank J. Alessi
Executive Vice President & Chief Financial
Officer

Attachments: A – Site Map
B – Ballpark Village OPA/Master Plan Major Terms
C – Letters from the Public
D – First Implementation Agreement
E – Environmental Secondary Study

ATTACHMENT A SITE MAP

LEGEND

-  PROPERTY LINE
-  PROPOSED RIGHT-OF-WAY LINE
-  PARCEL C & D (PARTICIPATING PARCEL)
-  AGENCY SALES PARCEL TO BE ADDED TO PARCEL C = APPROX. 3335.0 SF
-  LAND TO BE VACATED BY THE CITY TO PARCEL C = APPROX. 2154.8 SF
-  LAND TO BE DEDICATED TO THE CITY 12TH AVENUE RIGHT-OF-WAY = APPROX. 6283.9 SF



PROJECT DESIGN CONSULTANTS

Planning | Landscape Architecture | Environmental | Engineering | Survey

Job No. 2921.00

701 B Street, Suite 800
San Diego, CA 92101
619.238.5471 Tel
619.234.0349 Fax

Date: 08.12.05

ATTACHMENT B

Ballpark Village OPA/Master Plan Major Terms

The Ballpark Village project site is comprised of 7.1 acres of land located within the Ballpark sub-district of the East Village neighborhood in downtown San Diego. The site is configured as two parcels resulting from the realignment of streets to accommodate the Ballpark project. Parcel C is bounded by Park Boulevard, Twelfth Avenue (trolley tracks) and Imperial Avenue. Parcel D is bounded by Park Boulevard, Imperial Avenue, Eleventh Avenue and the trolley tracks.

When the Owner Participation Agreement (OPA) between the Redevelopment Agency of the City of San Diego ("Agency") and Ballpark Village LLC ("Participant") was approved in 2005, Parcels C and D were included within the "Sports/Entertainment District" of the 1992 Centre City Community Plan and Centre City Planned District Ordinance (PDO). The updated community plan (San Diego Downtown Community Plan) and PDO, approved in March 2006, places the parcels within the "Ballpark Mixed-Use" land use district. In both cases, the Ballpark Village parcels have a floor area ratio (FAR) of 6.5. The OPA includes provisions that augment the Downtown Community Plan and PDO development standards, including land use types and amounts, transfer of density from the Ballpark, affordable housing, public art, Ballpark event parking, pedestrian linear park, Harbor Drive Pedestrian Bridge, infrastructure, and land transfers and dedications. The OPA provides the opportunity for the Agency to achieve certain objectives that would result in numerous public benefits being realized through the development of the site.

Due to the highly visible nature of the site (major gateway to downtown approaching from the south, frontage along the Park-to-Bay Link along Park Boulevard, and adjacent to both PETCO Park and the planned Main Library), the OPA includes a Master Plan for the site. The Master Plan is intended to guide and control the site's urban design in a phased build-out. It provides a comprehensive set of development parameters for an area equivalent to five typical downtown blocks, and design guidelines that are more detailed than the PDO to ensure the site's future development projects are of high quality architectural design, and compatible with each other and with the emerging context of the East Village neighborhood.

The following is a summary of the major terms of the Ballpark Village OPA/Master Plan:

1. The Master Plan includes a synopsis of the development entitlements (Maximum Development) and the Participant's development obligations (Minimum Uses) on Parcels C and D. The OPA/Master Plan requires that the parcels be developed with:
 - a. A minimum of 300,000 gross square feet (GSF) of office;
 - b. A minimum 115,000 GSF of retail (predominantly ground floor--the retail requirement adds vitality to the neighborhood, but also stems from the Ballpark Memorandum of Understanding (MOU)); and
 - c. A minimum of 35,000 GSF of for-sale affordable housing to be constructed in the podium level of one building within Parcels C and D.

- i. The types of units (studio, 1-3 BR), the percentage of each that must be included within the total number of affordable units, and the minimum sizes of the units (500 SF-1100 SF) are specified.
 - ii. The units must be sold in perpetuity to income-qualified households and at sales prices meeting the more restrictive of the State Community Redevelopment Law Moderate-Income requirements or the City's Inclusionary Housing 100% Area Median Income requirements.
2. The OPA requires the construction of additional affordable housing either on-site or off-site, with the number of affordable housing units provided being no less than 10 percent of the number of market rate units provided on Parcels C and D, or 150 units, whichever is greater. The 134-unit 16th & Market affordable housing project, developed by the St. Vincent de Paul organization through an arrangement with the Participant, opened in early 2009 and satisfies a portion of this requirement.
 3. The Participant must provide 267 parking spaces dedicated for Ballpark events as part of the development of the site or at a location permitted by and in full compliance with the Final Subsequent Environmental Impact Report (FSEIR) completed in 1999 as part of the overall approval of the Ballpark project. The 267 spaces are a portion of the minimum 2,383 new and available parking spaces required by the FSEIR to have been developed for Ballpark events.
 4. The OPA/Master Plan envisions a mixed-use development to include a variety of land uses including retail, residential, office, hotel, commercial retail or service uses, parking, and other uses as permitted by the PDO.
 5. The OPA/Master Plan provides for the following minimum and maximum development densities on the two parcels. FAR is not transferrable between the two parcels.

	Parcel Area		Required Minimum Development		Maximum Permitted Development
Parcel C	169,719 sf	5.5 – 6.0	1,003,504 sf	8.829	1,498,527 sf
Parcel D	139,917 sf	6.0	839,502 sf	12.247	1,713,493 sf
Total Site	309,636 sf		1,843,006 sf	10.372	3,212,020 sf

6. The Parcel Map for Parcels C and D requires the City of San Diego and the Participant to exchange remnants of rights-of-way to create the southerly extension of Eleventh Avenue along the east perimeter of Parcel C (the Eleventh Avenue improvements are at the Participant's sole expense).
7. Approximately 1.2 million GSF of excess density from the Ballpark site may be transferred to Parcels C and D subject to the following:

¹ The Maximum Permitted Development on each parcel shall not exceed the Maximum Area specified for each parcel, and the overall Maximum Permitted Development may not exceed an FAR of 10.372.

- a. The transfer will only become effective upon issuance of Centre City Development Permits meeting the requirements of the Master Plan within five years following the Agency's execution of the OPA, or January 13, 2011;
- b. Construction pursuant to such permits must start within 2.5 years thereafter;
- c. The use of transferred density is calculated as the difference between the gross (above grade) building area to be constructed on a sub parcel and the 6.5 FAR permitted by the PDO; and
- d. To the extent development permits are not timely issued and/or are not timely pursued to construction start on a sub parcel, or if the Participant defaults under the terms of the OPA, sub parcels revert to the 6.5 FAR.

The transfer of 1.2 million GSF was in excess of the 700,000 GSF earlier contemplated in the Ballpark MOU or its implementation or letter agreements.

8. The OPA/Master Plan establishes that the development of Parcels C and D in aggregate shall not generate more than 16,500 cumulative Average Daily Trips (ADT) using the traffic generation formulas utilized in the Final Addendum to the Subsequent Environmental Impact Report (SEIR) prepared for the OPA/Master Plan. The PDO holds the Centre City Development Corporation ("Corporation") accountable to document the cumulative trips associated with each development permit and ensure that each of the two parcels maintain the ability to be developed to the minimum densities (or greater) as specified in the Master Plan, contain a viable mix of land uses, and not exceed a district maximum of 55,128 ADT.
9. The Participant must spend 1 percent of the building permit value of nonresidential components of development on public art on or adjacent to Parcels C and D (rather than exercising the option under the City's Ordinance to pay a 0.5 percent fee).
10. The Participant must design (subject to Corporation approval), improve and maintain in perpetuity the 28-foot pedestrian easement along the southerly edge of Parcel D, connecting Park Boulevard and the Metropolitan Transit System Tower along the rail right-of-way. This 28-foot easement was previously granted by JMI Realty (then-owner of Parcel D), who also entered into a Landscape Maintenance Agreement ("LMA") to maintain the easement. The OPA added the duty for the Participant to design and install the improvements. The improvements will effectively extend the existing Martin Luther King, Jr. Promenade located to the northwest of the site.
11. At the Agency's option, the Participant must install or pay the cost to install, and maintain in perpetuity the Event Plaza (pursuant to the LMA), to be located on the Agency-owned parcel which is the receptor for the north end of the adjacent Harbor Drive Pedestrian Bridge. A more detailed access easement is to be recorded by the Agency over a portion of this same parcel for a vehicular and service drive to Parcel D (a general easement has already been granted by the Agency). The estimated cost of the improvements of the Event Plaza is \$900,000. The Participant must also contribute \$4 million to the Agency toward the cost of constructing the Harbor Drive Pedestrian Bridge. The \$4 million contribution has been paid and received by the Agency for this purpose.
12. All development infrastructure and all development and building permit fees are the responsibility of the Participant.

ATTACHMENT C

Letters from the Public

Attached are the following letters addressed or copied to the Centre City Development Corporation regarding the Ballpark Village project and the proposed First Implementation Agreement to the Owner Participation Agreement between the Redevelopment Agency of the City of San Diego and Ballpark Village LLC:

1. Letter from Adams Broadwell Joseph & Cardozo on behalf of UNITE HERE Local 30 (dated July 7, 2009)
2. Letter from Center on Policy Initiatives (dated July 14, 2009)
3. Letter from Adams Broadwell Joseph & Cardozo on behalf of UNITE HERE Local 30 (dated July 20, 2009)
4. Letter from San Diego-Imperial Counties Labor Council AFL-CIO (dated September 21, 2009)

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660

FAX: (650) 569-5062

tgulesserian@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4715

TEL: (916) 444-8201

FAX: (916) 444-8209

DANIEL L. CARDOZO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
ELIZABETH KLEBANER
RACHAEL E. KOSS
LOULENA A. MILES
ROBYN C. PURCHIA

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL
GLORIA D. SMITH

July 7, 2009

By Hand Delivery

Chair Maas and Board of Directors
Centre City Development Corporation
401 B Street, Suite 400
San Diego, CA 92101-5074
Fax: 619-236-9148

Re: The Ballpark Village Project

Dear Chair Maas and Board of Directors,

We are writing on behalf of UNITE HERE Local 30 to urge the CCDC Real Estate Committee ("CCDC") not to approve the proposed First Implementation Agreement ("FIA") to the Owner Participation Agreement ("OPA") between the Redevelopment Agency of the City of San Diego and Ballpark Village LLC for the Ballpark Village Project. The proposed FIA is premature because Ballpark Village LLC has not submitted any specific project proposal to enable CCDC to consider the risks, benefits, and environmental impacts *in context*. Without a specific project proposal, the FIA is simply inconsistent with other terms and the intent of the OPA. Thus, any approval of the FIA at this time would be bad public policy. Since the current term in the OPA does not expire until 2011, CCDC has time to ensure that Ballpark Village LLC submits plans for a project that is in the best interest of the City.

Specifically, Ballpark Village LLC's first proposed term is to extend the expiration date from 2011 to 2016 for the transfer of entitlements for 1.2 million square feet over and above the 6.5 Floor Area Ratio ("FAR") otherwise permitted by the Centre City PDO. However, the 2011 expiration date was specifically negotiated to implement an agreed upon and acceptable schedule for the project and

to ensure that public benefits provided for in the OPA are timely implemented. Other terms of the OPA specifically set forth the Schedule of Performance and public benefits that must be provided by Ballpark Village LLC – all of which constitute the package of benefits and risks that the City agreed upon in the OPA. Thus, the OPA specifically prohibits use of the additional density after 5 years from the execution date of the OPA.

In addition, extending the expiration date for transfer of additional density would trigger an entirely new and updated EIR that considers environmental impacts associated with development over a significantly longer time frame. Yet, because no specific project is proposed at this time, CCDC would again be required to conduct environmental review when a project is actually proposed later this year. Thus, to extend the expiration date now – even though the current term does not expire until 2011, and even though Ballpark Village LLC has failed to advance its project and failed to submit any specific proposal or plans to consider the FIA *in context* – would not only set bad precedent, but would be unreasonable, premature, and lacking in negotiated benefits.

The second proposed modification of the OPA is to allow Ballpark Village LLC to provide 267 parking spaces dedicated for Ballpark event parking in a parking garage located outside of the Ballpark District. This proposal is inconsistent with the intent of the OPA, which requires the parking to be provided on the project site or in a location permitted by the environmental review document for the Ballpark and ancillary projects. In addition, the parking proposal is completely out of context. Without a proposal for a specific project, CCDC has no context to weigh the risks of allowing parking outside the Ballpark District against any potential benefits to the City, and no context for conducting the required environmental review of significant impacts to surrounding communities under the California Environmental Quality Act. Again, without a specific project, this parking proposal is unreasonable, premature, and lacking in negotiated benefits.

In sum, the Real Estate Committee's consideration of an FIA is premature, and the FIA is inconsistent with the OPA. Ballpark Village LLC has no specific project proposal to enable CCDC to have some context for considering the risks, benefits, and environmental impacts associated with the terms of the proposed FIA under the California Environmental Quality Act. Without a specific project to consider, approval of an FIA would amount to a giveaway of over a million square feet of development without any negotiated benefits to the City of San Diego. Such approval would be bad public policy. Since the current term does not expire until 2011,

July 7, 2009
Page 3

CCDC has time to ensure that Ballpark Village LLC submits plans for a project that is in the best interest of the City.

Sincerely,



Tanya A. Gulesserian
Attorney for UNITE HERE Local 30

TAG:bh

cc: Brad Richter, Manager of Current Planning



3727 CAMINO DEL RIO SOUTH, SUITE 100
SAN DIEGO, CA 92108
PHONE: 619-584-5744
FAX: 619-584-5748
WWW.ONLINECPI.ORG

MEMORANDUM

DATE: July 14, 2009

TO: Board of Directors, Centre City Development Corporation (CCDC)

CC: John W. Collum, CCDC

FROM: Murtaza H. Baxamusa

RE: CPI memorandum dated July 7, 2009 on Ballpark Village Project, First Implementation Agreement to the CCDC Real Estate Committee

We would like to clarify our position with respect to CCDC's deliberations on the First Implementation Agreement for the Ballpark Village Project. CPI is a supporter of the Ballpark Village Project and we want to make it absolutely clear that we support the adoption of the First Implementation Agreement.

In sending this correspondence, we are retracting our memorandum dated July 7, 2009 and clarifying that we do not challenge, contest or oppose the First Implementation Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read 'Murtaza H. Baxamusa', is written over a horizontal line.

Murtaza H. Baxamusa, Ph. D. AICP
Director of Research and Planning
Center on Policy Initiatives

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

501 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

lgulesserian@adamabroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4715

TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
ELIZABETH KLEBANER
RACHAEL E. KOSS
LOULENA A. MILES
ROBYN C. PURCHIA

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL
GLORIA D. SMITH

July 20, 2009

By Email and Overnight Mail

Chair Maas and Board of Directors
Centre City Development Corporation
401 B Street, Suite 400
San Diego, CA 92101-5074

Re: The Ballpark Village Project –
A Legal Review of the Lough Investigation and Ethical Violations

Dear Chair Maas and Board of Directors:

We are writing on behalf of UNITE HERE Local 30 regarding the Centre City Development Corporation's ("CCDC") consideration of the terms of a proposed First Implementation Agreement ("FIA") to the Owner Participation Agreement ("OPA") between the Redevelopment Agency of the City of San Diego and Ballpark Village LLC for the Ballpark Village Project. Specifically, we were retained to undertake an independent legal review of the ethics and conflict of interest issues associated with Helen Peak and former Director Nancy Graham's involvement in the Ballpark Village Project, and to review the implications associated with the currently proposed FIA.

As set forth below, the OPA may be void as a matter of law. Government Code Section 1090 ("Section 1090") voids any contract made by a public official who has a financial interest in that contract. Both Nancy Graham and Helen Peak may have independently committed ethical violations that meet the elements of Section 1090. Nancy Graham and Helen Peak also may have independently satisfied the elements necessary for a court to invalidate the OPA under the Political Reform Act ("PRA"). Thus, an entirely new OPA may be required for the Ballpark Village project to move forward.

In light of the recently released audit finding that CCDC personnel accepted gifts and gratuities from contractors, firms, or developers doing business with

July 20, 2009

Page 2

CCDC – creating the appearance of a potential conflict of interest,¹ that the absence of key written policies contribute to an environment where potential conflicts of interest may go undetected,² and that opportunities remain for CCDC to increase public transparency and tighten controls to provide reassurance that public funds are used responsibly,³ we urge CCDC to immediately investigate potential violations of Section 1090 and the PRA with respect to the making of the OPA.

Because the OPA may be void, any proposed implementation agreement is premature. However, the proposed FIA is also premature because Ballpark Village LLC has not submitted any specific project proposal to enable CCDC to consider the risks, benefits, and environmental impacts of changes to the OPA *in context*. Thus, any approval of the FIA at this time would be bad public policy. Since the current OPA does not expire until 2011, CCDC has time to ensure that Ballpark Village LLC submits plans for a project that is in the best interest of the City.

I. IF NANCY GRAHAM AND HELEN PEAK HAD A FINANCIAL INTEREST IN THE MAKING OF THE OPA, THE OPA IS VOID

Upon the recommendation of former Corporate Counsel Helen Peak, the CCDC Board hired James P. Lough as Special Counsel to prepare an “independent investigation” of ethical violations potentially committed by CCDC staff. On September 22, 2008, Mr. Lough issued a report which analyzed the ethics and conflict of interest issues associated with Helen Peak and former Director Nancy Graham’s involvement in the Ballpark Village project (“Lough Investigation”).

As this legal review demonstrates in detail, the Lough Investigation fails to discuss or analyze one of the State’s two major ethics laws: Section 1090 of the Government Code (“Section 1090”). Section 1090 governs the ethics and conflict of interest issues related to government agencies’ entry into contracts, and is relevant to the circumstances of this case, along with the PRA – the ethics statute that the Lough Investigation does discuss.

¹ City of San Diego, AUDIT REPORT, PERFORMANCE AUDIT OF THE CENTRE CITY DEVELOPMENT CORPORATION, Office of the City Auditor, Eduardol Luna, CIA, CGFM, City Auditor, July 10, 2009, pp. vi and 56.

² *Id.*, p. 35.

³ *Id.*, p. iv.

July 20, 2009

Page 3

With respect to the PRA, the legal analysis is flawed. Specifically, the Lough Investigation misinterprets the meaning of the term "influence" in the PRA. Because that term is the statute's central legal concept, its misapplication taints the Lough Investigation's analysis.

Furthermore, although the Lough Investigation was commissioned to analyze the ethical implications of Nancy Graham and Helen Peak's entire involvement in the Ballpark Village project, it falls short of that mark. The Lough Investigation contains no discussion of Helen Peak's involvement in the project after the date of her appearance on the dais on May 25, 2005. From that date to the date of her resignation on August 29, 2008, Helen Peak's involvement in the Ballpark Village project is not discussed. The Lough Investigation similarly picks only one day – May 25, 2005 – for determining whether Nancy Graham was involved in the adoption of the OPA. Instead, the Lough Investigation should have determined the extent of Nancy Graham's involvement in the OPA from the first date it was discussed with her in the hiring process to the date of its execution on January 13, 2006. However, given the limited legal analysis and the delimited time frame in which Nancy Graham and Helen Peak's activities were scrutinized, the Lough Investigation concludes that the OPA for the Ballpark Village project remains valid.⁴

The purpose of this letter is to provide a full legal analysis of Nancy Graham and Helen Peak's potential ethical violations and, in so doing, to prevent potential further procedural abuses related to the Ballpark Village project. Such a legal analysis should not have to be provided by third parties, at their own expense; it is incumbent on the City to ensure potential ethical violations *will be properly investigated*.

As this legal analysis will demonstrate, the OPA for the Ballpark Village project may be unenforceable and void under Section 1090. Contrary to the Lough Investigation's conclusions, Nancy Graham and Helen Peak may have violated the

⁴ Despite this, the Lough Investigation does conclude that two major points of negotiation for the former First Implementation Agreement, over which Nancy Graham had heavy involvement, must be renegotiated. As the Lough Investigation explains, renegotiation of these points is required or the FIA would be "*subject to suit and probable invalidation*." Since the former First Implementation Agreement is no longer being negotiated, this aspect of the Lough Investigation will not be discussed in this letter.

July 20, 2009

Page 4

PRA, making the OPA *voidable* in a court of law. Thus, UNITE HERE Local 30 respectfully requests that CCDC immediately investigate these potential conflicts of interest.

A. NANCY GRAHAM AND HELEN PEAK MAY HAVE VIOLATED SECTION 1090

1. The Legal Elements of Section 1090

The Lough Investigation failed to analyze potential violations of Section 1090 of the Government Code. Section 1090 is one of the state's two major ethics statutes.⁵ Section 1090 states that "city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members."⁶ The operating agreement between CCDC and the Redevelopment Agency mirrors this provision, and the City of San Diego's Ethics Ordinance embraces the provision's requirement for integrity in government processes.⁷

Contracts made in violation of Section 1090 are against public policy and provide no ground for equitable relief in court: the contract is void.⁸ The OPA is a "contract" under Section 1090,⁹ and it is void if the three elements of the statute are met. These three elements of Section 1090, which will now be analyzed respectively for Nancy Graham and Helen Peak, are as follows:

- 1) *a city officer or employee*
- 2) *"makes" a contract in her official capacity, and is*
- 3) *financially interested in that contract.*

⁵ The Attorney General's comprehensive conflicts of interests guide references Section 1090 one hundred and eighteen times. "Conflicts of Interests," Office of the Attorney General, Division of Civil Law, available at <http://ag.ca.gov/publications/coi.pdf>.

⁶ Government Code § 1090.

⁷ See City of San Diego Audit Report, Performance Audit of the Centre City Development Corporation (Jul. 10, 2009), p. 56; San Diego Municipal Code § 27.3501.

⁸ *Klistoff v. Superior Court* (2007) 157 Cal.App.4th 469, 481.

⁹ 82 Ops. Cal. Atty. Gen. 126 (1999) ("A development agreement is the type of 'contract' that would ordinarily come under the terms of section 1090").

2. Legal Analysis of Nancy Graham's Potential Section 1090 Violations

a) *Nancy Graham may have been an employee*

Nancy Graham may have become an employee of CCDC on the earlier date of 1) when she was hired or 2) when she was in a position to exercise influence over CCDC's decisions. The Lough Investigation concludes that Nancy Graham did not become an employee until December 1, 2005 – when Nancy Graham formally began employment as Director.

The Attorney General has held that Section 1090 “may be applied to consultants and independent contractors when they are advising government officials on matters of public policy, or when they are exercising judgment on behalf of a public entity.”¹⁰ Courts have stressed that the operative issue is not whether the person was formally an employee, but whether the person “was *in a position to exert considerable influence over the decisions*” of the public agency.¹¹

The CCDC press release announcing Nancy Graham's appointment as Director was issued on October 26, 2005; therefore, it appears that she had been hired some time before that date. Because the Lough Investigation concludes that Nancy Graham did not become an employee until December 2005 without providing her date of employment with CCDC, it remains unclear whether she was hired in October or some time before.

The Redevelopment Agency did not approve the OPA until October 18, 2005. CCDC was required to be involved in several decisions related to the Ballpark Village project after the Redevelopment Agency's October 18, 2005 approval of the OPA. Thus, Nancy Graham may have been an “employee” during CCDC's involvement in decisions related to the Ballpark Village OPA. The Lough Investigation makes no mention of the Redevelopment Agency's October 18, 2005 approval, and concerns itself only with the CCDC Board's May 25, 2005

¹⁰ ___ Ops. Cal. Atty. Gen. ___ (Oct. 20, 2005); see also California Housing Finance Agency v. Hanover. California Mgmt & Accounting Center (2007) 148 Cal.App.4th 682, 692-93 (hereinafter “*CHFA v. Hanover*”).

¹¹ *CHFA v. Hanover*, 148 Cal.App.4th at 691 (emphasis added).

recommendation to the Redevelopment Agency that the OPA be approved. But this snapshot of the CCDC Board's May 25, 2005 decision improperly limits the scope of investigation relevant to the application of Section 1090.

If Nancy Graham engaged in any strategic discussions on the Ballpark Village Project when she was hired in October 2005, then she may have been in a *position to influence* the October 18, 2005 decision and therefore a CCDC employee for purposes of Section 1090. It is apparent that CCDC employees and Board members commented on the Redevelopment Agency's October 18, 2005 decision on the OPA.¹² This October 18th approval involved the adoption of a Community Benefits Agreement that had not yet been negotiated when the CCDC Board recommended the OPA's approval on May 25, 2005. Thus, if Nancy Graham had been hired by October 18, 2005, she may have been an employee of CCDC when the contract was actually approved. Even if Nancy Graham had not been hired by October 18, 2005, she nonetheless may have been an "employee" for purposes of Section 1090 if she had been in a position to influence that decision.

The Lough Investigation concedes that Nancy Graham was a CCDC employee by December 1, 2005, but maintains that CCDC's January 13, 2006 execution of the OPA was ministerial. As will be examined below, the ministerial status of this contract execution remains in doubt.

b) Nancy Graham may have "participated in making" the OPA

The second element of Section 1090 liability is the "making" of a contract in her official capacity. Courts reject the "narrow and technical interpretation of the word 'made' and construe its meaning to encompass the planning, preliminary discussions [and] compromises...embodied in the making of the contract."¹³ Accordingly, if Nancy Graham participated in any discussions with CCDC staff and Board members pertaining to the Redevelopment Agency's adoption of the OPA

¹² CCDC Board member Robert McNeely testified at the Redevelopment Agency's October 18, 2005 meeting against adopting the Community Benefits Agreement for the project, the details of which had not been made available until September 20, 2005. See Stolz, M., "Council Approves Giant Ballpark Village Project," *San Diego Tribune*, October 19, 2005.

¹³ *Id.*; see also 89 Ops. Cal. Atty. Gen. 49 (2006). "[T]he phrase 'making of a contract' has been broadly defined to include the various activities leading up to execution of the contract, including preliminary discussions, negotiations, compromises, reasoning, and planning."

after she was “hired,” even by “giving advice or being involved inreasoning,”¹⁴ she may have been involved in the making of the contract – and the OPA would be void.

As mentioned above, the Lough Investigation concludes that the execution of the contract on January 13, 2006 was “ministerial” and therefore exempt from the PRA. But Section 1090 has no such provision limiting the “making” of a contract to discretionary activities. The language of Section 1090 refers to a contract being “made,” that is, executed. The court’s statement that the “*actual execution of the contract is not the only criteria*” for the application of Section 1090 makes apparent that the mere execution of a contract *does* fall within the statute.¹⁵

Since Nancy Graham may have participated in discussions with CCDC staff and Board members pertaining to the Redevelopment Agency’s adoption of the OPA after she was hired, she may have been involved in the making of the contract, thus voiding the OPA.

c) Nancy Graham may have had the requisite financial interest

The final element for the OPA to be voided by Section 1090 is that an employee must have had the requisite financial interest in the contract. “Financial interest,” within the meaning of Section 1090, is defined broadly as “any interest, other than an interest that is too remote or speculative, that could compromise a public official’s judgment or cast doubt on whether he executed his duties within the utmost allegiance.”¹⁶ Certainty of financial gain is not necessary to create a conflict.¹⁷ The only exclusions from the definition of “financial interest” under Section 1090 are for “remote interests” and “non-interests.”¹⁸ “Remote interests” are delineated categories in the statute which are applicable only to board members or elected officers – not employees. “Non-interests” are applicable to employees; these include non-salaried interests in non-profits, certain landlord-tenant relationships, and minor interests in banks providing loans to contracting parties.¹⁹

¹⁴ 83 Ops. Cal. Atty. Gen. 59 (2000).

¹⁵ *People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052 (emphasis added).

¹⁶ *Klistoff v. Superior Court*, 157 Cal.App.4th at 480.

¹⁷ *People v. Gnass* (2002) 101 Cal.App.4th 1271, 1298.

¹⁸ Gov. Code §§ 1091(a), 1091.5.

¹⁹ Gov. Code §§ 1091.5(a)(4), 1091.5(a)(6), 1091.5(b).

July 20, 2009

Page 8

Nancy Graham's alleged pre-existing business relationship with one of the parties to the OPA, for which she potentially received a \$125,000 direct payment in 2007, may not fall within any of these "non-interest" categories.

Moreover, Section 1090 applies irrespective of whether an employee has a direct financial interest in the contract. As the Attorney General has explained, "case law and our previous opinions indicate that forbidden financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain."²⁰ Nancy Graham's alleged business relation with a contracting party to the OPA, from which she may have derived a substantial financial benefit, was potentially forbidden by Section 1090. Thus, the third element necessary for Nancy Graham's involvement to void the OPA may have been met in this case.

3. Legal Analysis of Helen Peak's Potential Section 1090 Violations

Helen Peak's potential ethical violations may provide another, independent basis to render the OPA void under Section 1090.

a) Helen Peak may have been an employee

Helen Peak allegedly served as CCDC's Corporate Counsel from 2001 to her August 29, 2008 resignation from the position, which the CCDC Board accepted on September 10, 2008. Although the Lough Investigation states that Helen Peak was a partner to a law firm, and not exclusively employed by CCDC, it is well-established that an attorney from a private firm serving as agency counsel is considered an employee of that agency.²¹

Helen Peak may have been an employee of CCDC well before its May 25, 2005 recommendation to the Redevelopment Agency that the OPA be adopted. This may satisfy the first of the three elements necessary under Section 1090 for Helen Peak's involvement to void the OPA.

²⁰ 86 Ops. Cal Atty Gen. 138 (2003); *see also* 86 Ops. Cal. Atty Gen. 187 (2003), "The Legislature has made clear that ongoing business relationships may represent financial interests for purposes of section 1090."

²¹ *CHFA v. Hanover*, 56 Cal.App.4th at 691, "courts have recognized that liability under section 1090 may apply to an outside attorney in a position of influence over the public agency."

b) Helen Peak may have "participated in making" the OPA

Helen Peak may have been involved in the "making" of the contract if she participated in any "negotiations, discussions, reasoning, planning, and give and take which goes beforehand in the making of the decision to commit oneself" to an agreement.²² This includes "giving advice and being involved in preliminary discussions."²³

The Lough Investigation only describes Helen Peak's activities leading up to the recommended approval of the OPA on May 25, 2005 at a CCDC Board meeting, during which Helen Peak was allegedly present at the dais. It contains no discussion of Helen Peak's activities leading up to the Redevelopment Agency's October 18, 2005 approval of the OPA; no discussion of her involvement in the environmental review associated with the Ballpark Village project;²⁴ and no discussion of her involvement in the January 13, 2006 execution of the OPA.

Helen Peak's August 29, 2008 resignation letter itself acknowledges that she was present at "meetings" involving the Ballpark Village project in July 2007 and "meetings" involving the Ballpark Village project in 2005. From the time the Ballpark Village project was first introduced – well before May of 2005 – until her 2008 resignation, it appears that Helen Peak may have been present at many meetings related to the Ballpark Village project. Under Section 1090, this may constitute participating in the making of the OPA.

The Lough Investigation, which does not analyze Section 1090, dismisses Helen Peak's presence at the dais at the May 25, 2005 meeting as irrelevant because the meeting minutes do not reveal that she said anything about the Ballpark Village project. It acknowledges that Helen Peak attended other Board and Committee meetings at which the OPA was discussed, but likewise concludes

²² *Stigall v. City of Taft* (1962) 58 Cal. 2d at 569

²³ 82 Ops. Cal. Atty. Gen. 126 (1999).

²⁴ For example, the day before the contract was executed, on January 12, 2006, CCDC issued a final environmental impact report ("EIR") on the Downtown Community Plan; the Redevelopment Agency did not certify this EIR until March 14, 2006. Environmental review is discretionary and not ministerial, and CCDC is prohibited from taking final agency action on a project until its underlying environmental review is complete.

that she was not involved in any of these discussions. The Lough Investigation also concedes that Helen Peak had a "*role in redevelopment negotiations, in this issue and others,*" a role that is dismissed as "very limited....to general corporate and governmental matters, such as meeting procedure and Brown Act issues."²⁵

However, the Lough Investigation does not analyze Section 1090's legal standard. Section 1090 prohibits conduct in which an attorney acting in an official capacity "*could exercise some influence*" and does exercise that influence for personal gain.²⁶ The purpose of Section 1090 is to "remove or limit the *possibility* of any personal influence, either directly or indirectly, which may bear on an officer's or employee's decision."²⁷ Helen Peak may have participated in the making of the OPA because, among other activities, she may have attended meetings on the Ballpark Village project in her official capacity as CCDC's Corporate Counsel. Therefore, Helen Peak may have had the opportunity and potential to exercise influence over those decisions.

c) *Helen Peak may have had the requisite financial interest*

The third element under Section 1090 for the OPA to be void is that an employee must have the requisite financial interest in the contract. "[P]rohibited financial interests are not limited to express agreements for benefit . . . [r]ather, forbidden interests extend to expectations of benefit by express or implied agreement and may be inferred from the circumstances."²⁸ Helen Peak may have had such a financial interest. As a law firm partner, according to the Lough Investigation, Helen Peak may have received income from a contracting party to the OPA from 2005 to 2008. The financial benefit Helen Peak may have received from this business relationship is reportedly substantial.²⁹ As described above with respect to Nancy Graham, this financial interest element may be satisfied unless

²⁵ Lough Investigation, p. 4 (emphasis added).

²⁶ *People v. Gnass*, 101 Cal.App.4th at 1298-99.

²⁷ *Millbrae Assn. for Residential Survival v. City of Millbrae*, 262 Cal.App.2d 222, 237 (1968).

²⁸ *Id.*, quoting *People v. Honig* (1996) 48 Cal.App.4th 289, 315.

²⁹ Davis, R., "With Another Resignation, CCDC's Conflict Cloud Expands," *Voice of San Diego*, August 30, 2008 (reporting that Helen Peak owns 25% of her law firm and received \$10,000 in income from Lennar in 2007 alone), available at <http://www.voiceofsandiego.org/articles/2008/08/30/news/02ccdc083008.txt>.

Helen Peak's financial interest falls within the "remote interests" or "non-interests" exceptions to Section 1090.³⁰

While the "remote interests" exceptions do not apply to agency employees, the statute's delineation of "non-interests" does include a category that is applicable to agency attorneys. However, this "non-interest" exception applies only to attorneys of contracting parties who receive no compensation and who own "less than 10 percent of the law practice or firm."³¹ Helen Peak may not fall within this exception. Accordingly, the third of the three Section 1090 elements necessary for Helen Peak's involvement to void the OPA may be satisfied.

B. NANCY GRAHAM AND HELEN PEAK MAY HAVE VIOLATED THE PRA

The Lough Investigation analyzed the PRA. The Lough Investigation's discussion of Helen Peak's involvement in the Ballpark Village project is limited to *one date*, May 25, 2005, when the CCDC Board recommended to the Redevelopment Agency that the OPA be approved. The Lough Investigation contains no discussion of Helen Peak's activities either before or after that date. While the Lough Investigation acknowledges that Helen Peak potentially violated the PRA by sitting at the dais on May 25, 2005, it dismisses this as harmless error. However, in reaching this conclusion, the Lough Investigation misapplied the PRA's legal standard.

1. The Legal Elements of the PRA

The PRA states that "[n]o public official at any level of state or local government shall *make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.*"³² "Public official means every member, officer, *employee* or consultant of a state or local government agency."³³ The consequence of a violation of the PRA is that the "court may set the official action

³⁰ Gov. Code §§ 1091, 1091.5.

³¹ Gov. Code § 1091.5(a)(8).

³² Gov. Code § 87100.

³³ Gov. Code § 82048 (emphasis added).

aside as void.”³⁴ The three elements of the PRA necessary for a government decision to be voidable are similar to those of Section 1090, although the law defining the meaning of these elements is distinct. These elements are that 1) an employee 2) *participates in making or influences* a governmental decision in which that employee 3) knows or should know she has a financial interest.

The legal analysis of the PRA in the Lough Investigation was limited to a discussion of the second of these three elements, “influence.” With respect to the OPA, it analyzed whether Nancy Graham or Helen Peak “participated in making” or “influenced” CCDC’s decision to enter into the OPA. The Lough Investigation concedes that the other two elements – an employee having a financial interest – may have been met. However, as will now be examined, the Lough Investigation’s analysis of the “influence” element is flawed.

2. Both Nancy Graham and Helen Peak May Have Influenced the Decision

a) *Nancy Graham may have influenced the OPA*

The Lough Investigation concludes that Nancy Graham did not “participate in making” or “influence” any CCDC decision related to the OPA. According to the Lough Investigation, CCDC’s January 13, 2006 execution of the contract was “ministerial” under the FPPC regulations, and Nancy Graham could not have “participated” in the CCDC Board’s May 25, 2005 recommendation to adopt the OPA because she had not begun employment at that time.

To be sure, the FPPC regulations state that “[m]aking or participating in making a governmental decision shall not include...[a]ctions of public officials which are solely *ministerial*, secretarial, manual, or clerical.”³⁵ However, it is unclear whether the January 13, 2006 execution of the contract was actually ministerial. If any findings or certifications were required to be made as a condition for contract execution, then the execution of the contract cannot be categorized as “ministerial.”

³⁴ Gov. Code § 91003(b).

³⁵ Cal. Code Regs., tit. 2, § 18702.4(a)(1) (emphasis added).

The Lough Investigation also fails to discuss any other decisions the CCDC Board may have made between May 25, 2005 and January 13, 2006, including decisions related to environmental review for the Ballpark Village project. These decisions may not have been ministerial, and, as discussed above, at least one of these decisions was made when Nancy Graham may have been an "employee" of CCDC.

Moreover, the ministerial exception on which the Lough Investigation relies applies only to public officials "participating in making a governmental decision" – not to public officials "attempting to influence" such a decision.³⁶ Ministerial acts are nowhere among those exceptions to "attempting to use [an] official position to influence a governmental decision" which are delineated in the FPPC regulations.³⁷ Thus, even if the Lough Investigation correctly concludes that the January 13, 2006 execution of the contract was "ministerial," this would not exempt Nancy Graham from having potentially "influenced" that decision.

As distinct from "participating in making" a decision, the FPPC regulations carve out no ministerial exception to its definition of "influencing" a governmental decision. There is only one exception to "influencing" a governmental decision delineated in the FPPC regulations that may be relevant to Nancy Graham, and that is the exception for negotiating the "terms and conditions of...employment."³⁸ As discussed above with respect to Section 1090, Nancy Graham may have exercised influence on the Ballpark Village discussions during the course of the hiring process. If Nancy Graham had not been hired by the date of the Redevelopment Agency's October 18, 2005 approval of the OPA, this exception to the definition of "influence" may be applicable. But even if it were, Nancy Graham may have "influenced" any CCDC decisions related to the OPA that were made immediately after that date.

Following the FPPC regulations, Nancy Graham may have improperly "influenced" CCDC's decisions related to the OPA if she used her position "for the purpose of influencing the decision," by contacting, appearing before, or "otherwise attempt[ing] to influence" any "member, officer, employee or consultant" of CCDC.³⁹

³⁶ *Id.*; cf. Cal. Code Regs., tit. 2, § 18702.4(b).

³⁷ Cal. Code Regs., tit.2, § 18702.4(b).

³⁸ Cal. Code Regs., tit.2, § 18702.4(b)(1)(C)(3).

³⁹ Cal. Code Regs., tit.2, § 18702.3(a).

Nancy Graham also may have improperly influenced an *outside agency* – the Redevelopment Agency – if she took actions or purported to take actions on CCDC's behalf; these actions include “but are not limited to the use of official stationery.”⁴⁰ In short, if CCDC made any decisions pertaining to the OPA from the date of Nancy Graham's hire through the January 13, 2006 execution of the contract, she may have “influenced” these decisions in violation of the PRA.

b) Helen Peak may have influenced the OPA

The Lough Investigation is limited to a discussion of Helen Peak's role in the CCDC Board's May 25, 2005 decision recommending to the Redevelopment Agency that the OPA be approved. It contains no discussion of Helen Peak's involvement in the Redevelopment Agency's October 18, 2005 adoption of the OPA and does not discuss her possible participation in any other CCDC action related to the Ballpark Village project, including environmental review, until the time of her August 29, 2008 resignation from the position of Corporate Counsel.

If Helen Peak contacted, appeared before, or “otherwise attempt[ed] to influence” any “member, officer, employee or consultant” of CCDC with respect to the Ballpark Village project, at any time from its inception (presumably sometime in 2004) to her August 2008 resignation, then she may have exercised improper “influence” under the PRA.⁴¹ Similarly, if Helen Peak contacted the Redevelopment Agency or any other outside agency on behalf of CCDC, *in any manner*, including by “use of official stationery,”⁴² concerning the adoption of the OPA, its underlying environmental review documents, or any other decision related to the Ballpark Village project – until her August 2008 resignation – then she may have violated the PRA by attempting to “influence” that outside agency's decision. None of the exceptions to either “participating in the making” or “attempting to influence” a governmental decision which are contained in the FPPC regulations may be applicable to Helen Peak.

⁴⁰ Cal. Code Regs., tit.2, § 18702.3(b).

⁴¹ Cal. Code Regs., tit.2, § 18702.3(a).

⁴² Cal. Code Regs., tit.2, § 18702.3(b).

c) *Helen Peak may have influenced the CCDC Board's May 25, 2005 decision*

The Lough Investigation exculpates Helen Peak with respect to the CCDC Board's May 25, 2005 decision to recommend to the Redevelopment Agency that the OPA be approved – the only decision that the Lough Investigation examines. However, once the proper legal standard is applied, even this snapshot-in-time analysis reveals that Helen Peak may have violated the PRA on that date by potentially "participating in making" and "influencing" the CCDC Board's decision.

The Lough Investigation reasons that Helen Peak did not "participate in making" the May 25, 2005 decision because she was not "part of the negotiating team" and made no "substantive recommendation" on the Ballpark Village project.⁴³ It also concludes that Helen Peak did not "influence" the May 25, 2005 decision because she did not act directly "on behalf of a 'business entity.'"⁴⁴ However, these conclusions are premised on a misinterpretation of the FPFC regulations.

The FPFC regulations provide that Helen Peak "participated in making" the May 25, 2005 decision if she conducted research or made "any investigation" that required the "exercise of judgment" to influence that decision.⁴⁵ Contrary to the Lough Investigation's analysis, this does not require her to have been a member of the lead negotiating team or to have made at any time a substantive recommendation in favor of the project's approval.

The Lough Investigation states that Helen Peak may have had a "*role in redevelopment negotiations, in this issue and others,*" which pertained to "general corporate and governmental matters, such as meeting procedure and Brown Act issues."⁴⁶ Clearly, legal advice concerning these matters could have involved the *exercise of judgment* on the part of Helen Peak. Thus, the only issue is whether her advice on the Brown Act or another matter had an "influence" on the May 25, 2005 decision for purposes of the PRA. Given the fact that the decision could not even

⁴³ Lough Investigation, p. 5.

⁴⁴ Lough Investigation, p. 6.

⁴⁵ Cal. Code Regs., tit. 2, § 18702.2(b)(1).

⁴⁶ Lough Investigation, p. 4 (emphasis added).

have been made by the CCDC Board absent compliance with the Brown Act,⁴⁷ Helen Peak may have had such an influence on the decision.

Moreover, the Lough Investigation improperly concludes that Helen Peak did not “influence” the May 25, 2005 decision because she did not act “on behalf of” the business in which she had a financial interest. The FPPC regulations plainly contradict this point. The regulations state that an individual has “attempt[ed] to use [her] official position to influence the decision” if she “for the purpose of influencing the decision...contact[ed], or appear[ed] before, or otherwise attempt[ed] to influence, any member, officer, employee or consultant of the agency.”⁴⁸ Here, Helen Peak may have contacted and appeared before CDCC employees, board and committee members, and consultants, so the “otherwise attempts to influence” category is not at issue.

Finally, the Lough Investigation acknowledges Helen Peak’s presence at the dais during the May 25, 2005 CCDC Board meeting at which the decision on the OPA was made. The Lough Investigation admits that the FPPC regulations require employees holding high offices, such as attorneys, to announce the conflict and leave the room,⁴⁹ but it concludes that Helen Peak did not “participate in making” the decision because she “did not speak to the [Ballpark Village] item.”⁵⁰ However, the issue as to whether Helen Peak’s presence at the dais in this context is a violation of the PRA is a legal question.

The FPPC regulations require employees holding high offices, such as attorneys, to announce the conflict and leave the room.⁵¹ The fact that Helen Peak’s status in such a high-ranking position potentially requires her not only to remove herself from the dais, but to remove herself from the meeting altogether, supports the legal conclusion that her failure to comply with these requirements necessarily may have had an improper influence on the decision.

⁴⁷ See Gov. Code § 54950 *et seq.*

⁴⁸ Cal. Code Regs., tit.2, § 18702.3(a) (emphasis added).

⁴⁹ Cal. Code Regs., tit.2, § 18702.5(b).

⁵⁰ Lough Investigation, p. 4.

⁵¹ Cal. Code Regs., tit.2, § 18702.5(b).

July 20, 2009

Page 17

More importantly, the fact that Helen Peak may not have spoken on the matter, when her very presence at the dais was for the purpose of ensuring that procedures were properly followed, is not determinative of whether she “participated in making” the decision. The FPPC has held that an attorney who provides “legal advice or representation...*would be considered to be participating in the making of a governmental decision.*”⁵² Helen Peak may have been at the dais on May 25, 2005 for the purpose of providing legal representation to CCDC. Attorneys who attend meetings on behalf of their clients usually do so in their capacity as attorneys to provide “legal representation” – regardless of whether, or how often, they speak at those meetings. Accordingly, because Helen Peak provided legal representation at the dais on May 25, 2005, she may have “participated in making” the decision in violation of the PRA.

C. SUMMARY OF ETHICAL AND CONFLICT OF INTEREST ISSUES

The Lough Investigation is inadequate. It failed to apply Government Code Section 1090 – one of the two major State ethics statutes. Section 1090 voids any contract made by a public official who has a financial interest in that contract. Both Nancy Graham and Helen Peak may have independently committed ethical violations that meet the elements of the statute – with respect to the OPA. Thus, the OPA may now be void by operation of law.

Nancy Graham and Helen Peak may have also independently satisfied all of the elements necessary for a court to invalidate the OPA under the PRA. Thus, an entirely new OPA may now be required for the Ballpark Village project to move forward – in any incarnation.

⁵² See Richard R. Terzian, Cal. Fair Pol. Prac. Com., A-05-050, 2005 WL 762252 (Mar. 22, 2005) “[City Attorney, also serving as General Counsel to City Redevelopment Agency,] providing legal advice or representation as city attorney would be considered to be participating in the making of a governmental decision.”

July 20, 2009

Page 18

II. THE PROPOSED FIRST IMPLEMENTATION AGREEMENT IS PREMATURE

As a preliminary matter, *any* potential implementation agreement is premature, since the OPA may be void. Any entry into a contract that a party knows to be legally void is incompatible with the meeting of the minds generally required for a *lawful* contract to be made.

In addition, the proposed FIA is premature, because Ballpark Village LLC has no specific proposal or plans for its project. Without a specific project proposal, the FIA is simply inconsistent with other terms and the intent of the OPA. Moreover, without a specific project proposal, CCDC has no context in which to evaluate the significant risks, benefits, and environmental impacts under the California Environmental Quality Act, other than the significant impacts resulting from the FIA. Thus, any approval at this time would constitute bad public policy.

Specifically, Ballpark Village LLC's first proposed term is to extend the expiration date from 2011 to 2016 for the transfer of entitlements for 1.2 million square feet over and above the 6.5 Floor Area Ratio ("FAR") otherwise permitted by the Centre City PDO. However, the 2011 expiration date was specifically negotiated to implement an agreed upon and acceptable schedule for the project and to ensure that public benefits provided for in the OPA are timely implemented. Other terms of the OPA specifically set forth the Schedule of Performance and public benefits that must be provided by Ballpark Village LLC – all of which constitute the package of benefits and risks that the City agreed upon in the OPA. Thus, the OPA specifically prohibits use of the additional density after 5 years from the execution date of the OPA. Any other term would affect the risks and benefits previously negotiated in the OPA.

In addition, extending the expiration date for transfer of additional density would trigger an entirely new and updated EIR to consider the significant environmental impacts associated with development over a significantly longer time frame. Then, CCDC would be required to conduct environmental review *again* when a project is proposed later this year. Thus, to extend the expiration date now – even though the current term does not expire until 2011, and even though Ballpark Village LLC has failed to advance its project and failed to submit any

specific proposal or plans – would not only set bad precedent, but would be an inefficient expenditure of public resources.

The second proposed modification of the OPA is to allow Ballpark Village LLC to provide 267 parking spaces dedicated for Ballpark event parking in a parking garage located outside of the Ballpark District. This proposal is inconsistent with the OPA, which requires the parking to be provided on the project site or in a location permitted by the environmental review document for the Ballpark and ancillary projects. In addition, the parking proposal is completely out of context. Without a proposal for a specific project, CCDC has no context to weigh the risks of allowing parking outside the Ballpark District against any potential benefits to the City, and no context for conducting the required environmental review, other than significant impacts to surrounding communities. Again, without a specific project, the parking proposal is unreasonable, premature, and lacking in negotiated benefits.

III. CONCLUSION

In sum, an FIA is premature because the OPA may be void. Both Nancy Graham and Helen Peak may have independently committed ethical violations that meet the elements of Section 1090 – with respect to the OPA. Nancy Graham and Helen Peak also may have independently satisfied all of the elements necessary for a court to invalidate the OPA under the PRA. Thus, an entirely new OPA may now be required for the Ballpark Village project to move forward – in any incarnation. UNITE HERE Local 30 respectfully requests that CCDC investigate these potential violations into whether the OPA is void.

An FIA is also premature, because Ballpark Village has no specific project proposal for CCDC to consider the risks, benefits, and all associated significant environmental impacts. Any approval of an FIA at this time would be bad policy, evidencing a willingness to give away over a million square feet of development without any further negotiated benefit to the City of San Diego.

July 20, 2009
Page 20

Thank you for your attention to these important matters.

Sincerely,



Tanya A. Gulesserian
Attorney for UNITE HERE Local 30

TAG:bh

cc: City of San Diego Redevelopment Agency
Councilmember Sherri Lightner
Council President Pro Tem Kevin Faulconer
Councilmember Todd Gloria
Councilmember Tony Young
Councilmember Carl DeMaio
Councilmember Donna Frye
Councilmember Marti Emerald
Council President Ben Hueso
Brad Richter, Manager of Current Planning



San Diego-Imperial Counties Labor Council

AFL-CIO

September 21, 2009

VIA U.S. MAIL AND ELECTRONIC MAIL

Council President Ben Hueso
City of San Diego
202 C Street, 10th Floor
San Diego, CA 92101

Re: Ballpark Village First Implementation Agreement -- SUPPORT

Dear Council President Hueso:

I am writing on behalf of the San Diego and Imperial Counties Labor Council, AFL-CIO to encourage the City Council's docketing and approval of Ballpark Village's First Implementation Agreement to further the mixed-use project that was approved in 2005 and covered by a Community Benefits Agreement.

As you know, the Labor Council was concerned about the project rapidly moving forward as a convention center hotel until we could fully understand the various economic and environmental impacts associated with such a hotel. Since the developer, Ballpark Village, LLC, has stated in writing to both the City and CCDC that they have abandoned their efforts to develop a convention hotel at Ballpark Village, we fully support the original mixed-use project moving forward.

Sincerely,

Lorena Gonzalez
Secretary-Treasurer/CEO

cc: San Diego City Council members
Mayor Jerry Sanders
Fred Maas, Chairman CCDC
John Kratzer, Ballpark Village, LLC
ACCORD members

LORENA GONZALEZ, *Secretary-Treasurer*

MICKEY KASPARIAN, *President*

4305 University Ave., Ste. 340 • San Diego, CA 92105 • (619) 283-5411 • Fax (619) 283-2782 • www.unionyes.org

ATTACHMENT D

FIRST IMPLEMENTATION AGREEMENT

to

OWNER PARTICIPATION AGREEMENT
(Ballpark Village)

by and between

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO,
AGENCY,

and

BALLPARK VILLAGE LLC,
PARTICIPANT.

FIRST IMPLEMENTATION AGREEMENT TO
OWNER PARTICIPATION AGREEMENT

This FIRST IMPLEMENTATION AGREEMENT TO OWNER PARTICIPATION AGREEMENT ("First Implementation Agreement") is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (the "Agency"), and BALLPARK VILLAGE LLC, a Delaware limited liability company (the "Participant"), with reference to the following facts:

- A. The Agency and Participant entered into that certain Owner Participation Agreement dated as of January 13, 2006 (the "OPA") with regard to that certain real property in the City of San Diego referred to therein as the "Site". The OPA is incorporated herein by this reference. OPA as used herein shall mean, refer to and include the OPA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference). Any capitalized term not defined herein shall have the meaning ascribed to such term in the OPA.
- B. Subject to all of the terms and conditions of this First Implementation Agreement and the OPA, the parties desire to enter into this First Implementation Agreement to modify and implement the OPA as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Transfer of Excess Ballpark FAR.

- a. Section 701 of the OPA entitled "Transfer of Excess Ballpark FAR" shall be deleted and replaced in its entirety to read as follows:

"A. [§ 701] Transfer of Excess Ballpark FAR

Density from the Ballpark may be transferred to the Site subject and pursuant to the terms of the Master Plan and the following conditions:

(1) The transfer of density with respect to a Parcel shall only become effective upon issuance, within ten (10) years following execution of this Agreement by the Agency (i.e., January 13, 2016), of a Centre City Development Permit for such Parcel meeting the requirements of the Master Plan;

(2) No density shall be transferred to any Parcel after the expiration of ten (10) years following execution of this Agreement by the Agency (i.e., January 13, 2016); and

(3) The amount of density transferred shall be calculated as the difference between the gross above ground building area to be constructed

pursuant to a Centre City Development Permit and the base 6.5 Floor Area Ratio (“FAR”).”

b. All other references to “five (5) year” for a transfer of excess FAR on a particular Parcel shall be changed to “ten (10) year” for a transfer of excess FAR on a particular Parcel.

2. Ballpark Event Parking. Section 704 of the OPA entitled “Ballpark Event Parking” shall be deleted and replaced in its entirety to read as follows:

“D. [§ 704] Ballpark Event Parking

- a. The Participant shall at all times provide a minimum of two hundred sixty-seven (267) parking spaces dedicated for Ballpark event parking in accordance with this Section 704 and the hereinafter defined FSEIR (“Minimum Ballpark Event Parking Spaces”). The dedicated Minimum Ballpark Event Parking Spaces are all currently located on Parcel C. Participant shall satisfy such obligation by: (1) including on the undeveloped Site or as a part of the development of the Site all or any portion of the Minimum Ballpark Event Parking Spaces; and/or (2) providing all or any portion of the Minimum Ballpark Event Parking Spaces in the parking garage owned by Metropolitan Transit System, which is located at the corner of Imperial Avenue and 11th Avenue, pursuant to that certain Lease Agreement for Parking Spaces – James R. Mills Building Parking Garage by and between the County of San Diego, San Diego Regional Building Authority, and Metropolitan Transit System, collectively as Lessors, and Padres L.P., as Lessee; and/or (3) providing all or any portion of the Minimum Ballpark Event Parking Spaces in another location permitted by that certain Final Subsequent Environmental Impact Report to the Final Master EIR for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents for the proposed Ballpark and Ancillary Development Projects, and Associated Plan Amendments, dated September 13, 1999, and any Addenda thereto (collectively the “FSEIR”), and only to the extent such location is in full compliance with the overall requirement to provide 2,383 parking spaces for the Ballpark pursuant to the FSEIR. The parties agree that the James R. Mills Building Parking Garage is a location permitted by the FSEIR to provide the dedicated Minimum Ballpark Event Spaces.
- b. If Participant decides to provide the dedicated Minimum Ballpark Event Parking Spaces at a location other than Parcel C, then Participant shall submit to the Agency for the Agency Executive Director’s or designee’s review and written approval all of the following: (1) a written notice which specifically identifies where

each of the dedicated Minimum Ballpark Event Parking Spaces are provided as of the date of such notice; (2) supporting documentation that such dedicated Minimum Ballpark Event Parking Spaces are provided in full compliance with this Section 704 and the FSEIR; and (3) any contractual agreement required to be submitted as described in subsection d., below (collectively, the "Ballpark Event Parking Spaces Notice"). The Agency Executive Director or designee shall have the right to review and approve the Ballpark Event Parking Spaces Notice to determine whether the dedicated Minimum Ballpark Event Parking Spaces are being provided in full compliance with this Section 704 (including, without limitation, compliance with subsections a. and d.) and the FSEIR, which approval shall not be unreasonably withheld, conditioned or delayed.

- c. Before there may be a change in where the dedicated Minimum Ballpark Event Parking Spaces are provided from the location identified in the Ballpark Event Parking Spaces Notice approved by the Agency in accordance with subsection b., above, such change must be in full compliance with this Section 704 and the FSEIR and Participant must first submit, or cause to be submitted, to the Agency a new Ballpark Event Parking Spaces Notice for the Agency Executive Director's or designee's review and written approval in accordance with the procedure described in subsection b., above.
- d. If the dedicated Minimum Ballpark Event Parking Spaces will be provided (in whole or in part) through a contractual agreement (such as a lease, license, will-serve agreement, or other contractual right to use such spaces), then both of the following shall apply:
 - (1) Participant shall submit, or cause to be submitted, the proposed contractual agreement to the Agency as part of a Ballpark Event Parking Spaces Notice for the Agency Executive Director's or designee's review and written approval in accordance with the procedure described in subsection b., above; and
 - (2) Any approval by the Agency Executive Director or designee of any such contractual agreement shall only be effective so long as such contractual agreement remains in full force and effect substantially in the form approved by the Agency Executive Director or designee. In the event the contractual agreement expires or is terminated in any way (in whole or in part) or is substantially modified or amended in any way (in whole or in part), Participant shall submit, or cause to be submitted, to the Agency a new

Ballpark Event Parking Spaces Notice for the Agency Executive Director's or designee's review and written approval in accordance with the procedure described in subsection b., above.

- e. In addition to any Ballpark Event Parking Spaces Notices required to be submitted under subsections b., c., and d. above, from time to time as may be reasonably requested by the Agency Executive Director or designee, Participant shall submit, or cause to be submitted, a current Ballpark Event Parking Spaces Notice to the Agency for the Agency Executive Director's or designee's review and written confirmation of compliance with this Section 704.
- f. Participant shall also submit to the Agency Executive Director or designee any other information or documentation reasonably requested by the Agency Executive Director or designee related to Participant's obligations under this Section 704 (including, without limitation, current estoppel certificates for any contractual agreements approved pursuant to this Section 704 duly executed by the parties thereto. Such estoppel certificates shall at a minimum certify that such contractual agreement is unmodified and in full force and effect (or, if modified, is in full force and effect, and stating the modifications) and whether any defaults exist under the contractual agreement on the part of any party thereto).
- g. Such Minimum Ballpark Event Parking Spaces may be made available for other uses, provided that such users (or the owners of the Site (or, as applicable, owners of other property) or portions thereof who permit such other uses) enter into parking agreements or covenants with the Participant stating that such uses will not conflict with Ballpark events and the availability of such parking during Ballpark events.
- h. Nothing herein is intended to or shall be deemed to nor shall grant any property rights in the James R. Mills Building Parking Garage or any parking spaces therein."

3. Agreement To Be Recorded Affecting Real Property. The OPA shall be amended by changing all references to the "Agreement to be Recorded Affecting Real Property" to mean the Agreement to be Recorded Affecting Real Property as amended by the First Amendment to the Agreement to be Recorded Affecting Real Property. The "First Amendment to the Agreement to be Recorded Affecting Real Property" is attached hereto as Exhibit No. 1 and incorporated herein by this reference. The First Amendment to the Agreement to be Recorded Affecting Real Property shall amend the Agreement to be Recorded Affecting Real Property to reflect the modifications to the OPA contained in Section 2 of this First Implementation Agreement. The

First Amendment to the Agreement to be Recorded Affecting Real Property shall be recorded against the Site.

4. Notices. Participant's address set forth in Section 107 of the OPA shall be revised to mean, and Participant's address for purposes of the OPA is:

2265 India Street
San Diego, CA 92101

With a copy to: Solomon Minton Cardinal LLP
701 B Street, Suite 1775
San Diego, CA 92101

Agency's address set forth in Section 106 of the OPA shall be revised to include a copy to Centre City Development Corporation, 401 B Street, Suite 400, San Diego, California 92101.

5. Binding on Successors and Assigns. This First Implementation Agreement and all of the terms and conditions herein shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of the parties hereto and every successor in interest to or assignee of the Site or any portion thereof.

6. OPA in Full Force and Effect. Except as otherwise expressly provided herein, the terms and conditions of the OPA shall remain unmodified and in full force and effect. In the event of any conflict between the terms of this First Implementation Agreement and the OPA, the terms of this First Implementation Agreement shall control.

7. Further Assurances. The parties agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this First Implementation Agreement.

8. Effective Date of this First Implementation Agreement. This First Implementation Agreement shall not be effective until the Effective Date. The "Effective Date" of this First Implementation Agreement shall be the date on which all of the following conditions have been satisfied:

- a. This First Implementation Agreement has been duly approved by the Agency;
- b. This First Implementation Agreement has been executed by the Agency and Participant; and
- c. The First Amendment to the Agreement to be Recorded Affecting Real Property has been recorded against the Site.

If the Effective Date has not occurred within six (6) months after the date this First Implementation Agreement has been approved by the Agency, this First Implementation Agreement shall be null and void *ab initio*.

[remainder of page left blank]


[signatures on following pages]

BALLPARK VILLAGE, LLC,
a Delaware limited liability company
(Participant)

By: JMIR-Ballpark Village LLC,
a Delaware limited liability company,

By: JMIR Project Manager, LLC,
a Delaware limited liability company

Date: 7/29/09

By: 
Name: JAMES A. CHATFIELD
Its: VICE PRESIDENT

[Signatures continue on following pages]

REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO
(Agency)

Date: _____

By: _____

Executive Director

APPROVED AS TO
FORM AND LEGALITY

JAN I. GOLDSMITH
AGENCY GENERAL COUNSEL

By: _____

Jana L. Garmo
Deputy General Counsel

APPROVED:
KANE, BALLMER & BERKMAN
Agency Special Counsel

By: Murray O. Kane

Exhibit No. 1

First Amendment to the Agreement to be Recorded Affecting Real Property

[behind this page]

OFFICIAL BUSINESS

Document entitled to free
recording per Government
Code Section 6103

Recording Requested By
And When Recorded Return to:
REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO
401 B Street, Suite 400
San Diego, California 92101
Attention: David Allsbrook

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**FIRST AMENDMENT TO AGREEMENT TO BE RECORDED
AFFECTING REAL PROPERTY [PARCELS C & D]**

THIS FIRST AMENDMENT TO AGREEMENT TO BE RECORDED AFFECTING REAL PROPERTY [PARCELS C & D] ("First Amendment") is entered into as of _____, 2009, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic ("Agency"), and BALLPARK VILLAGE LLC, a Delaware limited liability company ("Owner").

RECITALS

A. Owner owns fee title to the real property located within the City of San Diego, County of San Diego, State of California, legally described in the "Legal Description" attached hereto and incorporated herein as Exhibit "A" ("Site").

B. The Site is within the Centre City Redevelopment Project area ("Project Area") in the City of San Diego and is subject to the provisions of the Redevelopment Plan, as amended, for the Project adopted by Ordinance No. 0-17767[NS] on May 11, 1992 by the City Council of the City of San Diego ("Redevelopment Plan").

C. In furtherance of the Redevelopment Plan, Agency and Owner entered into that certain Owner Participation Agreement dated as of January 13, 2006, as amended by that certain First Implementation Agreement to Owner Participation Agreement dated as of _____, 2009 (collectively, the "OPA"). OPA as used herein shall mean, refer to and include the OPA, as well as any riders, exhibits, addenda, implementation agreements, amendments, or attachments thereto (which are hereby incorporated herein by this reference). Any capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the OPA.

First Amendment to Agreement Affecting Real Property

2 of 8

D. In connection with the OPA, Agency and Owner entered into that certain Agreement to be Recorded Affecting Real Property [Parcels C & D] dated as of March 15, 2006 and recorded on March 23, 2006 and Document No. 2006-0202469 (“AARP”).

E. Agency and Owner now desire to amend the AARP to reflect the revisions contained in the First Implementation Agreement to the OPA.

NOW, THEREFORE, THE AGENCY AND THE OWNER AGREE AS FOLLOWS:

1. Ballpark Event Parking. Section 1.b.(4) of the AARP entitled “Ballpark Event Parking” is deleted and replaced in its entirety to read as follows:

“Ballpark Event Parking

- (a) In addition to all parking required for the development of the Site, the Owner shall at all times provide a minimum of two hundred sixty-seven (267) parking spaces dedicated for Ballpark event parking in accordance with this Section 1.b.(4) and the hereinafter defined FSEIR (“Minimum Ballpark Event Parking Spaces”). The dedicated Minimum Ballpark Event Parking Spaces are all currently located on Parcel C. Owner shall satisfy such obligation by: (i) including on the undeveloped Site or as a part of the development of the Site all or any portion of the Minimum Ballpark Event Parking Spaces; and/or (ii) providing all or any portion of the Minimum Ballpark Event Parking Spaces in the parking garage owned by Metropolitan Transit System, which is located at the corner of Imperial Avenue and 11th Avenue, pursuant to that certain Lease Agreement for Parking Spaces – James R. Mills Building Parking Garage by and between the County of San Diego, San Diego Regional Building Authority, and Metropolitan Transit System, collectively as Lessors, and Padres L.P., as Lessee; and/or (iii) providing all or any portion of the Minimum Ballpark Event Parking Spaces in another location permitted by that certain Final Subsequent Environmental Impact Report to the Final Master EIR for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents for the proposed Ballpark and Ancillary Development Projects, and Associated Plan Amendments, dated September 13, 1999, and any Addenda thereto (collectively the “FSEIR”), and only to the extent such location is in full compliance with the overall requirement to provide 2,383 parking spaces for the Ballpark pursuant to the FSEIR. The parties agree that the James R. Mills Building Parking Garage is a location permitted by the FSEIR to provide the dedicated Minimum Ballpark Event Spaces.

- (b) If Owner decides to provide the dedicated Minimum Ballpark Event Parking Spaces at a location other than Parcel C, then Owner shall submit to the Agency for the Agency Executive Director's or designee's review and written approval all of the following: (i) a written notice which specifically identifies where each of the dedicated Minimum Ballpark Event Parking Spaces are provided as of the date of such notice; (ii) supporting documentation that such dedicated Minimum Ballpark Event Parking Spaces are provided in full compliance with this Section 1.b.(4) and the FSEIR; and (iii) any contractual agreement required to be submitted as described in subsection (d), below (collectively, the "Ballpark Event Parking Spaces Notice"). The Agency Executive Director or designee shall have the right to review and approve the Ballpark Event Parking Spaces Notice to determine whether the dedicated Minimum Ballpark Event Parking Spaces are being provided in full compliance with this Section 1.b.(4) (including, without limitation, compliance with subsections (a) and (d)) and the FSEIR, which approval shall not be unreasonably withheld, conditioned or delayed.
- (c) Before there may be a change in where the dedicated Minimum Ballpark Event Parking Spaces are provided from the location identified in the Ballpark Event Parking Spaces Notice approved by the Agency in accordance with subsection (b), above, such change must be in full compliance with this Section 1.b.(4) and the FSEIR and Owner must first submit, or cause to be submitted, to the Agency a new Ballpark Event Parking Spaces Notice for the Agency Executive Director's or designee's review and written approval in accordance with the procedure described in subsection (b), above.
- (d) If the dedicated Minimum Ballpark Event Parking Spaces will be provided (in whole or in part) through a contractual agreement (such as a lease, license, will-serve agreement, or other contractual right to use such spaces), then both of the following shall apply:
 - (i) Owner shall submit, or cause to be submitted, the proposed contractual agreement to the Agency as part of a Ballpark Event Parking Spaces Notice for the Agency Executive Director's or designee's review and written approval in accordance with the procedure described in subsection (b), above; and
 - (ii) Any approval by the Agency Executive Director or designee of any such contractual agreement shall only be effective so long as such contractual agreement remains in

full force and effect substantially in the form approved by the Agency Executive Director or designee. In the event the contractual agreement expires or is terminated in any way (in whole or in part) or is substantially modified or amended in any way (in whole or in part), Owner shall submit, or cause to be submitted, to the Agency a new Ballpark Event Parking Spaces Notice for the Agency Executive Director's or designee's review and written approval in accordance with the procedure described in subsection (b), above.

- (e) In addition to any Ballpark Event Parking Spaces Notices required to be submitted under subsections (b), (c), and (d) above, from time to time as may be reasonably requested by the Agency Executive Director or designee, Owner shall submit, or cause to be submitted, a current Ballpark Event Parking Spaces Notice to the Agency for the Agency Executive Director's or designee's review and written confirmation of compliance with this Section 1.b.(4).
- (f) Owner shall also submit to the Agency Executive Director or designee any other information or documentation reasonably requested by the Agency Executive Director or designee related to Owner's obligations under this Section 1.b.(4) (including, without limitation, current estoppel certificates for any contractual agreements approved pursuant to this Section 1.b.(4) duly executed by the parties thereto. Such estoppel certificates shall at a minimum certify that such contractual agreement is unmodified and in full force and effect (or, if modified, is in full force and effect, and stating the modifications) and whether any defaults exist under the contractual agreement on the part of any party thereto).
- (g) Such Minimum Ballpark Event Parking Spaces may be made available for other uses, provided that such users (or the owners of the Site (or, as applicable, owners of other property) or portions thereof who permit such other uses) enter into parking agreements or covenants with the Owner stating that such uses will not conflict with Ballpark events and the availability of such parking during Ballpark events.
- (h) Nothing herein is intended to or shall be deemed to nor shall grant any property rights in the James R. Mills Building Parking Garage or any parking spaces therein."

2. Counterparts. This First Amendment may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this First Amendment, which, with all attached signature pages, shall be deemed to be an original agreement.

3. AARP in Full Force and Effect. Except as otherwise expressly modified herein, the terms and conditions of the AARP shall remain unmodified and in full force and effect. From and after the effective date of this First Amendment, all references to the “Agreement to be Recorded Affecting Real Property [Parcels C & D]” shall mean the Agreement to be Recorded Affecting Real Property [Parcels C & D] as amended by this First Amendment.

4. Date of this First Amendment. The effective date of this First Amendment shall be the date this First Amendment is executed by the Agency.

[reminder of page left intentionally blank]

[signatures on following pages]

IN WITNESS WHEREOF, the Agency and the Owner have signed this First Amendment as of the date set forth above.

**REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO**

Date: _____

By: _____

Executive Director

APPROVED AS TO
FORM AND LEGALITY

JAN I. GOLDSMITH
AGENCY GENERAL COUNSEL

By: _____

Jana L. Garmo
Deputy General Counsel


[signatures continue on following page]

BALLPARK VILLAGE, LLC,
a Delaware limited liability company

By: JMIR-Ballpark Village LLC,
a Delaware limited liability company,

By: JMIR Project Manager, LLC,
a Delaware limited liability company

Date: 7/29/09

By: 
Name: JAMES A. CHATFIELD II
Its: VICE PRESIDENT

STATE OF CALIFORNIA

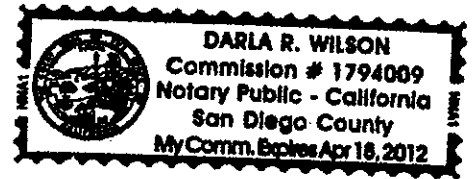
COUNTY OF San Diego

On July 29, 2009 before me, Darla R Wilson, a Notary Public, personally appeared James A Chatfield who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Darla R Wilson (Seal)



STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

(

LEGAL DESCRIPTION

The Site is that certain real property located in the City of San Diego, County of San Diego and State of California more specifically described as follows:

Lots 7, 8, 10, 12, and 13 through 16, inclusive, of Parcel Map No. 18855 filed on December 7, 2001 as File no. 2001-0900838 in the Official Records of the San Diego County Recorder.

NOTE: The legal description of the Site shall be revised in accordance with a lot line adjustment or amended parcel map, as required by the City of San Diego, to reflect the street vacations, dedications of rights of way and the purchase and sale of the Sales Parcel, all as shown on the Site Map, Attachment No. 1 to the OPA.

ATTACHMENT E

**ENVIRONMENTAL SECONDARY STUDY
FOR THE PROPOSED
BALLPARK VILLAGE
FIRST IMPLEMENTATION AGREEMENT (FIA)
TO THE OWNER PARTICIPATION AGREEMENT (OPA)**

JULY 2009

Prepared for: The Redevelopment Agency of
The City of San Diego
1200 Third Avenue, 14th Floor
San Diego, California 92101

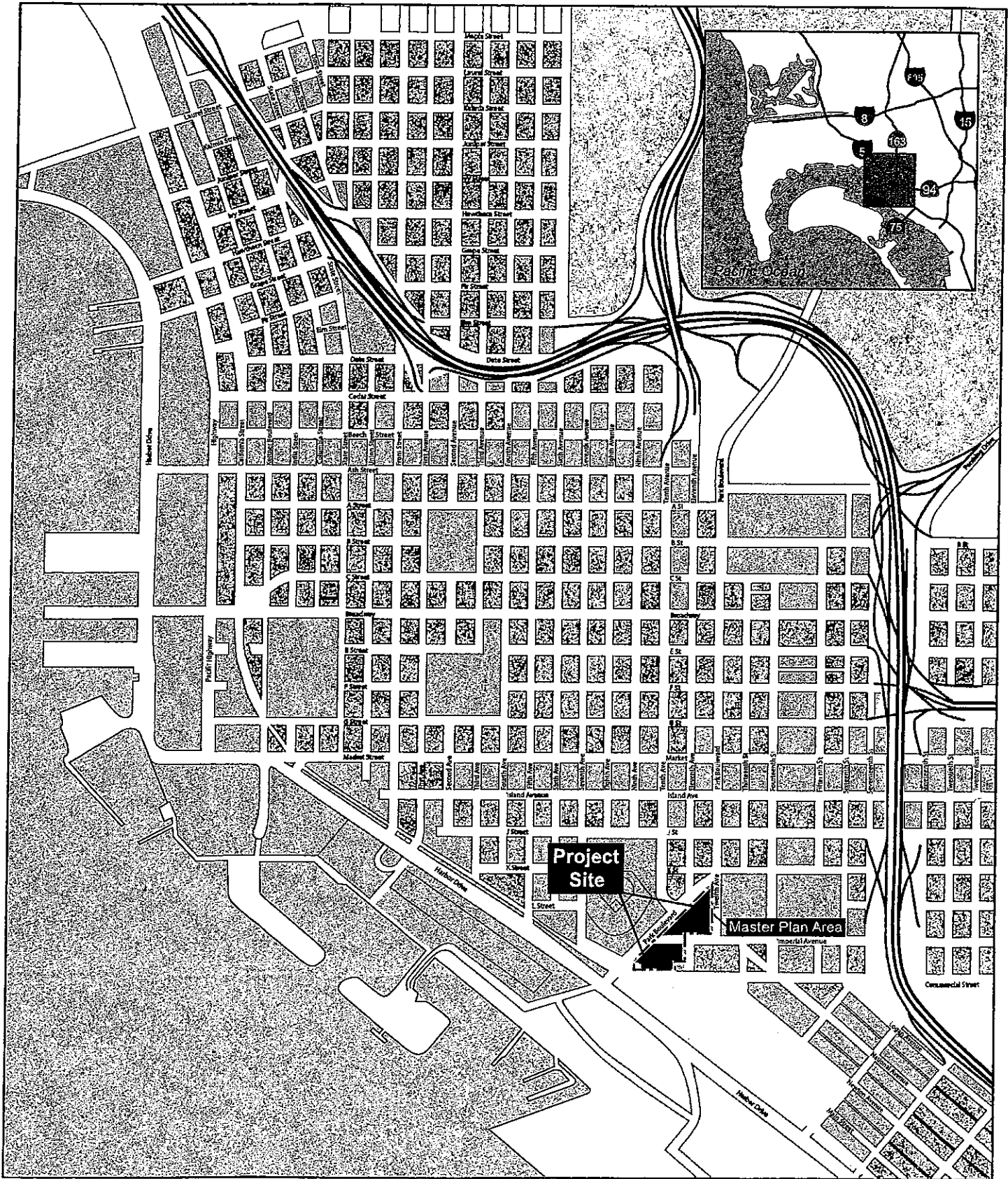
Preparation Administered by: Centre City Development Corporation
401 B Street, Suite 400
San Diego, California 92101

Prepared by: EDAW AECOM
1420 Kettner Boulevard, Suite 500
San Diego, California 92101

ENVIRONMENTAL SECONDARY STUDY

1. **PROJECT TITLE:** First Implementation Agreement (FIA) to the Owner Participation Agreement (OPA) between the Redevelopment Agency of the City of San Diego and Ballpark Village LLC.
2. **APPLICANT:** Centre City Development Corporation (CCDC), on behalf of the Redevelopment Agency of the City of San Diego (Agency).
3. **PROJECT LOCATION:** The Ballpark Village project site (project site) is located just east of Park Boulevard and PETCO Park (Ballpark). The project site is comprised of Parcels C and D (as referred to in the San Diego Ballpark Village Master Plan). Parcel C is bounded by Park Boulevard to the west, 12th Avenue and the trolley tracks to the east, and Imperial Avenue to the south. Parcel D is bounded by Park Boulevard to the west, Imperial Avenue to the north, 11th Avenue to the east, and the Trolley tracks/rail yard to the south. The project site is located in the Ballpark Mixed Use District of the Downtown Community Plan area and the East Village Redevelopment District of the Expansion Sub Area of the Centre City Redevelopment Project in Downtown San Diego (Figure 1). Centre City includes approximately 1,500 acres of the metropolitan core of San Diego, bounded by Interstate 5 on the north and east and San Diego Bay on the south and southwest. Centre City is located 15 miles north of the United States International Border with Mexico.
4. **PROJECT SETTING:** Located in the highly urbanized Centre City environment, the project site is currently occupied by two asphalt-paved at-grade parking lots (Parcels C and D). Existing land uses within the vicinity of the site include: PETCO Park, a professional baseball stadium to the west; the San Diego Convention Center to the southwest; the Hilton San Diego Bayfront Hotel and six-story parking structure to the south; the 10th Avenue Marine Terminal to the southeast; the 12th and Imperial Trolley Station and Metropolitan Transit System (MTS) office building and parking structure to the east; Tailgate Park to the north; and a 14-story condominium project to the northwest of Parcel C. The Harbor Drive Pedestrian Bridge is being constructed south of the project site. The northern terminus of the bridge is planned for an Agency-owned parcel adjacent to the southwest corner of the project area. The Harbor Drive Pedestrian Bridge is not a part of the proposed project and has undergone separate design and environmental reviews.

Applicable plans and policies governing the site include the Centre City Redevelopment Plan and the 11th amendment thereof, the San Diego Downtown Community Plan, the Centre City Planned District Ordinance, the Ballpark Village Owner Participation Agreement (OPA) including the Ballpark Village Master Plan, and the San Diego Municipal Code. The project site is not located within the coastal zone.



Source: EDAW 2007



Figure 1
Regional Location and Vicinity

The OPA and Ballpark Village Master Plan establish allowed land uses, minimum and maximum development intensities, parking requirements, building standards such as height, bulk, setbacks and stepbacks, site coverage, vehicular circulation requirements, and other development standards in the Ballpark Village Master Plan area. The Ballpark Village Master Plan permits the following variety of land uses: residential, commercial/professional, office, commercial retail, commercial services, visitor accommodations, and public and semi-public uses. Parking and accessory uses and structures are also allowed.

- 5. PROJECT DESCRIPTION:** This Environmental Secondary Study analyzes the potential environmental impacts associated with the approval of the proposed terms set forth in the First Implementation Agreement (FIA) to the OPA between the Redevelopment Agency of the City of San Diego (Agency) and Ballpark Village LLC (Participant). The proposed terms of the FIA are discussed in detail below. Approval of the proposed terms as presented in the FIA would result in changes to the existing OPA. It should be noted that the proposed terms of the FIA are not project specific, but rather would be applicable to any future development to occur on the project site (Parcels C and D). This Secondary Study provides applicable information about the project site and analyzes the potential environmental impacts associated with the approval of the proposed terms of the FIA. Upon approval, future proposed projects at this site would undergo extensive design review, entitlements, and environmental analysis in addition to this study.

Background

Development of the project site is governed by the OPA, entered into on January 13, 2006. The OPA includes the Ballpark Village Master Plan for two development sites on the north and south side of Imperial Avenue (Parcels C and D), just east of Park Boulevard and the Ballpark. The Ballpark Village Master Plan details development envelopes, design criteria and guidelines, vehicular/pedestrian circulation, and land uses for the development of the parcels. Assuming obligations under the OPA are met, the development entitlement of the two parcels is permitted to increase by 1.2 million square feet over and above the 6.5 Floor Area Ratio (FAR) otherwise permitted by the Centre City Planned District Ordinance (PDO). This represents an increase in development entitlement to 3.212 million square feet and could be accomplished and permitted through the transfer of excess developable floor area from the Ballpark site.

The Participant has requested changes to the OPA that would extend the permitted timeframe to transfer the excess Ballpark FAR and clarify permitted locations for dedicated Ballpark Event parking tied to the Ballpark Village site. The changes would make the Ballpark Village project more marketable as development-ready land and more attractive to capital markets in an effort to capture the first dollars available when markets recover from the current economic downturn. The terms proposed to be incorporated into the FIA are as follows:

1. Transfer of Excess Ballpark FAR (OPA Section 701): The OPA permits the transfer of excess development floor area from the Ballpark site into the Ballpark Village project. Pursuant to the OPA, the additional development entitlement to be transferred from the Ballpark site shall expire within five years of the date of the execution of the OPA (January 13, 2011) absent the issuance of Centre City Development Permits for the parcels. The Participant has requested that the date be extended by five years from 2011, making January 13, 2016 the new effective date by which the additional density will expire for the project site.
2. Ballpark Event Parking (OPA Section 704): The OPA obligates the Participant to be responsible for providing two hundred sixty-seven (267) parking spaces dedicated for Ballpark Event parking. Such spaces may be made available for other uses during times that no ballpark events have been scheduled. The OPA provides the ability for the Participant to

provide the spaces as part of the development of the Ballpark Village site (project site), or at a location other than the project site permitted by the “Final Subsequent Environmental Impact Report to the Final Master EIR for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents for the proposed Ballpark and Ancillary Development Projects, and Associated Plan Amendments,” dated September 13, 1999, and any Addenda (collectively the “FSEIR”), and only to the extent such location is in full compliance with the overall requirement to provide 2,383 parking spaces for the Ballpark pursuant to the FSEIR.

The Participant has requested, as part of the Implementation Agreement, additional language in the OPA to clarify the Participant’s flexibility in where the Ballpark Event parking would be located in order to allow the Participant to determine which option fits best with future development scenarios while ensuring that the dedicated spaces are provided. The options would include:

- a. On the undeveloped Site or as part of the development of the Site; and/or
- b. In the parking garage owned by Metropolitan Transit System (MTS), which is located at the corner of Imperial Avenue and 11th Avenue, pursuant to the “Lease Agreement for Parking Spaces – James R. Mills Building Parking Garage” by and between the San Diego Regional Building Authority, County of San Diego and MTS, collectively as lessors, and Padres L.P. as lessee; and/or
- c. In another location permitted by the FSEIR, and only to the extent such location is in full compliance with the overall requirement to provide 2,383 parking spaces for the Ballpark pursuant to the FSEIR.

Under any of the above options and as is currently noted in the OPA text, the minimum 267 Ballpark Event Parking Spaces may be made available for other uses, provided that such users (or the owners of the Site (or, as applicable, owners of other property) or portions thereof who permit such other uses) enter into parking agreements or covenants with the Participant stating that such uses will not conflict with Ballpark events and the availability of such parking during Ballpark events. The spaces would also be qualified as a “minimum” 267 spaces.

The aforementioned FIA terms are not project specific; they would be applicable to any proposed land use and future development on the project site. In addition, the Participant is requesting that the terms be approved through the proposed FIA and precede any specific development proposals for the project site.

- 6. California Environmental Quality Act (CEQA) COMPLIANCE:** The Centre City Redevelopment Project and related activities have been addressed by the following environmental documents, which were prepared prior to this Secondary Study and are hereby incorporated by reference:

Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Redevelopment Plan for the Centre City Project (State Clearinghouse Number 2003041001, certified by the Redevelopment Agency (Resolution No. R-04001) and the City Council (Resolution No. R-301265) on March 14, 2006.

Addendum to the FEIR for the 11th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project, Amendments to the San Diego Downtown Community Plan, Centre City Planned District Ordinance, Marina Planned District Ordinance, and Mitigation, Monitoring and Reporting Program of the FEIR for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and the Redevelopment Plan for the Centre City Redevelopment Project certified by the Redevelopment Agency by Resolution R-04193 and by the City Council by R-302932 on July 31, 2007.

Final Subsequent Environmental Impact Report to the Final Master Environmental Impact Report for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents for the proposed Ballpark and Ancillary Development Projects, and Associated Plan Amendments dated September 13, 1999.

Final Addendum to the Final Subsequent Environmental Impact Report to the Final Master Environmental Impact Report for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents for the proposed Ballpark and Ancillary Development Projects, and Associated Plan Amendments dated August 8, 2005.

The FEIR is a "Program EIR" as described in Section 15168 of the State CEQA Guidelines. The aforementioned environmental documents are the most recent and comprehensive environmental documents pertaining to the proposed project. These environmental documents are available for review at the office of the Centre City Development Corporation, 401 B Street, Suite 400, San Diego, California 92101.

This Secondary Study has been prepared in compliance with the San Diego Redevelopment Agency's amended "Procedures for Implementation of CEQA and the State CEQA Guidelines" (adopted July 17, 1990). Under these Agency Guidelines, environmental review for subsequent specific development projects is accomplished using the Secondary Study process defined in the Agency Guidelines, as allowed by Sections 15168 and 15180 of the State CEQA Guidelines. The Secondary Study includes the same evaluation criteria as the Initial Study defined in Section 15063 of the State CEQA Guidelines. Under this process, the Secondary Study is prepared for each subsequent specific development project to determine whether the potential impacts were anticipated in the FEIR. No additional documentation is required for subsequent specific development projects if the Secondary Study determines that the potential impacts have been adequately addressed in the FEIR and subsequent specific development projects implement appropriate mitigation measures identified in the Mitigation, Monitoring, and Reporting Program (MMRP) that accompanies the FEIR.

If the Secondary Study identifies new impacts or a substantial change in circumstances, additional environmental documentation is required. The form of this documentation depends upon the nature of the impacts of the subsequent specific development project being proposed. Should a proposed project result in: (a) new or substantially more severe significant impacts that are not adequately addressed in the FEIR, or (b) there is a substantial change in circumstances that would require major revision to the FEIR, or (c) that any mitigation measures or alternatives previously found not to be feasible or not previously considered would substantially reduce or lessen any significant effects of the project on the environment, a Subsequent or Supplement to the EIR would be prepared in accordance with Sections 15162 or 15163 of the State CEQA Guidelines (CEQA Statutes Section 21166). If the lead agency under CEQA finds pursuant to Sections 15162 and 15163, no new significant impacts will occur or no new mitigation will be required, the lead agency can approve the subsequent specific development project, as being within the scope of the project covered by the FEIR, and no new environmental document is required.

7. **PROJECT-SPECIFIC ENVIRONMENTAL ANALYSIS:** See attached Environmental Checklist and *Section 10 Evaluation of Environmental Impacts*.

- 8. MITIGATION, MONITORING, AND REPORTING PROGRAM:** Any specific projects associated with implementation of the FIA will be subject to future environmental review and mitigation, as appropriate, pursuant to CEQA at the time a specific project is proposed. Mitigation may include, but is not necessarily limited to, the mitigation measures included in the Mitigation, Monitoring, and Reporting Program (MMRP) found in Volume 1B of the FEIR.

Some of the mitigation measures found in Volume 1B of the FEIR are planwide and implemented on an ongoing basis regardless of whether the proposed project is enacted. Other measures are to be specifically implemented by development projects as they come forward. No specific impacts of the proposed project have been identified requiring mitigation. Because of this, no project-specific mitigation monitoring table is currently identified for the proposed project.

- 9. DETERMINATION:** In accordance with Sections 15168 and 15180 of the CEQA Guidelines, the potential impacts associated with future development within the Centre City Redevelopment Project are addressed in the FEIR prepared for the San Diego Downtown Community Plan, Centre City Planned District Ordinance and Tenth Amendment to the Redevelopment Plan for the Centre City Redevelopment Project, which was certified on March 14, 2006 and the Addendum to the FEIR certified by the Redevelopment Agency by Resolution R-04193 and by the City Council by R-302932 on July 31, 2007.

These previous documents address the potential effects of future development within the Centre City Redevelopment Project based on buildout forecasts projected from the land use designations, density bonus, and other policies and regulations governing development intensity and density. Based on this analysis, the FEIR and Addendum concluded that future development would result in significant impacts related to the following issues (mitigation and type of impact shown in parentheses):

Significant but Mitigated Impacts

- Air Quality: Construction Emissions (AQ-B.1) (Direct (D))
- Land Use: Ballpark Noise (LU-B.1) (D)
- Land Use: Ballpark Lighting (LU-B.5) (D)
- Noise: Interior From Traffic Noise (NOI-B.1) (D)
- Noise: Interior From Ballpark Noise (NOI-B.2) (D)
- Paleontology: Impacts to Significant Paleontological Resources (PAL-A.1) (D)

Significant and Not Mitigated Impacts

- Aesthetics/Visual Quality: Views Of Bay And Bay Bridge (VIS-B.1) (D)
- Air Quality: Construction Emissions (AQ-B.1) (Cumulative (C))
- Air Quality: Mobile-source Emissions (C)
- Historical Resources: Historical (D/C)
- Historical Resources: Archaeological (D/C)
- Land Use: Traffic Noise (LU-B.2) (D)
- Land Use: Aircraft Noise (LU-B.3) (D)
- Land Use: Railroad Noise (LU-B.4) (D)
- Land Use: Physical Changes Related to Transient Activity (LU-B.6) (D/C)
- Noise: Traffic Noise Level Increase on Grid Streets (NOI-A.1) (D/C)
- Noise: Exterior Traffic Noise in Residential Development (NOI-C.1) (D)
- Noise: Exterior Aircraft Noise in Residential Development (NOI-C.2) (D)
- Noise: Exterior Traffic Noise in Public Parks and Plazas (NOI-D.1) (D)
- Noise: Exterior Aircraft Noise in Public Parks and Plazas (NOI-D.2) (D)
- Parking: Excessive Parking Demand (TRF-D.1) (D/C)
- Traffic: Impact on Grid Streets (TRF-A.1.1) (D)

- Traffic: Impact on Surrounding Streets (TRF-A.1.2) (D/C)
- Traffic: Impact on Freeway Ramps and Segments (TRF-A.2.1) (D/C)
- Traffic: Impact from Removal of Cedar Street Ramp (TRF-A.2.2) (D)
- Water Quality: Urban Runoff (WQ-A.1) (C)

In certifying the FEIR and approving the Downtown Community Plan, Planned District Ordinance, and 10th Amendment to the Redevelopment Plan, the San Diego City Council and Redevelopment Agency adopted a Statement of Overriding Considerations, which determined that the unmitigated impacts were acceptable in light of economic, legal, social, technological, or other factors including the following:

Overriding Considerations

- Develop downtown as the primary urban center for the region.
- Maximize employment opportunities within the downtown area.
- Develop full-service, walkable neighborhoods linked to the assets downtown offers.
- Increase and improve park and public spaces.
- Maximize the advantages of downtown's climate and waterfront setting.
- Implement a coordinated, efficient system of vehicular, transit, bicycle and pedestrian traffic.
- Integrate historical resources into the new downtown plan.
- Facilitate and improve the development of business and economic opportunities located in the downtown area.
- Integrate health and human services into neighborhoods within downtown.
- Encourage a regular process of review to ensure the Plan and related activities are best meeting the vision and goals of the Plan.

The proposed activity analyzed within this Secondary Study is covered under the FEIR for the San Diego Downtown Community Plan, Centre City Planned District Ordinance 1992, and 10th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project, which was certified by the Redevelopment Agency by Resolution R-04001 and by the City Council by Resolution R-301265 on March 14, 2006, and the Addendum to the FEIR for the 11th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project, Amendments to the San Diego Downtown Community Plan, Centre City Planned District Ordinance, Marina Planned District Ordinance, and MMRP of the FEIR for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and the 10th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project certified by the Redevelopment Agency by Resolution R-04193 and by the City Council by R-302932 on July 31, 2007, the Final Subsequent Environmental Impact Report to the Final Master Environmental Impact Report (FSEIR) for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents for the proposed Ballpark and Ancillary Development Projects, and Associated Plan Amendments dated September 13, 1999, and the Final Addendum to the Final Subsequent Environmental Impact Report to the Final Master Environmental Impact Report (Addendum to the FSEIR) for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents for the proposed Ballpark and Ancillary Development Projects, and Associated Plan Amendments dated August 8, 2005.


This activity is adequately addressed in the environmental documents noted above and the Secondary Study prepared for this project reveals there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental documents adequately covered this activity as part of the previously approved project, this activity is not a separate project for purposes of review under the CEQA pursuant to CEQA Guidelines Sections 15060(c)(3), 15180, and 15378(c).

SUMMARY OF FINDINGS: In accordance with Public Resources Code sections 21166, 21083.3, and CEQA Guidelines sections 15162(a), 15168 and 15183, the following findings are derived from the environmental review documented by this Secondary Study and the 1999 FSEIR, 2005 Addendum to

the FSEIR, 2006 FEIR, and the 2007 Addendum to the FEIR.

1. No substantial changes are proposed in the Centre City Redevelopment Project, or with respect to the circumstances under which the Centre City Redevelopment Project is to be undertaken as a result of the development of the proposed project, which will require important or major revisions in the 1999 FSEIR, 2005 Addendum to the FSEIR, 2006 FEIR, and the 2007 Addendum to the FEIR for the Centre City Redevelopment Project;
2. No new information of substantial importance to the Centre City Redevelopment Project has become available, which was not known or could not have been known at the time the 2006 FEIR for the Centre City Redevelopment Project was certified as complete, and which shows that the Centre City Redevelopment Project will have any significant effects not discussed previously in the 1999 FSEIR, 2005 Addendum to the FSEIR, 2006 FEIR, and the 2007 Addendum to the FEIR, or that any significant effects previously examined will be substantially more severe than shown in 1999 FSEIR, 2005 Addendum to the FSEIR, 2006 FEIR, and the 2007 Addendum to the FEIR, or that any mitigation measures or alternatives previously found not to be feasible or not previously considered would substantially reduce or lessen any significant effects of the project on the environment;
3. No Negative Declaration, Subsequent EIR, or Supplement or Addendum to the 2006 FEIR is necessary or required; and
4. The development of the site will have no significant effect on the environment, except as identified and considered in the 1999 FSEIR, 2005 Addendum to the FSEIR, 2006 FEIR, and the 2007 Addendum to the FEIR to the FEIR for the Centre City Redevelopment Project. No new or additional project-specific mitigation measures are required for this project.
5. The proposed project and its associated activities would not have any new effects that were not adequately covered in the 1999 FSEIR, 2005 Addendum to the FSEIR, 2006 FEIR, and the 2007 Addendum to the FEIR, and therefore, the proposed project is within the scope of the program approved under 1999 FSEIR, 2005 Addendum to the FSEIR, 2006 FEIR, and the 2007 Addendum to the FEIR.

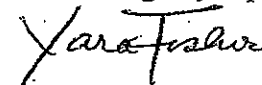
The CCDC, the implementing body for the Redevelopment Agency of the City of San Diego, administered the preparation of this Secondary Study.



Signature of Lead Agency Representative

7/15/09

Date



Signature of Preparer

July 15, 2009

Date

ENVIRONMENTAL CHECKLIST

10. EVALUATION OF ENVIRONMENTAL IMPACTS

This environmental checklist evaluates the potential environmental effects of the proposed project consistent with the significance thresholds and analysis methods contained in the FEIR for the San Diego Downtown Community Plan, Centre City PDO, and Redevelopment Plan for the Centre City Project Area. Based on the assumption that the proposed activity is adequately addressed in the FEIR, the Addendum to the FEIR, the FSEIR, and the Addendum to the FSEIR, the environmental checklist table indicates how the impacts of the proposed activity relate to the conclusions of the FEIR and the Addendum to the FEIR. As a result, the impacts are classified into one of the following categories:

- Significant and Not Mitigated (SNM)
- Significant but Mitigated (SM)
- Not Significant (NS)

The checklist identifies each potential environmental effect and provides information supporting the conclusion drawn as to the degree of impact associated with the proposed project. As described in the Project Description, approval of the FIA to the OPA between the Redevelopment Agency and Ballpark Village LLC would extend the time period of the excess Ballpark FAR density transfer and provide clarification language for where dedicated Ballpark Event parking of a minimum 267 spaces could be provided. These two components of the FIA are within the time period covered by the 2006 FEIR and the development capacity assumed for downtown and the project site. Therefore, no impacts beyond those which were analyzed in the 2006 FEIR are expected to occur. Although the time extension and parking language are expected to facilitate future development of the site, no specific development project is proposed at this time.

The checklist summarizes the potential impacts of approving the FIA for the Ballpark Village OPA. However, because the approval of the FIA for the Ballpark Village OPA does not coincide with a specific project or identify the timing of projects that may be implemented, future environmental review of specific projects with the potential for physical impacts will be required pursuant to the California Environmental Quality Act (CEQA) at the time when they are proposed.

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
1. AESTHETICS/VISUAL QUALITY:						
<p>(a) Substantially disturb a scenic resource, vista, or view from a public viewing area, including a State scenic highway or view corridor designated by the Community Plan? No designated scenic resources exist within the downtown planning area, although the northern downtown planning area includes an approximately quarter-mile-long portion of the segment of State Route 163 from Ash Street to Interstate 8, which is eligible for designation as a California Scenic Highway. This segment of State Route 163 begins at Ash Street approximately 1 mile north of the project site. It is not anticipated that future development at the project site would disturb this California Scenic Highway eligible highway.</p> <p>The project site is located at the ends of Tenth Avenue, Eleventh Avenue, Twelfth Avenue, K Street, L Street, and Imperial Avenue and adjacent to Park Boulevard next to the southeast side of Petco Park. The Downtown Community Plan does not identify Tenth Avenue, Eleventh Avenue, K Street, L Street, or Imperial Avenue as view corridors and buildings are not required to have setbacks. However, Park Boulevard is designated as a view corridor. In accordance with the PDO, buildings facing the Park Boulevard view corridor would be required to provide a 10 foot setback from the property line at a height of 60 feet and an additional 30 foot setback at a height of 90 feet. However, the Ballpark Village Master Plan development standards were adopted for the project site prior to adoption of the Downtown Community Plan and PDO requirements for setbacks from Park Boulevard. Thus, developments at the project site are not required to provide these setbacks. Since the Ballpark Village Master Plan was adopted at the time of Downtown Community Plan Final</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>Environmental Impact Report (FEIR) certification, the development standards thereof were considered and accounted for in the analysis of impacts to the Park Boulevard view corridor.</p> <p>Public viewing areas within and around downtown as well as along view corridors within the planning area affords views of scenic resources such as San Diego Bay, San Diego-Coronado Bay Bridge, Point Loma, Coronado and the downtown skyline. The project site is located between scenic views of San Diego Bay and the San Diego-Coronado Bay Bridge from Balboa Park and Highway 94. Views of San Diego Bay and the San Diego Bay-Coronado Bay Bridge are generally to the south of Balboa Park and southwest of Highway 94. The FEIR concludes that since low-rise buildings currently dominate the East Village Redevelopment District, any new high-rise development would result in the obstruction of public views of San Diego Bay and the Coronado Bridge from both Balboa Park and State Route 94. The FEIR states that the only way to avoid or reduce the obstruction of scenic views from Balboa Park and State Route 94 would be to greatly restrict high-rise development in the intervening areas in the East Village Redevelopment District. However, the FEIR concludes that such action would require a major modification of the land use program contemplated in the FEIR, conflict with the overall goal of reinforcing the Downtown as an urban node, and would not constitute feasible mitigation under CEQA. The FEIR concludes that this impact would be cumulatively significant and not mitigated.</p> <p>Although no specific development project is proposed at this time, approval of the FIA to the OPA would facilitate development on the project site in the future. However, this type of development would be within the scope of development assumed in the Downtown</p>						

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>Community Plan, specifically the Ballpark Village area, and analyzed in the FEIR.</p> <p>The proposed project would not result in any direct physical changes to the project site or allow substantially different types or intensity of development on the project site other than those assumed in the FEIR. In addition, since no specific development project with the potential for physical impacts related to visual resources is proposed at this time, no specific impacts can be determined. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur from the proposed project would be speculative and no further analysis of their impacts is required. However, any future development project would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, no significant direct or cumulative impacts associated with this issue area have been identified.</p>						
<p>(b) Substantially incompatible with the bulk, scale, color and/or design of surrounding development? The project site is located in a developed area of downtown already exhibiting major facilities such as Petco Park and the San Diego Convention Center. The FEIR concludes that implementation of the Downtown Community Plan would not significantly impact the neighborhood character of the Ballpark sub-district of the East Village Redevelopment District. The OPA and Ballpark Village Master Plan regulates the bulk, scale, and design of development on the project site by establishing building setbacks, building coverage maximums, maximum bulk envelopes and other design requirements therefore resulting in development patterns consistent with those currently occurring in the Sports/Entertainment</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>District. In addition, all streets would receive special streetscape treatment and would conform to the streetscape and landscape standards contained in the Centre City Streetscape Manual. Additionally, the urban design standards contained in the PDO would ensure compatible building scales and styles be incorporated into future development allowed pursuant to project approval.</p> <p>Approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents. Therefore, there are no additional potential direct or cumulative impacts related to this issue.</p>						
<p>(c) Substantially affect daytime or nighttime views in the area due to lighting? All future development at the project site would be required to comply with the regulations set forth in the FEIR and the PDO. The PDO requires a Light, Glare, and Shadow study for any building over 75 feet in height in the Ballpark Mixed-Use District. In addition, outdoor lighting associated with development at the project site would be shielded or directed away so that direct light or glare does not adversely impact adjacent land uses. The City's Light Pollution Law (Municipal Code Section 101.1300 et seq.) also protects nighttime views (e.g., astronomical activities) and light-sensitive land uses from excessive light generated by development in the downtown area.</p> <p>As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents. Therefore, there are no additional potential direct or</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
cumulative impacts related to this issue.						
2. AGRICULTURAL RESOURCES						
(a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland) to non-agricultural use? Centre City is an urban downtown environment that does not contain land designated as prime agricultural soils by the Soils Conservation Service, nor does it contain prime farmlands designated by the California Department of Conservation. Therefore, no direct or cumulative significant impact to agricultural resources would occur.					X	X
(b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? The downtown area does not contain, nor is it near, land zoned for agricultural use or land subject to a Williamson Act contract pursuant to Section 51201 of the California Government Code. Therefore, significant direct or cumulative impacts to land zoned for agricultural use or land subject to a Williamson Act contract lands would not occur.					X	X
3. AIR QUALITY						
(a) Conflict with or obstruct implementation of an applicable air quality plan, including the County's Regional Air Quality Strategies or the State Implementation Plan? The project site is located within the San Diego Air Basin, which is under the jurisdiction of the San Diego Air Pollution Control District (SDAPCD). The San Diego Air Basin is designated by state and federal air quality standards as nonattainment for ozone and particulate matter (PM) less than 10 microns (PM ₁₀) and less than 2.5 microns (PM _{2.5}) in equivalent diameter. The SDAPCD has developed a Regional Air Quality Strategy (RAQS) to attain the state air quality standards for ozone. According to the FEIR, development					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>pursuant to the Downtown Community Plan would not conflict with regional air quality planning, and would be consistent with the RAQS.</p> <p>As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents. Therefore, there are no additional potential direct or cumulative impacts related to this issue.</p>						
<p>(b) Expose sensitive receptors to substantial air contaminants including, but not limited to, criteria pollutants, smoke, soot, grime, toxic fumes and substances, particulate matter, or any other emissions that may endanger human health? The FEIR indicates that construction activities could result in a potentially significant impact from exposing sensitive receptors to substantial emissions of particulate matter. The FEIR also finds that the long-term operation of development within the downtown planning area, including the project site, could involve the exposure of sensitive receptors to air contaminants including toxic air contaminants (TACs) and substantial concentrations of carbon monoxide (CO) (commonly referred to as CO "hot spots") due to potential traffic congestion near the project site with cumulative development. However, the FEIR concludes that development within the downtown area would not expose sensitive receptors to significant levels of any of the air contaminants discussed above.</p> <p>As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
permitted by the OPA and covered by previously approved environmental documents. Therefore, there are no additional potential direct or cumulative impacts related to this issue.						
(c) Generate substantial air contaminants including, but not limited to, criteria pollutants, smoke, soot, grime, toxic fumes and substances, PM, or any other emissions that may endanger human health? The FEIR concludes that construction activities associated with future development would cause the creation of dust and the generation of construction equipment emissions that, when considered together, result in a potentially significant impact. As summarized in the project description, the proposed project would not result in any direct physical changes to the project site or allow substantially different types or intensity of development on the project site other than those assumed in the FEIR. Since no specific development project with the potential for cumulatively significant impacts related to construction and mobile-source emission is proposed at this time, no specific impacts can be determined. As no specific project with the potential for physical impacts is proposed at this time, no specific impacts can be determined Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the downtown planning area which may occur from the proposed project would be speculative and no further analysis of their impacts is required. However, future development at the project site would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. No significant direct or cumulative impact associated with this issue area has been identified.					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
4. BIOLOGICAL RESOURCES						
(a) Substantially effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive or special status species in local or regional plans, policies, or regulations, or by local, state, or federal agencies? Due to the highly urbanized nature of the downtown area, there are no sensitive plant or animal species, habitats, or wildlife migration corridors within the area. In addition, the ornamental trees and landscaping included in the proposed project are considered of insignificant value to native wildlife in their proposed location. Therefore, no significant direct or cumulative impact associated with this issue is anticipated to occur.					X	X
(b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations by local, state, or federal agencies? As identified in the FEIR, the project site is not within a subregion of the San Diego County Multiple Species Conservation Program. The proposed project would comply with any applicable local, regional, state, and federal plans, policies and regulations protecting riparian habitat or other sensitive natural communities and species. Therefore, significant direct or cumulative impacts associated with substantial adverse effects on riparian habitat or other sensitive natural communities identified in local or regional plans, policies, and regulations by local, state, or federal agencies would not occur.					X	X
5. HISTORICAL RESOURCES						
(a) Substantially impact a significant historical resource, as defined in § 15064.5? The proposed project site does not include any structures and is currently used as a paved surface parking lot. Furthermore, according to the conclusions in the					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>FEIR, the project site does not include any designated architectural resources.</p> <p>As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents. Additionally, the proposed project would not result in any direct physical changes to the project site or allow development that would impact sensitive historical resources. Therefore, no significant direct or cumulative impact associated with this issue area has been identified.</p>						
<p>(b) Substantially impact a significant archaeological resource pursuant to § 15064.5, including the disturbance of human remains interred outside of formal cemeteries? The likelihood of encountering archaeological resources is greatest for projects that include grading and/or excavation of areas on which past grading and/or excavation activities have been minimal (e.g., vacant sites and surface parking lots). Since archaeological resources have been found within inches of the ground surface in the downtown planning area, even minimal grading activities can impact these resources. In addition, the likelihood of encountering subsurface human remains during construction and excavation activities, although considered low, is possible. Thus, according to the analysis in the FEIR, the excavation, demolition, and surface clearance activities associated with development at the project site could have potentially significant adverse impacts to archaeological resources, including buried human remains.</p> <p>The proposed project would not result in any direct physical changes to the project site or allow substantially different types or intensity of development on the project site other than those</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>assumed in the FEIR. Since no specific development project with the potential for physical impacts related to archaeological resources is proposed at this time, no specific impacts can be determined. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur from the proposed project would be speculative and no further analysis of their impacts is required. However, any future development project would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, no significant direct or cumulative impacts associated with this issue area have been identified.</p>						
<p>(c) Substantially impact a unique paleontological resource or site or unique geologic feature? The proposed project site is underlain by the San Diego Formation and Bay Point Formation, which have high paleontological resource potentials. The FEIR concludes that development would have potentially significant impacts to paleontological resources if grading and/or excavation activities are conducted beyond a depth of 1-3 feet.</p> <p>However, the proposed project would not include any direct physical changes to the project site or allow substantially different types or intensity of development on the project site other than those assumed in the FEIR. In addition, since no specific projects with the potential for physical impacts related to paleontological resources are proposed at this time, no specific impacts can be determined. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur from the proposed project would be speculative and no further analysis of their impacts is required.</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
However, any future development project would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, no significant direct or cumulative impacts associated with this issue area have been identified.						
6. GEOLOGY AND SOILS						
<p>(a) Substantial health and safety risk associated with seismic or geologic hazards? The Downtown Planning Area, including the project site, is located in a seismically active region. The Rose Canyon fault zone, Downtown Graben, and the San Diego Fault traverse the Downtown Planning Area. According to the FEIR, a seismic event on these faults could cause significant seismic groundshaking within the downtown area.</p> <p>Although no specific development project is proposed at this time, approval of the FIA to the OPA would facilitate development on the project site in the future. However, the proposed project does not include any physical changes to the project site that could result in a substantial health and safety risks associated with a seismic hazard. Although the potential for geologic hazards (landslides, liquefaction, slope failure, and seismically-induced settlement) is considered low due to the moderate to non-expansive geologic structure that underlies the planning area, such hazards could nevertheless occur. Conformance with, and implementation of, all seismic-safety development requirements, including the Alquist-Priolo Zone Act, the seismic design requirements of the Uniform Building Code (UBC), the City of San Diego Notification of Geologic Hazard procedures, and all other applicable requirements would ensure that the potential direct and cumulative impacts associated with seismic and geologic hazards are</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
not significant, consistent with the analysis of the FEIR.						
7. HAZARDS AND HAZARDOUS MATERIALS						
<p>(a) Substantial health and safety risk related to on-site hazardous materials? As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents.</p> <p>Although approval of the FIA is expected to facilitate future development of the site, no specific development project is proposed at this time. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur from the proposed project would be speculative and no further analysis of their impacts is required. However, future implementation of any proposed development project would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, the proposed project would not result in any direct physical changes to the project site or allow development that would result in impacts related to on-site hazardous materials. No significant direct or cumulative impacts associated with this issue area have been identified.</p>					X	X
<p>(b) Be located on or within 2,000 feet of a site that is included on a list of hazardous materials sites compiled pursuant to Government Code § 65962.5 and, as a result, would it create a significant hazard to the public or the environment? In accordance with analysis in the</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>Final Subsequent Environmental Impact Report (FSEIR) for the Ballpark Village Master Plan, the project site is not located on the State of California Hazardous Waste and Substances Sites (Cortese) List and is not located on or within 2,000 feet of a site on the State of California Hazardous Waste and Substances Sites List. Additionally, the County of San Diego maintains a Site Assessment Mitigation (SAM) Case Listing of known contaminated sites throughout the County. The FEIR concludes that potentially significant impacts to human health and the environment would be avoided through compliance with existing mandatory federal, state, and local regulations designed to protect the public from the adverse effects of hazardous materials sites. Furthermore, the proposed project would not include any direct physical changes to the project site or allow substantially different types or intensity of development on the project site that would result in the creation of new hazardous material sites. Therefore, direct and cumulative impacts related to this issue are not significant.</p>						
<p>(c) Substantial safety risk to operations at San Diego International Airport? The entire Downtown Planning Area is located within the Airport Influence Area of the Airport Land Use Compatibility Plan for San Diego International Airport. The FEIR prepared for the planning area identifies policies that regulate development within areas affected by Lindbergh Field including building heights, use and intensity limitations, and noise sensitive uses.</p> <p>As discussed in the project description, the proposed project would not include any direct physical changes to the project site or allow substantially different types or intensity of development on the project site that could present a safety risk to operations at the San Diego International Airport. In addition, since no specific projects with the potential for physical</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
impacts related to airport hazards are proposed at this time, no specific impacts can be determined. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur from the proposed project would be speculative and no further analysis of their impacts is required. However, any future development project would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, no significant direct or cumulative impacts associated with this issue area have been identified.						
<p>(d) Substantially impair implementation of an adopted emergency response plan or emergency evacuation plan? The FEIR concludes that development that occurs in accordance with the Downtown Community Plan would not adversely affect implementation of the City of San Diego's Emergency Operations Plan.</p> <p>As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents. Therefore, there are no additional potential direct or cumulative impacts related to this issue.</p>					X	X
8. HYDROLOGY AND WATER QUALITY						
<p>(a) Substantially degrade groundwater or surface water quality? According to the FEIR, adherence to existing State and local water quality controls would ensure that the urban runoff generated by new development within the Downtown Community Plan area would not degrade groundwater or surface water quality; Best Management Practices (BMPs) required as</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>part of the local Storm Water Pollution Prevention Plan (SWPPP) would reduce short-term water quality impacts during construction activities whereas BMPs required by the local Standard Urban Stormwater Mitigation Program (SUSMP) and Stormwater Standards would reduce the long-term impacts of development allowed by the revised documents. Furthermore, Waste Discharge Permits required for groundwater discharge during construction would ensure that impacts to groundwater quality are not significant. Since the proposed project does not include components that would in any way violate or impede adherence to the above-mentioned water quality controls, direct impacts to groundwater and surface water quality would not be significant.</p> <p>The FEIR concluded that the water quality of San Diego Bay is already impacted, and the addition of any pollutants in urban runoff discharged to the Bay would result in a cumulatively significant impact. However, as summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents.</p> <p>Additionally, the proposed project would not include any direct physical changes to the project site or allow substantially different types or intensity of development on the project site that would contribute to the degradation of groundwater or surface water quality. Since no specific project with the potential for physical impacts is proposed at this time, no specific impacts can be determined. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur</p>						

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>from the proposed project would be speculative and no further analysis of their impacts is required. However, any future development project would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, no significant direct or cumulative impacts associated with this issue area have been identified.</p>						
<p>(b) Substantially increase impervious surfaces and associated runoff flow rates or volumes? The FEIR concludes that development under the Downtown Community Plan would not substantially increase impervious surfaces and associated runoff flow rates or volumes. As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents.</p> <p>Additionally, the proposed project would not include any direct physical changes to the project site that would substantially increase impervious surfaces beyond the level assumed by the FEIR, impacts associated with increased runoff flow water or volumes would not be directly or cumulatively significant, consistent with the analysis of the FEIR. Impacts associated with the quality of urban runoff are analyzed in Section 8(a)</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>(c) Substantially impede or redirect flows within a 100-year flood hazard area? The project site, and the Downtown Planning Area as a whole, is not located within a 100-year floodplain. Similarly, the proposed project would not result in direct physical changes to the site and would not affect off-site flood hazard areas, as no 100-year floodplains are located downstream. Therefore, direct or cumulative impacts associated with these issues are not significant.</p>					X	X
<p>(d) Substantially increase erosion and sedimentation? However, the FEIR concludes that the hydrology of the Downtown Planning Area would not be substantially altered over the long-term by implementation of the proposed project as the planning area would maintain a similar quantity of impervious surfaces as currently exists. However, the FEIR indicates that the potential for erosion and sedimentation could increase during any short-term site preparation, excavation and other construction activities and concludes that the mandatory preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP) would ensure that short-term impacts associated with erosion and sedimentation are not significant.</p> <p>As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents. Additionally, the proposed project would not include any direct physical changes to the project site or allow substantially different types or intensity of development on the project that would increase erosion and sedimentation onsite, direct or cumulative impacts associated with this issue are not significant.</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
9. LAND USE AND PLANNING						
<p>(a) Physically divide an established community? The FEIR concludes that buildout of the Downtown Community Plan would avoid dividing established communities within the Downtown Planning Area and surrounding areas, including the Ballpark Village Master Plan area. As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents. Although approval of the FIA is expected to facilitate future development of the site, no specific development project is proposed at this time. Because of that, no significant direct or cumulative impacts associated with physically dividing an established community have been identified.</p>					X	X
<p>(b) Substantially conflict with the City's General Plan and Progress Guide, Downtown Community Plan, Centre City PDO or other applicable land use plan, policy, or regulation? The proposed project would not allow for an increase in density or intensity of development, or allow substantially different types or intensity of development on the project site other than those assumed in the Downtown Community Plan and the FEIR. The proposed project is consistent in land use and intensity with the Centre City Redevelopment Plan, Community Plan, and PDO. In addition, the existing Ballpark OPA permits the transfer of excess development floor area (1.2 million GSF) from the Ballpark site to the Ballpark Village project site. As discussed in the project description, this transfer of excess development floor area shall expire within five years of the date of execution of the OPA (January 13, 2011) absent the issuance of Centre</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
City Development Permits for the project site. Approval of the proposed project would grant an extension of this time period for an additional five years, making January 13, 2016 the new effective date for the transfer of excess development floor area. This timeline extension would not change the limits of development allowed on the project site and would still be consistent with the Downtown Community Plan and the associated FEIR. Therefore, no significant direct or cumulative impacts would be associated with this issue.						
(c) Substantial incompatibility with surrounding land uses? According to the FEIR sources of land use incompatibility include lighting, shading, industrial activities, and noise. As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents. Although approval of the FIA is expected to facilitate future development of the site, no specific development project is proposed at this time. Therefore, there are no additional potential direct or cumulative impacts related to this issue. Potential incompatibility impacts caused by traffic, aircraft, and railroad noise are discussed in Sections 11.b, and 11c. No other impacts related to land use incompatibility would occur. Therefore, this issue area is not directly or cumulatively significant.					X	X
(d) Substantially impact surrounding communities due to sanitation and litter problems generated by transients displaced by downtown development? The FEIR concludes that the impacts from the migration of displaced transient populations are considered significant and unavoidable. As summarized in the project description, approval of the FIA, including the					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents.</p> <p>Additionally, the proposed project would not include any direct physical changes to the project site. Since no specific project with the potential for physical impacts related to sanitation and litter problems generated by displaced transients is proposed at this time, no specific impacts can be determined. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur from the proposed project would be speculative and no further analysis of their impacts is required. However, any future development project would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, no significant direct or cumulative impacts associated with this issue area have been identified.</p>						
10. MINERAL RESOURCES						
(a) Substantially reduce the availability of important mineral resources? The FEIR concludes that the viable extraction of mineral resources is limited in Centre City due to its urbanized nature and the fact that the area is not designated as having high mineral resource potential. Therefore, no significant direct or cumulative impact associated with this issue would occur.					X	X
11. NOISE						
(a) Substantial noise generation? The FEIR indicates that development within the Downtown					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>Planning Area could generate both temporary noise impacts caused by construction activities and long-term noise impacts caused by entertainment and industrial sources. The FEIR concludes that adherence to existing sections of the City of San Diego Municipal Code at the individual project level would ensure that noise impacts caused by construction activities are not significant. Since the proposed project does not include any regulations or measures that would in any way violate or obstruct implementation of the applicable sections of the City of San Diego Municipal Code and would subject to the Municipal Code, the impacts of the amendments would not be significant, consistent with the analysis of the FEIR.</p> <p>In addition, the FEIR concludes that build-out of the downtown will result in substantial traffic noise increases on several street segments. The FEIR concludes that there are no feasible mitigation measures available to reduce the significant increase in noise on affected roadways and this impact remains significant and unavoidable. As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents.</p> <p>Additionally, the proposed project would not include any direct physical changes to the project. Since no specific project with the potential for physical impacts related to noise is proposed at this time, no specific impacts can be determined. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur from the proposed project would be speculative and no further analysis of their impacts is required.</p>						

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>However, any future development project would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, no significant direct or cumulative impacts associated with this issue area have been identified.</p>						
<p>(b) Substantial exposure of required outdoor residential open spaces or public parks and plazas to noise levels (e.g., exposure to levels exceeding 65 dBA CNEL)? The FEIR indicates that exterior traffic noise in public park and plazas is a significant impact and requires mitigation at the project level to help reduce this impact, even though impacts would not be fully mitigated.</p> <p>As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents.</p> <p>In addition, implementation of proposed project does not involve required outdoor residential opens spaces or public parks and plazas as no physical changes would be occurring on the project site. Since no specific project with the potential for physical impacts related to the exposure of required outdoor residential open spaces or public parks and plazas to noise levels exceeding 65 dB (A) CNEL is proposed at this time, no specific impacts can be determined. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur from the proposed project would be speculative and no further analysis of their impacts is required. However, any future development project would be subject to CEQA. Environmental documentation prepared pursuant</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, no significant direct or cumulative impacts associated with this issue area have been identified.						
<p>(c) Substantial interior noise within habitable rooms (e.g., levels in excess of 45 dBA CNEL)? The FEIR states that traffic noise levels in excess of 65 dB (A) could result in substantial interior noise within habitable rooms. The FEIR recognizes that noise levels on several street segments in the Downtown Planning Area would exceed 65 dB (A) CNEL and could expose habitable rooms facing these streets to levels in excess of 45 dB (A) CNEL (the interior standard required by California Code of Regulations, Title 24). The FEIR identifies this as a potentially significant impact and requires mitigation at the project level to reduce this impact below a level of significance.</p> <p>However, as summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents.</p> <p>Additionally, implementation of the proposed project would not involve operational activities that would expose interior rooms to a noise level in excess of 45 dB (A) CNEL) as it would not result in any direct physical changes to the project site. Since no specific project with the potential for physical impacts related to noise is proposed at this time, no specific impacts can be determined. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur from the proposed project would be speculative and no</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
further analysis of their impacts is required. However, any future development project would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, no significant direct or cumulative impacts associated with this issue area have been identified.						
12. POPULATION AND HOUSING						
(a) Substantially induce population growth in an area? The proposed project would not result in any direct physical changes to the project site or propose construction of any facilities that would induce substantial population growth in the Downtown Planning Area. The FEIR concludes that buildout of the Downtown Community Plan would not induce substantial population growth that results in significant physical changes. Therefore, direct or cumulative impacts associated with this issue would not be significant.					X	X
(b) Substantial displacement of existing housing units or people? There are no existing housing units located on the project site. The proposed project would not result in any physical changes to the project site. Therefore, the proposed project would not result in the displacement of any existing housing units or people and no significant direct or cumulative impacts would occur.					X	X
13. PUBLIC SERVICES AND UTILITIES:						
(a) Substantial adverse physical impacts associated with the provision of new schools? The proposed project would not propose construction of any housing units or changes to the project site that would generate students and contribute to the need for schools in the Downtown Planning Area; therefore, no significant direct or cumulative impacts would occur. The FEIR concludes that the additional student population					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>anticipated at buildout of the downtown would require the construction of at least one additional school. As indicated in the FEIR, the specific future location of a new school is unknown at present time. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur from future construction of schools would be speculative and no further analysis of their impacts is required. However, construction of new schools would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures.</p>						
<p>(b) Substantial adverse physical impacts associated with the provision of new libraries? The FEIR concludes that, cumulatively, development in the downtown would generate the need for a new Main Library and possibly several smaller libraries within the downtown. In and of itself, the proposed project would not generate additional demand necessitating the construction of new library facilities; therefore, no significant direct or cumulative impacts would occur. However, according to the analysis in the FEIR, the proposed project is considered to contribute to the cumulative need for new library facilities in the downtown identified in the FEIR. Nevertheless, the specific future location of these facilities (except the Main Library) is unknown at present time. Pursuant to Section 15145 of CEQA, analysis of the physical changes in the downtown planning area, which may occur from future construction of these public facilities, would be speculative and no further analysis of their impacts is required (The environmental impacts of the Main Library were analyzed in a Secondary Study prepared by CCDC in 2001). Construction of any additional library facilities would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
significant impacts and appropriate mitigation measures.						
<p>(c) Substantial adverse physical impacts associated with the provision of new fire protection/emergency facilities? The FEIR does not conclude that the cumulative development of the downtown area would generate additional demand necessitating the construction of new fire protection/emergency facilities. The proposed project would not propose construction of any facilities or improvements that would generate substantial additional demand necessitating the construction of new fire protection/emergency facilities in the downtown planning area; therefore, no significant direct or cumulative impacts would occur</p> <p>Through the collective efforts of the City, the Redevelopment Agency, and CCDC, two sites for new fire stations have been secured in the downtown area. Potential impacts associated with one of the proposed sites, the Bayside Fire Station, have been evaluated in a Secondary Study prepared for the project. Upon approval of the contract for design services for the Bayside Fire Station, the proposed project would undergo further design review and entitlements process, along with subsequent environmental review. This subsequent environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. The other fire station site would also require the same procedures as the Bayside Fire Station site (i.e., preparation of a Secondary Study) and further environmental review and mitigation measures as appropriate.</p>					X	X
<p>(d) Substantial adverse physical impacts associated with the provision of new law enforcement facilities? The FEIR analyzes impacts to law enforcement service resulting from the cumulative development of the downtown and concludes that the construction of new law</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>enforcement facilities would not be required. The proposed project would not propose construction of any facilities or improvements that would generate substantial additional demand necessitating the construction of new law enforcement facilities in the Downtown Planning Area; therefore, no significant direct or cumulative impacts would occur. However, the need for a new facility could be identified in the future. Pursuant to Section 15145 of CEQA, analysis of the physical changes in the downtown planning area, which may occur from future construction of law enforcement facilities, would be speculative and no further analysis of their impacts is required. However, construction of new law enforcement facilities would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures.</p>						
<p>(e) Substantial adverse physical impacts associated with the provision of new water transmission or treatment facilities? The FEIR concludes that new water treatment facilities would not be required to address the cumulative development of the downtown. The proposed project would not result in the construction of any facilities or improvements that would generate substantial additional demand necessitating the construction of new water transmission or treatment facilities in the Downtown Planning Area. In addition, water pipe improvements that may be needed to serve the proposed project are categorically exempt from environmental review under CEQA as stated in the FEIR. Therefore, impacts associated with this issue would not be directly or cumulatively significant.</p>					X	X
<p>(f) Substantial adverse physical impacts associated with the provision of new storm water facilities? The FEIR concludes that the cumulative development of the downtown would not impact the existing downtown storm drain system. The proposed project would not result in</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
the construction of any facilities or improvements that would generate substantial additional demand necessitating the construction of new stormwater facilities in the Downtown Planning Area. Therefore, no significant direct or cumulative impacts would occur.						
(g) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? The proposed project would not result in the construction of any facilities or improvements that would generate additional substantial demand for water necessitating the need for new or expanded entitlements. Direct and cumulative impacts associated with this issue are considered not significant.					X	X
(h) Substantial adverse physical impacts associated with the provision of new wastewater transmission or treatment facilities? The FEIR concludes that new wastewater treatment facilities would not be required to address the cumulative development of the downtown. The proposed project would not result in the construction of any facilities or improvements that would generate additional substantial demand for wastewater transmission or treatment facilities. In addition, sewer improvements that may be needed to serve the proposed project are categorically exempt from environmental review under CEQA as stated in the FEIR. Therefore, direct or cumulative impacts associated with this issue would not be significant.					X	X
(i) Substantial adverse physical impacts associated with the provision of new landfill facilities? The proposed project would not result in the construction of any facilities or improvements that would generate substantial additional demand for new landfill facilities. However, the FEIR concludes that cumulative					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
development within the downtown would increase the amount of solid waste sent to the Miramar Landfill and contribute to the eventual need for an alternative landfill. The location and size of a new landfill is unknown at this time. Pursuant to Section 15145 of CEQA, analysis of the physical changes that may occur from future construction of landfills would be speculative and no further analysis of their impacts is required. However, construction or expansion of a landfill would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, direct or cumulative impacts of the proposed project are not considered significant.						
14. PARKS AND RECREATIONAL FACILITIES:						
(a) Substantial increase in the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? The FEIR discusses impacts to park and recreational facilities and the maintenance thereof and concludes that buildout of the Downtown Community Plan would not result in significant impacts associated with this issue. The proposed project would not propose construction of any housing units or improvements that would generate additional demand for parks and recreational facilities. Therefore, substantial deterioration of existing neighborhood or regional parks would not occur or be substantially accelerated as a result of the proposed project. No significant direct or cumulative impacts associated with this issue would occur.					X	X
15. TRANSPORTATION/TRAFFIC						
(a) Cause the level of service (LOS) on a roadway segment or intersection to drop below LOS E? The FEIR states that projects generating greater					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>than 2,400 ADT would result in potentially significant impacts to the level of service (LOS) of a roadway segment or intersection, and requires implementation of mitigation measures at the project level to mitigate the impact. Any additional automobile trips generated by future development at the project site would, in combination with the traffic generated by other downtown development, contribute to the significant cumulative traffic impacts projected in the FEIR to occur on a number of downtown roadway segments and intersections, and streets within neighborhoods surrounding the Plan area at buildout of the Community Plan. The FEIR includes mitigation measures to address these impacts, but they may or may not be able to fully mitigate these cumulative impacts.</p> <p>As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents. Additionally, the proposed project would not include any direct physical changes to the project site. Since no specific project with the potential for physical impacts related to traffic is proposed at this time, no specific impacts can be determined. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur from the proposed project would be speculative and no further analysis of their impacts is required. However, any future development project would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, no significant direct or cumulative impacts associated with this issue area have been</p>						

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
identified.						
<p>(b) Cause the LOS on a freeway segment to drop below LOS E or cause a ramp delay in excess of 15 minutes? The FEIR concludes that development within the downtown will result in significant cumulative impacts to freeway segments and ramps serving the downtown planning area.</p> <p>As summarized in the project description, approval of the FIA, including the extension of the FAR transfer period of time and Ballpark Event parking language, does not alter the scope of the previously approved development permitted by the OPA and covered by previously approved environmental documents.</p> <p>Additionally, the proposed project would not include any direct physical changes to the project site. Since no specific project with the potential for physical impacts related to traffic is proposed at this time, no specific impacts can be determined. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the Downtown Planning Area which may occur from the proposed project would be speculative and no further analysis of their impacts is required. However, any future development project would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures. Therefore, no significant direct or cumulative impacts associated with this issue area have been identified.</p>					X	X
<p>(c) Create an average demand for parking that would exceed the average available supply?</p> <p>The FEIR requires that all development projects provide adequate parking to meet their project generated demands. The parking requirements for development projects are established in the</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>PDO. The FEIR concludes that the total parking demand generated by downtown development would exceed the amount of parking provided by such development in accordance with the PDO. The FEIR includes mitigation measures that would reduce, but not fully mitigate, the significant cumulative impact of excessive parking demand.</p> <p>According to the previous environmental analysis in the Ballpark village Master Plan FSEIR, it was anticipated that development of the project site would result in the loss of approximately 959 existing parking spaces in the surface lots currently located on Parcels C and D used for ballpark events. The FSEIR specified number of dedicated parking spaces (2,383) for ballpark events will need to be maintained. Currently, 2,116 dedicated spaces are provided at Tailgate Park (1,061 spaces), Padres Parkade (P1) (1,004 spaces), and the Ballpark (51 spaces). Elimination of the 959 spaces currently provided by surface parking lots at Parcels C and D leaves a shortfall of 267 dedicated parking spaces for ballpark events. It is also stated in the FSEIR that the future project proponent for the Ballpark Village would be responsible for identifying the 267 additional parking spaces in order to be consistent with this requirement and maintain the 2,383 dedicated spaces at all times.</p> <p>As discussed in the project description, the proposed project would not result in any direct physical changes or additional features at the project site that would generate parking demands. However, one of the terms of project approval is clarifying where the Ballpark Event parking can be located. Approval of the FIA would clarify that there is flexibility in the location of the 267 additional parking spaces needed to meet the requirement set forth in the FSEIR, as follows:</p> <p>a. On the undeveloped Site or as part of the</p>						

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>development of the Site; and/or</p> <p>b. In the parking garage owned by Metropolitan Transit System (MTS), which is located at the corner of Imperial Avenue and 11th Avenue, pursuant to the "Lease Agreement for Parking Spaces – James R. Mills Building Parking Garage" by and between the San Diego Regional Building Authority, County of San Diego and MTS, collectively as lessors, and Padres L.P. as lessee; and/or</p> <p>c. In another location permitted by the FSEIR, and only to the extent such location is in full compliance with the overall requirement to provide 2,383 parking spaces for the Ballpark pursuant to the FSEIR.</p> <p>Providing this additional clarification for the location of the 267 additional parking spaces would not change the parking requirements set forth in the FSEIR, FEIR, or the PDO and would ensure the provision of adequate parking supply. Therefore, no additional unmet parking demands creating a significant direct or cumulative impact would result with approval of the proposed project.</p>						
<p>(d) Substantially discourage the use of alternative modes of transportation or cause transit service capacity to be exceeded? The Downtown Planning area has an abundance of alternative transportation choices including the Coaster, Trolley, and bus lines. The proposed project does not include measures that would substantially discourage the use of alternative modes of transportation or cause transit service capacity to be exceeded. Additionally, SANDAG has indicated that transit facilities should be sufficient to serve the downtown population without exceeding capacity. Therefore, no significant direct or cumulative impact will occur</p>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
associated with transit or alternative modes of transportation.						
16. MANDATORY FINDINGS OF SIGNIFICANCE						
(a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? As indicated in the FEIR, due to the highly urbanized nature of the downtown area, no sensitive plant or animal species, habitats, or wildlife migration corridors are located in the Centre City area. Furthermore, the project does not have the potential to eliminate important examples of major periods of California history or prehistory at the project level. No other aspects of the project would substantially degrade the environment; therefore, no significant direct or cumulative impact would occur. Cumulative impacts are described in subsection 16.b below.					X	X
(b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)? As acknowledged in the FEIR, implementation of the Downtown Community Plan, PDO, and Redevelopment Plan would result in cumulative impacts associated with: aesthetics/visual quality, air quality, historical and archaeological resources, physical changes associated with transient activities, noise, parking, traffic, and water quality.						X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes at the project site which may occur from the proposed project would be speculative and no further analysis of their impacts is required. Because no significant project-level impacts have been identified, no contribution to a significant cumulative impact is identified. However, future development of the project site would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant cumulative impacts and appropriate mitigation measures.						
(c) Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly? Impacts associated with air quality, hazardous materials, geology/soils, and noise have the potential to cause substantial adverse effects on human beings. However, pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes at the project site which may occur from the proposed project would be speculative and no further analysis of their impacts is required. Because no significant project-level impacts have been identified, no contribution to a significant cumulative impact is identified. However, future development of the project site would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant cumulative impacts and appropriate mitigation measures.					X	X