

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: June 7, 2013
TO: Honorable Mayor and City Councilmembers
FROM: City Attorney
SUBJECT: Challenges to Relocation of Valet Operations in Plaza de Panama in Balboa Park

This memorandum is intended to provide the background and status of this matter as of today's date. By memorandum dated May 16, 2013, this Office addressed the authority to relocate the valet parking lots. A forthcoming memorandum will address a new claim made on May 31, 2013, regarding the relocation of the valet drop off lanes in Plaza de Panama.

By a letter dated May 13, 2013, Kathleen S. Hasenauer, Deputy Director of the Park and Recreation Department of the City, advised David Kinney, Executive Director of Balboa Park Central, formerly House of Hospitality Association, Inc. (collectively referred to as "HOH"), that pursuant to the provisions of the City's lease with HOH, the valet operations in the Plaza de Panama will be relocated behind the Casa de Balboa, just east of the House of Hospitality, effective June 10, 2013. In anticipation of the relocation, issuance of a right of entry permit is proposed to HOH for the new location for valet drop off lanes and parking lots for vehicle storage (ROE Permit). On or about May 22, 2013, the City posted a Notice of Right to Appeal Environmental Determination for the proposed ROE Permit, in accordance with San Diego Municipal Code section 112.0310.

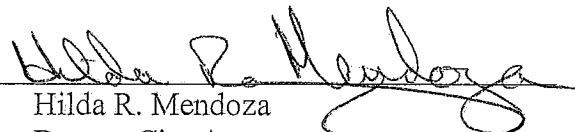
On May 31, 2013, the City Attorney received a letter from Valentine S. Hoy, on behalf of Hard Work Too, Inc. (HWT), a sublessee of HOH, attached as Exhibit A (HWT Letter). The HWT Letter contends that the City's relocation of the valet drop off and pick up point would constitute a breach of the Nonprofit Lease between the City and the HOH, filed with the City Clerk as document number RR-289141, and the Percentage Lease between the HOH and HWT, filed with

the City Clerk as document number RR-291443-2, which was consented to by the City pursuant to the Consent of City of San Diego, filed with the City Clerk as document number RR-291443-1.

Our Office is in the process of reviewing the legal issues raised in the HWT Letter concerning relocation of the valet drop off and pick-up point. We had not previously reviewed that issue.

On June 5, 2013, four separate appeals of the environmental determination made by City staff for the ROE Permit were filed with the City Clerk, pursuant to San Diego Municipal Code section 112.0520. *See* Exhibits B-E. Regardless of the merits of the new claim presented by the HWT Letter, implementation of the ROE Permit and the relocation of the valet drop off lanes and parking lots for vehicle storage legally may not proceed until after the appeals are heard by the Council. SDMC § 112.0511. If any one of the appeals is granted, the Development Services Director must reconsider the environmental determination and a revised environmental document may be required before the relocation may proceed. SDMC § 112.0520(e). If all of the appeals are denied and there are no further legal challenges, the actions contemplated in the ROE Permit may proceed without further delay.

JAN I. GOLDSMITH, CITY ATTORNEY

By 
Hilda R. Mendoza
Deputy City Attorney

HRM:als

Attachments: Exhibit A – Letter from Valentine S. Hoy dated May 31, 2013
Exhibit B – Environmental Determination Appeal – Hard Work Too, Inc.
Exhibit C – Environmental Determination Appeal – Balboa Park Cultural Partnership
Exhibit D – Environmental Determination Appeal – Leo Wilson
Exhibit E – Environmental Determination Appeal – Michael Siedel

cc: Stacey LoMedico, Park and Recreation Department Director
James Barwick, Real Estate Assets Department Director
Andrea Tevlin, Independent Budget Analyst

Doc. No.: 575305

EXHIBIT A

1311126

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
501 West Broadway, 15th Floor | San Diego, CA 92101-3541
Telephone: 619.233.1155 | Facsimile: 619.233.1158
www.allenmatkins.com

Valentine S. Hoy
E-mail: vhoy@allenmatkins.com
Direct Dial: 619.235.1521 File Number: 373261-00001/SD805224.05

Via Email/U.S. Mail

May 31, 2013

Jan Goldsmith
City Attorney
The City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101

Re: Hard Work Too, Inc./Balboa Park

Dear Mr. Goldsmith:

I am writing to you on behalf of my client, Hard Work Too, Inc. (HWT). On May 13, 2013, HWT was given a copy of the enclosed letter from Kathleen Hasenauer, the Deputy Director of the City's Parks & Recreation Department to David Kinney, the Executive Director of Balboa Park Central, formerly known as the House of Hospitality Association, Inc. In the letter, Ms. Hasenauer advised Mr. Kinney that the last day for valet operations in the Plaza de Panama would be on Sunday June 9, 2013. Thereafter, valet operations would be relocated behind the Casa de Balboa, just east of the House of Hospitality.

The purpose of this letter is to advise the City that the proposed relocation of the valet drop off and pick up point would constitute a breach of that certain Percentage Lease (the Lease) negotiated and approved by the City of San Diego and executed between the House of Hospitality Association, Inc., a California nonprofit corporation, as Lessor, and HWT, as Lessee, on April 1, 1999. For the same reasons, the proposed action would violate the terms of that certain Nonprofit Lease (the Master Lease) executed between the City of San Diego, as Lessor, and the House of Hospitality Association, Inc., a California nonprofit corporation, as Lessee, approved by the City Council on September 8, 1997. My client respectfully requests that the notice referenced above be withdrawn so as to avoid causing further damage.

BACKGROUND FACTS

Since April 1, 1999, HWT has operated The Prado restaurant in Balboa Park (the Restaurant Premises) as part of the Cohn Restaurant Group under the terms of the Lease. The City, in turn, leases the House of Hospitality Building, including the Restaurant Premises, to Balboa Park Central (formerly The House of Hospitality Association, Inc.) under the Master Lease. HWT is an intended beneficiary of the Master Lease.

Jan. Goldsmith

May 31, 2013

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The Lease and the Master Lease were negotiated with a full-service restaurant and catering facility in mind. The City wanted to attract a high quality restaurant to the House of Hospitality as part of the Balboa Park Master Plan and the Precise Plan. The parties recognized from the outset that a high quality restaurant and catering facility could not survive in that location without convenient valet parking. Therefore, a key component of the Master Lease and the Lease was an arrangement for valet parking that would be acceptable to a high quality restaurant and catering operation.

ANALYSIS

The City Did Not Reserve Discretion In The Leases To Change The Established Location Of the Valet Parking Pick Up and Drop Off Location

Section 1.8 of the Lease provides for valet parking. Valet parking consists of two separate components: (1) a valet station near the restaurant entrance for dropping off and picking up passengers and (2) the remote parking lot for storage of vehicles. The Lease provides for the valet service to operate between the restaurant and the remote parking lot.

The City could not have attracted The Prado Restaurant, or any other high quality restaurant, to the Park without a suitable location for a valet service to unload and load passengers. The valet station at the restaurant was always intended to be in the Plaza de Panama, at the architecturally significant grand entrance to the historic House of Hospitality. In fact, the parties who negotiated the Master Lease and the Lease did so with the knowledge that the Balboa Park Precise Plan provided for "vehicular drop-off and loading zones" in the Plaza de Panama. Lanes were set aside at the entrance to the restaurant for unloading and loading passengers pursuant to that Balboa Park Precise Plan. That common understanding is confirmed by 14 years of consistent performance. The City did not negotiate for the unilateral right to move the valet station away from the front entrance to the restaurant. Indeed, a discretionary right to move the valet station would not have been acceptable to HWT.

The remote parking lot for storage of vehicles was treated differently. The location of the parking lot for vehicle storage was not established by the Precise Plan or any other document. The location of the parking lot was not critical to HWT. Therefore, in stark contrast, the City only agreed to use its best efforts to designate a parking lot in Balboa Park that could be used on a non-exclusive basis for storing vehicles and "from which Lessee can operate valet parking or shuttle service to and from the restaurant." After the initial designation of a parking lot, the City reserved the right, on notice, to designate a different parking lot. The City expressly reserved sole discretion to choose the parking lot within Balboa Park.

The City Attorney's memorandum dated May 16, 2013, which discusses the Lease on page 8, mistakenly assumes that the grant of discretion to the City to choose the parking lot also grants discretion to move the valet station away from the restaurant entrance. The opposite is true. The grant of discretion applies by its express terms only to the parking lot. Nowhere in the lease is the

City given discretion to choose a different location for the valet pick up and drop off at the restaurant. Far from supporting the City's position, the express reservation of discretion to choose and to change the location of the parking lot serves only to confirm that the valet station was not to be moved at the unilateral discretion of the City. Had the parties intended the location of the valet station and lanes to be chosen in the City's sole discretion, they would have addressed it in the Lease, just as they did with the parking lot.

Ms. Hasenauer's letter quotes the entirety of section 1.12 of the Master Lease as the basis for the City's discretion to relocate the location for unloading and loading passengers. Section 1.12 of the Master Lease is identical to section 1.8 of the Lease, however. The grant of discretion to the City applies only to the choice of the parking lot where the cars will be stored and from which vehicles (or shuttle passengers) would be shuttled to and from the restaurant. Section 1.12 of the Master Lease grant the City no similar discretion to choose or to unilaterally change the location for unloading and loading passengers at the restaurant.

The House of Hospitality with its unique past is one of the most significant and historical buildings in Balboa Park (<http://www.sandiegohistory.org/bpbbuildings/hospitality.htm>). The front façade of the House of Hospitality is one of the most recognized, majestic designs within Balboa Park and presents an unforgettable sense of arrival. The Cohn Restaurant Group and HWT understood that this façade would greet their valet guests coming to dine or attend a catering event at The Prado restaurant. This location, in the heart of Balboa Park, would make it easy for visitors to arrive at a central location and enjoy all that Balboa Park has to offer. They never dreamed that the valet station could be unilaterally consigned to a remote, difficult to access, unattractive area in the rear of the building, where deliveries are unloaded and the trash bins are stored. Had the possibility of moving the valet station to the rear of the building been suggested or discussed during the lengthy lease negotiations with the House of Hospitality Association or the City, HWT would not have entered into the lease and spent millions of its own dollars improving the City building. Please keep in mind that not only was this lease negotiated by the City, but it was also unanimously approved by the City Council and consented to by the Director of Real Estate Assets and the City Attorney's Office.

**The City's Proposed Alternative Location Is Not Reasonable And Effectively Denies
Bargained For Valet Service To The Prado**

A second and independent reason why the City's proposal to relocate the valet stand is inconsistent with the leases is that the alternative location is tantamount to a denial of any valet service at all. The proposed new location is concealed, accessible only by a circuitous route through two parking lots and over a narrow bridge, and available only to vehicles entering from Park Blvd. Ironically, the valet location would be placed in a dark corner of a parking lot that is known to park employees as "the secret parking lot." Any guest or park visitor intrepid enough to find the location would discover an unattractive back alley next to the trash bins. Passengers would disembark in the middle of the restaurant's delivery area. This cannot be changed, as there is no reasonable alternative place for the trash bins or the delivery area.

Jan Goldsmith
May 31, 2013
Page 4

The Prado Restaurant is a place where entire families gather for special occasions. Many of the users of the valet parking service in the Park are disabled and elderly. The worst experience would be reserved for them. Elderly and disabled customers would have to navigate their way up and around a lengthy serpentine ramp. The distance from the valet station to the restaurant entrance increases from 30 feet to 528 feet. There is also a significantly greater increase in elevation from the proposed valet drop off location to the restaurant entrance. The enclosed photos show the locations of the current and proposed future valet stations and illustrate the access routes from those locations to the restaurant entrance. Clearly, the impact of the change would fall most heavily on the disabled and elderly users of the valet service. We have seen no study showing that the proposed new location is even ADA compliant.

In addition, The Prado Restaurant is a partner with the Old Globe Theatre and the valet service is used by many theatre goers who enjoy convenient, accessible valet service including pre-theatre dining at The Prado. This valuable partnership was always a part of HWT's business and marketing plan and is essential to the success of the restaurant. Re-locating the valet station to the rear of the House of Hospitality would adversely impact this important relationship.

CONCLUSION

Generations of San Diegans have celebrated life cycle events at the House of Hospitality. Many of my client's customers, particularly those who have booked weddings, graduation parties, and family events, are looking to continue this San Diego tradition. Without a convenient valet service to and from the historically significant front entrance to the House of Hospitality, The Prado Restaurant would be endangered as a business. In sum, the proposal deserves another look. If the City is determined to make changes to the Plaza de Panama, my client believes those changes can be made without breaching the Lease and irreparably damaging The Prado Restaurant. My client is reasonable and would welcome the opportunity to work with the City on an arrangement that works for everyone. We urge you to contact us soon with a response.

Sincerely,


Valentine S. Hoy

VSH:gst
Enclosure

cc: Mr. Allen Jones
Mr. James F. Barwick
Ms. Kathleen Hasenauer
Mr. David Kinney
J. Michael Wilson, Esq.
Katie Pothier, Esq.



THE CITY OF SAN DIEGO

May 13, 2013

Mr. David Kinney
Executive Director
Balboa Park Central (Formerly House of Hospitality Association, Inc.,)
1549 El Prado
San Diego, CA 92101

Dear Mr. Kinney:

This is to advise you that the last day for Valet operations in the Plaza de Panama will be on Sunday, June 9, 2013. Effective Monday, June 10, 2013, Valet operations will be relocated behind the Casa de Balboa, just east of the House of Hospitality.

The House of Hospitality Association, Inc. (Balboa Park Central) Lease Agreement with the City of San Diego includes the following provision:

Section 1: Uses 1.12 Parking City recognizes LESSEE'S desire for parking for its restaurant customers, and CITY will use its best efforts to designate a public parking lot in Balboa Park for LESSEE'S restaurant customers' non-exclusive use. Throughout the term of this lease, the Park and Recreation Department of CITY shall issue LESSEE a Right of Entry Permit at no charge designating a public parking lot in Balboa Park from which LESSEE can operate valet parking or shuttle service to and from the restaurant. LESSEE understands that it may not reserve parking spaces and that availability of parking spaces is not guaranteed. Upon prior notice to LESSEE, the Park and Recreation Department may designate a different public parking lot in Balboa Park, and the choice of parking lot shall be determined in the sole and absolute discretion of the Department. Any restaurant parking and directional signs used by LESSEE shall be portable and set up and removed each day. The size, design, and placement of signs shall be subject to prior approval by the Park and Recreation Department.

The City of San Diego Right of Entry Permit will stipulate the use of a portion of the Casa de Balboa parking lot for loading zone lanes, and the non-exclusive use of the Federal Building, North and South



Developed Regional Parks Division • Park and Recreation

2125 Park Boulevard • San Diego, CA 92101-4792
Tel (619) 235-1100 Fax (619) 235-1160

Page 2

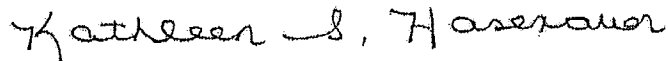
Mr. David Kinney

May 13, 2013

Pepper Grove parking lots. Additionally, during periods of high demand, the non-exclusive use of the Inspiration Point parking lot will be available for Valet operations.

Please feel free to contact me at KHasenauer@sandiego.gov or (619) 235-1157 if you need additional information.

Best Regards,

A handwritten signature in cursive script that reads "Kathleen S. Hasenauer".

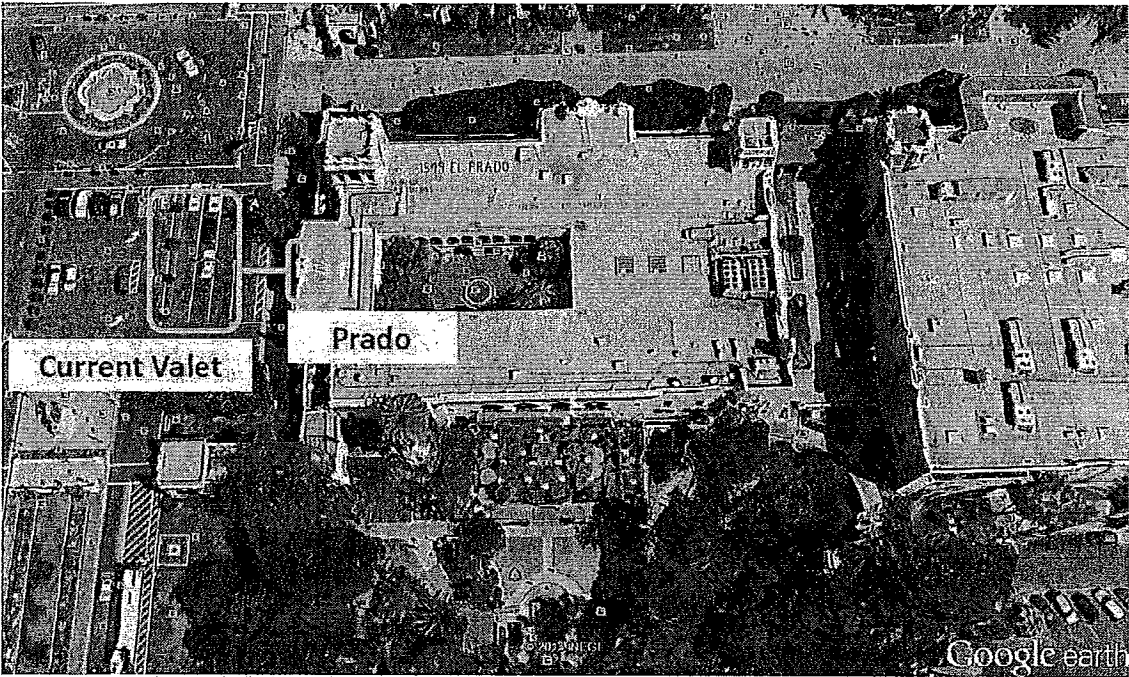
Kathleen S. Hasenauer

Deputy Director

cc: Bruce Martinez, Balboa Park District Manager
Ryan Robertson, Senior Park Ranger

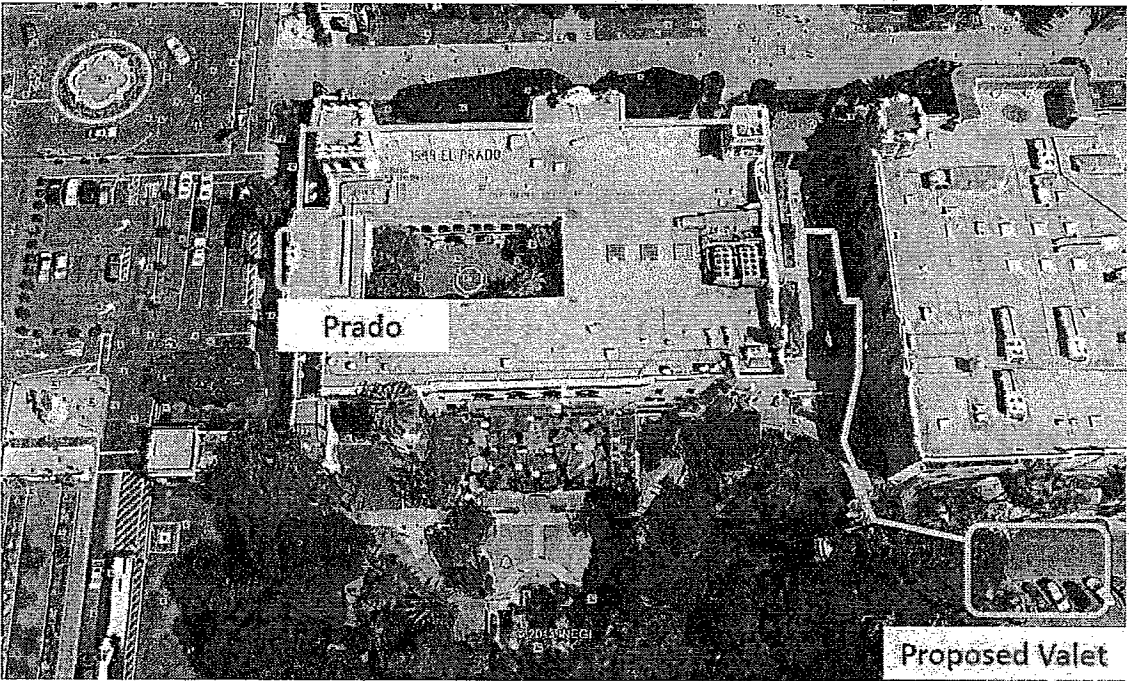
Distance from Valet Zone
The Prado

House of Hospitality (Current)
30 Feet



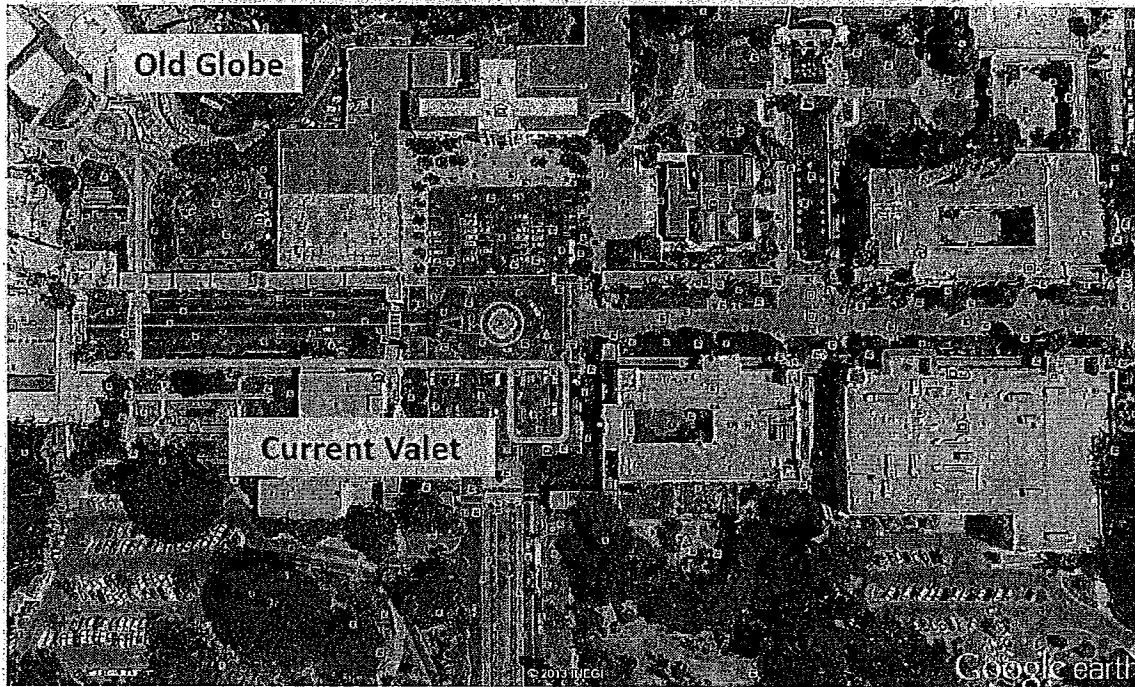
Distance from Valet Zone
The Prado

Casa de Balboa (Proposed)
528 Feet



Distance from Valet Zone
The Old Globe

House of Hospitality (Current)
1,056 Feet



Distance from Valet Zone
The Old Globe

Casa de Balboa (Proposed)
1,584 Feet

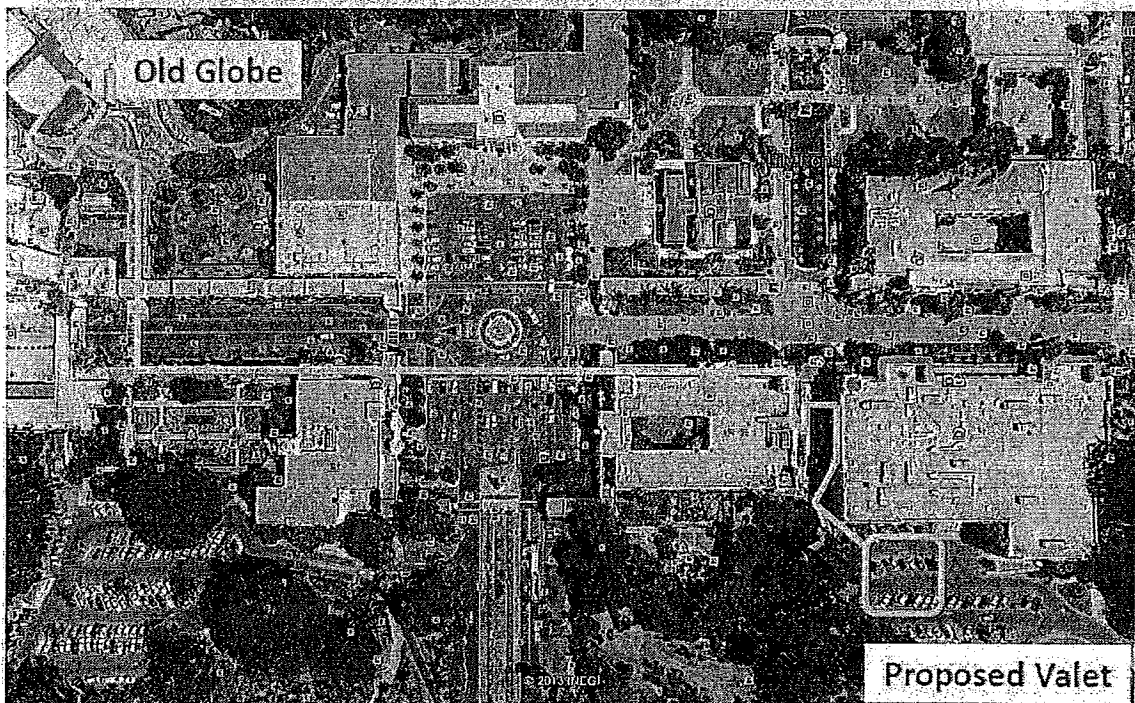


EXHIBIT B

DECLARATION OF INTEREST



City of San Diego
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101
(619) 446-5210

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
OCTOBER 2012

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- ☐ Process Two Decision - Appeal to Planning Commission
☐ Process Three Decision - Appeal to Planning Commission
☐ Process Four Decision - Appeal to City Council
☒ Environmental Determination - Appeal to City Council
☐ Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one ☐ Applicant ☐ Officially recognized Planning Committee ☒ "Interested Person" (Per M.C. Sec. 113.0103)

Name:
Hard Work Too, Inc.

E-mail Address:
david@dlincrg.com

Address:
2790 Truxton Road, Suite 120

City:
San Diego

State: Zip Code:
CA 92106

Telephone:
(619) 236-1299

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Park & Recreation Director, City of San Diego

4. Project Information

Permit/Environmental Determination & Permit/Document No.:

Date of Decision/Determination:

City Project Manager:

Balboa Park Central Valet Service

May 22, 2013

Ryan Robertson

Decision (describe the permit/approval decision):

The Park & Recreation Director has determined that the issuance of a Right of Entry Permit to Balboa Park Central is exempt from CEQA.

5. Grounds for Appeal (Please check all that apply)

- ☒ Factual Error
☒ Conflict with other matters
☒ Findings Not Supported

- ☐ New Information
☐ City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

Please see attached.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:

[Handwritten Signature]

Date:

JUNE 4, 2013

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

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Upon request, this information is available in alternative formats for persons with disabilities.

DS-3031 (10-12)

Environmental Determination Appeal Application

Appellant -- Hard Work Too, Inc.

Attachment 1

5. Description of Grounds for Appeal

The Environmental Determination (Determination) issued by the Park and Recreation Director for the Balboa Park Central Valet Service (Project) on May 22, 2013 is invalid for the following reasons:

- a) The California Environmental Quality Act (CEQA) prohibits piecemealing. The Project is part of a larger, more extensive project proposed by the Mayor of the City of San Diego, more commonly referred to as the Balboa Park Transportation Plan (BPTP), addressed at length by the City Attorney in its May 16, 2013 legal memorandum. The City cannot break the BPTP into smaller pieces to avoid environmental review of the whole project.
- b) The Project Description included in the Determination is incorrect. It fails to include all of the other BPTP components.
- c) The Project requires an amendment to the Balboa Park Central Mesa Precise Plan (Precise Plan). Neither the 2012 amendment nor the prior version of the Precise Plan authorizes the use of the Casa de Balboa parking lot as the location of the valet drop-off area. Amending the Precise Plan to accommodate the Project will itself require CEQA review.
- d) The Determination erroneously relies on the categorical exemption found in 14 Code of California Regulations Section 15301, which applies to Existing Facilities. The Determination states that the Project will move the valet drop-off area to a new location. This move will fundamentally change traffic, parking and pedestrian access within Balboa Park.
- e) A categorical exemption from CEQA cannot be used when an exception to the exemption applies. Here, there is a reasonable possibility that the Project will have a significant effect on the environment due to the unusual circumstances presented.
- f) The Project will have a significant impact on parking and traffic circulation patterns throughout and adjacent to Balboa Park, and in particular, on Park Boulevard and Space Theater Way. For example, to access the new valet drop-off area, visitors traveling north on Park Boulevard will need to make a left-hand turn onto Space Theater Way at an un-signalized intersection. The City failed to analyze these impacts.

- g) The Determination incorrectly indicates that "[o]nly the valet drop-off area is being changed." However, the Project also changes the parking lots used by the valet service. Thus, the Project Description is inadequate and the Determination failed to analyze the impacts caused by the valet service's use of the North Pepper Grove and South Pepper Grove lots.
- h) There is no evidence that the City analyzed whether the proposed valet location is accessible to physically and mobility challenged persons. Given the topography and the distant location of the new drop-off area, the Project will have a significant impact on the ability of physically and mobility challenged persons to access Balboa Park.
- i) The traffic and pedestrian safety impacts caused by the new drop-off location, the narrow Space Theater Way Bridge and the re-routed traffic must be analyzed to ensure that the proposed Project does not endanger visitors to Balboa Park.
- j) The City failed to consider the parking, delivery and access impacts the Project will have on the facilities that back up onto Space Theater Way, including the Reuben H. Fleet Science Center, the Museum of Photographic Arts, the San Diego Model Railroad Museum and the San Diego History Center. For example, the new drop-off location will have a negative impact on the number of available parking spaces in the Casa de Balboa parking lot.
- k) The Determination also failed to consider air quality, greenhouse gas emissions, land use, noise and recreation impacts that could result from the Project.
- l) The accessibility, traffic and safety impacts caused by the Project must be analyzed in light of the close proximity of the new drop off area to the delivery area and refuse bins for the restaurant. Vehicular access to the drop-off area will be constrained and pedestrian access to and from the drop off area will be restricted during deliveries and refuse removal.

Bill of Lading

User Name: PAM LEWIS
Company: ALLEN MATKINS/SD

Offices in: Las Vegas New York Phoenix Sacramento San Francisco Santa Ana
Los Angeles Oakland Riverside San Diego San Jose Tucson

Nationwide Legal

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LA (213) 252-2000

Control Number: 4074959

eTrac Number: 108814113

Submitter Information	Shipping Information
Account: 40125 Name: ALLEN.MATKINS,ET.AL; Requested By: PAM LEWIS Reference: 373261-00001-1804 BOL No.: SEE NOTEPAD!!! Entered: 05-JUN-2013 09:23 Last Updated: 05-JUN-2013 12:25 (EST)	Service Type: DEL RSH-2HRS E-TRAC Return Service: None Pieces: 0 Weight: 0.0 Lbs. Charges: 0.00 Quote: 0.00
Pick Up From	Deliver To
ALLEN MATKINS,ET.AL. 501 WEST BROADWAY SUITE 1500 SAN DIEGO, CA 92101 Phone: 619-233-1155	CITY OF SAN DIEGO CITY CLERK'S OFF 202 C STREET 2ND FLOOR SAN DIEGO, CA 92101
Pickup Details	Special Instructions
Requested Date: 05-JUN-2013 Ready Time: NOW Pickup Instructions: Case Number: DEVELOPMENT PERMIT/E Case Name: NVIRONMENTAL DETERMI Type of Docs: NATION APPEAL APPLICATION Actual Date: Arrival Time: Departure Time:	Requested Date: 05-JUN-2013 Deliver By: 09:23 FILING FEE OF \$100 IS ATTACHED. CHECK NO. 5333. P LEASE FILE THE APPEAL APPLICATION AND RETURN A FILE STAMPED COPY. THANKS. Actual Date: Arrival Time: Departure Time:
Driver: _____ Date: _____ Time: _____	Received by: X _____ Print Name: _____

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EXHIBIT C

THE END



City of San Diego
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101
(619) 446-5210

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
OCTOBER 2012

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1. Type of Appeal:

- ☐ Process Two Decision - Appeal to Planning Commission
☐ Process Three Decision - Appeal to Planning Commission
☐ Process Four Decision - Appeal to City Council
☒ Environmental Determination - Appeal to City Council
☐ Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one ☐ Applicant ☐ Officially recognized Planning Committee ☒ "Interested Person" (Per M.C. Sec. 113.0103)

Name:
BALBOA PARK CULTURAL PARTNERSHIP

E-mail Address:
bpcp@bpcp.org

Address:
1549 El Prado Suite 1

City:
San Diego

State:
CA

Zip Code:
92101

Telephone:
(619) 232-7418

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

City of San Diego/Balboa Park Central Valet Service

4. Project Information

Permit/Environmental Determination & Permit/Document No.:

Date of Decision/Determination:

City Project Manager:

Exemption per Section 15301

May 22, 2013

Ryan Robertson

Decision (describe the permit/approval decision):

Exemption per Section 15301 for Balboa Park Central Valet Service : Issuance of a Right of Entry Permit to Balboa Park Central to relocate from Plaza de Panama to Casa De Balboa parking lot to provide valet service to park patrons. utilize Casa de Balboa parking lot for drop off lanes and use of other designated parking lots.

5. Grounds for Appeal (Please check all that apply)

- ☒ Factual Error
☒ Conflict with other matters
☒ Findings Not Supported
☒ New Information
☐ City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

See attached letter from appellant Balboa Park Cultural Partnership

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: _____

Date: June 4, 2013

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

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DS-3031 (10-12)



BALBOA PARK

CULTURAL PARTNERSHIP

Executive Committee

Deborah Klockhō
BPCP President
Museum of Photographic Arts

Michael W. Hager, PhD
San Diego Natural History Museum

Luanne Kanzawa
Japanese Friendship Garden

James G. Kidrick
San Diego Air & Space Museum

Jeffrey W. Kirsch, PhD
Reuben H. Fleet Science Center

Michael Murphy
The Old Globe

Micah Parzen, PhD, JD
San Diego Museum of Man

Rob Sidner
Mingei International Museum

Dalouge Smith
San Diego Youth Symphony

John Wilson, PhD
Tinkers Museum of Art

Board Members

Paula L. Brandes
San Diego Automotive Museum

Charlotte Cagan
San Diego History Center

Makeda Dread
WorldBeat Center

Timothy J. Field
*San Diego Art Institute;
Museum of the Living Artist*

Vivian Kung Haga
Balboa Park Online Collaborative

David Kinney
Balboa Park Central

Mike McDowell
San Diego Hall of Champions

Rod Melendez, USN Ret
*Veterans Museum &
Memorial Center*

Douglas G. Myers
Zoological Society of San Diego

Anthony Ridenhour
San Diego Model Railroad Museum

Carmen Sandoval
Centro Cultural de la Raza

Molly Terbovich-Ridenhour
San Diego Civic Youth Ballet

Roxana Velasquez
The San Diego Museum of Art

Elizabeth Woolrych
Spanish Village Art Center

Theresa Wulf
San Diego Junior Theatre

June 4, 2013

City Council of City of San Diego
City Clerk's Office
202 "C" Street, 2nd Floor
San Diego, CA 92101

Re: Appeal of Environmental Determination Pursuant to CEQA
Project Name/Number: Balboa Park Central Valet Service

Dear Councilmembers:

The Balboa Park Cultural Partnership ("BPCP") submits this appeal of the Environmental Determination made by the Development Services Department ("DSD") on May 22, 2013 regarding the Balboa Park Central Valet Service Project ("Valet Relocation").

BPCP is a collaborative body and the collective voice for twenty-seven cultural institutions in Balboa Park serving 6.5 million visitors and members annually. BPCP supports and celebrates Mayor Filner's proposal to restore pedestrian access to Plaza de Panama. This proposal appears to promise an important improvement in the overall guest experience at Balboa Park which is a primary concern of BPCP and its member institutions.

BPCP is not taking a position regarding the merits of the Valet Relocation at this time. However, BPCP is concerned that the Valet Relocation is one aspect of a larger, phased plan outlined in the Balboa Park Transportation Plan ("BPTP") and that separation of this one component from the other phases of the BPTP will result in inadequate analysis of the impacts of the Valet Relocation within the larger BPTP. BPCP's overriding concern is to avoid impacts which may detract from the guest experience at Balboa Park and to assure that such impacts are adequately analyzed before project implementation.

In this regard, BPCP has reviewed the issues raised: (1) by the City Attorney in a memorandum (MS 59) dated May 16, 2013 to Mayor Filner and the council; and (2) by Councilmember Gloria in a memorandum dated May 9, 2013. Based upon these memoranda and the observations of our member institutions, BPCP submits the following grounds for this appeal.

Collaborative for Arts, Science & Culture





BPCP questions whether DSD's exemption determination is appropriate. We understand that a project is exempt only if it involves negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

A change in location of use does not constitute a use existing at the time of the agency determination. The relocation may set off a range of impacts, none of which have been addressed by the City in the environmental determination. Based upon the issues raised by the City Attorney and Councilmember Gloria, BPCP is concerned the Valet Relocation component of the BPTP may involve significant impacts which render this exemption inapplicable in the first instance, particularly since the project is one component of a larger plan.

In addition, even if application of the exemption was proper, due to the interrelated nature of the various components of the BPTP, this one aspect of the larger BPTP presents an unusual situation potentially resulting in a number of effects as outlined below.

For example, the valet service is used by elderly and disabled guests to the park. BPCP is concerned about the absence of any analysis of the Valet Relocation's impacts on accessibility for disabled and elderly persons from the new valet location including the altered path of travel for the disabled to and from this new location to other primary function areas (museums, gardens, etc.) within the park.

It is also reasonable to expect that traffic and parking patterns within the park will change if the Valet Relocation is implemented and the valet drop off location moved to the back of Casa de Balboa. Specifically, if the valet service is using parking spaces in the Casa de Balboa lot for parking and drop off lanes, the number of parking spaces available for other park guests will be impacted. The Notice of Right to Appeal indicates the Valet Relocation will also impact other Balboa Park lots including the parking lots at the Federal Building, North Pepper Grove, South Pepper Grove, and Inspiration Point.

Likewise, park guests traveling north on Park Boulevard to use the new valet location will make a left turn at the unsignalized intersection of Park Boulevard and Space Theater Way. BPCP is concerned that this change or increase in use at this intersection may impact circulation and pedestrian safety and that these impacts should be analyzed before project implementation.

BPCP anticipates that the project may have parking, delivery and access impacts on member institutions that back up on Space Theater Way such as the Reuben H. Fleet Science Center, the Museum of Photographic Arts, the San Diego

Collaborative for Arts, Science & Culture



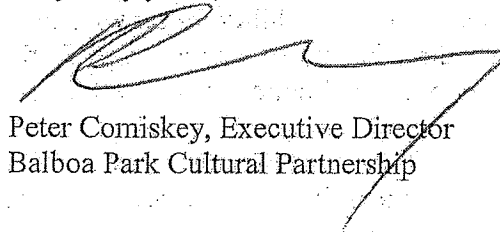


Model Railroad Museum and the San Diego History Center and that these impacts should be examined.

BPCP understands a different valet relocation plan may have been addressed in the Environmental Impact Report for the Balboa Park Master Plan Amendment (Project No. 233958) as part of a multi-faceted, comprehensive plan which included redesign of the Alcazar parking lot and relocation of the valet service to that parking lot. However, BPCP is unaware of any environmental analysis of the impacts of the present relocation proposal to the Casa de Balboa lot. In fact, the City Attorney's memorandum of May 16, 2013 indicates as part of the City Attorney's analysis of the BPTP, this "Office is not aware whether any review of potential traffic impacts has occurred for the BPTP."

Again, BPCP takes no position on the merits of the Valet Relocation Project. It does, however, request that the City Council set aside the environmental determination, develop specific impact information and appropriately analyze these impacts in conjunction with the other phases of the BPTP prior to implementation.

Very truly yours,



Peter Comiskey, Executive Director
Balboa Park Cultural Partnership

Collaborative for Arts, Science & Culture





THE CITY OF SAN DIEGO

Date of Notice: 05/22/2013

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

DEVELOPMENT SERVICES DEPARTMENT

PROJECT NAME/NUMBER: Balboa Park Central Valet Service

COMMUNITY PLAN AREA: Balboa Park

COUNCIL DISTRICT: 3

LOCATION: Casa De Balboa and other Balboa Park parking lots

PROJECT DESCRIPTION: Issuance of a Right of Entry permit to Balboa Park Central. Permit would allow Balboa Park Central to provide valet service to park patrons. A section of the Casa De Balboa parking lot will be utilized for valet drop off lanes. The non-exclusive use of the Federal Building, North Pepper Grove, South Pepper Grove, and Inspiration Point parking lots will also be included in the permit.

ENTITY CONSIDERING PROJECT APPROVAL: Park and Recreation Director

ENVIRONMENTAL DETERMINATION: Exempt per Section 15301

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

Valet already exists in Balboa Park. This is a reissuance of an expired Right of Entry Permit. Only the valet drop off area is being changed with the new permit. Negligible impacts from changes existing parking patterns.

DEVELOPMENT PROJECT MANAGER: Ryan Robertson

MAILING ADDRESS: 2125 Park Blvd. San Diego CA 92101

PHONE NUMBER: (619) 235-1120

On 05/22/2013 the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Development Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice. The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

Cc: Councilmember Todd Gloria, District 3
Balboa Park Committee Chair



CITY OF SAN DIEGO
CALIFORNIA
OFFICIAL RECEIPT

070058244

DEPARTMENT/DIVISION NAME

DATE

Legislative Services/Hearings 6-5-13

AMOUNT:

One hundred

DOLLARS

00/100

CENTS

\$100.-

RECEIVED FROM:

ADDRESS:

Balboa Park Cultural Partnership 1549 El Prado St / San Diego 92101-7418

IN PAYMENT OF:

CEQA Appeal - Balboa Park Central Valet Service



CHECK



CASH

RECEIVED BY:

Genda Irwin

FOR ABOVE NAMED DEPARTMENT

FUND	DEPARTMENT	ORGANIZATION	ACCOUNT	JOB ORDER	FACILITY	AMOUNT	DISTRIBUTION:
41300			77120				WHITE - CUSTOMER PINK - TREASURER YELLOW - RETAIN GREEN - AUDITOR

6/5/13 Received \$100 Hildamana Espindola #5

EXHIBIT D

17112A



City of San Diego
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101
(619) 446-5210

RECEIVED
CITY CLERK'S OFFICE
13 JUN -5 PM 3:34

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
OCTOBER 2012

SAN DIEGO, CALIF.

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- ☐ Process Two Decision - Appeal to Planning Commission
☐ Process Three Decision - Appeal to Planning Commission
☐ Process Four Decision - Appeal to City Council
- ☒ Environmental Determination - Appeal to City Council
☐ Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one ☐ Applicant ☐ Officially recognized Planning Committee ☒ "Interested Person" (Per M.C. Sec. 113.0103)

Name: LEO WILSON E-mail Address: Eucalyptusalert@sbcglobal.net
Address: 536 Maple Street, No. 202 City: San Diego State: CA Zip Code: 92103 Telephone: (619) 231-4495

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

City of San Diego, Park and Recreation Director

4. Project Information

Permit/Environmental Determination & Permit/Document No.: Balboa Park Central Valet Service	Date of Decision/Determination: May 22, 2013	City Project Manager: Ryan Robertson
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Decision (describe the permit/approval decision):

Environmental determination that Balboa Park Central Valet Service Project is exempt from CEQA review pursuant to Section 15301

5. Grounds for Appeal (Please check all that apply)

- ☐ Factual Error
☒ Conflict with other matters
☒ Findings Not Supported
- ☐ New Information
☐ City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

The decision that the project is exempt pursuant to Section 15301 violates the CEQA prohibition on "piecemealing" larger projects into components for the purposes of CEQA review.

As stated in the attached City Attorney Memorandum, dated May 16, 2013, breaking the environmental review of a project with significant environmental impacts into small components constitutes "piecemealing", and is forbidden by CEQA. The Balboa Park Central Valet Service is a component of the Balboa Park Transportation Plan, which was presented as one project and therefore needs to be subject to CEQA review as one entire project. As such, it violates CEQA to issue a determination that one component of the entire project is exempt pursuant to Section Section 15301.

The attached City Attorney memorandum, dated May 16, 2013, is incorporated by reference in this appeal, as it provides the legal basis of why the Balboa Park Central Valet Service environmental determination violates CEQA.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:  Date: June 5, 2013

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: May 16, 2013
TO: Honorable Mayor and City Councilmembers
FROM: City Attorney
SUBJECT: Balboa Park Transportation Plan

INTRODUCTION

This memorandum is in response to various concerns raised at the City Council Park & Recreation budget hearing on May 5, 2013, regarding a budget proposal of \$300,000 for the proposed Balboa Park Transportation Plan (BPTP). The memorandum briefly highlights potential legal issues related to the BPTP, and is provided as preliminary legal guidance only. Upon further refinement or direction from the Mayor or City Council, this Office will provide additional legal review and analysis.

The May 5, 2013 budget hearing did not involve the approval of any specific project; therefore, the description of the project in this memorandum is based on a presentation made by the Mayor to the Balboa Park Committee as well as additional information regarding the project details that was contained in the Independent Budget Analyst's (IBA) Report. *See Attachments 1 and 2.*

The BPTP consists of three phases. Phase I is the closure of the Cabrillo Bridge to vehicular traffic on weekends and holidays beginning on Saturday May 25th. Phase II is the removal of parking from the Plaza de Panama, with traffic re-routed to flow through the southwest quadrant of the Plaza de Panama during the weekdays. On weekends and holidays, when the Cabrillo Bridge is closed, traffic heading north into the Plaza de Panama would have to make a u-turn upon entering the Plaza de Panama. Phase II is anticipated to occur in late June or early July 2013. Phase III is the expansion of the accessible parking in the Alcazar Parking Lot, along with the resurfacing of a portion of the lot. This Office is unaware of a timeframe for Phase III. The BPTP also includes the relocation of the valet parking drop-off from directly west of the House of Hospitality to the parking lot directly south of the Casa de Balboa, and the installation

of tables, chairs, and other amenities in the Plaza de Panama. It is unknown which phase of the BPTP will implement these aspects.

Should further details about the BPTP become available, or should the BPTP be revised, this Office is available to provide further analysis.

ANALYSIS

I. CLOSURE OF THE CABRILLO BRIDGE

A. CEQA Analysis of Effects

The primary concern with the proposed closure of the Cabrillo Bridge to vehicular traffic is whether the potential effects of the closure on the environment have been properly considered in accordance with the California Environmental Quality Act (CEQA). Unless otherwise exempt, CEQA applies to discretionary projects proposed to be carried out. Cal. Pub. Res. Code § 21080(a). A discretionary project is "a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations."¹ CEQA Guidelines² § 15357. The closure of the Cabrillo Bridge is an exercise of judgment or deliberation by the Mayor.³

The Environmental Impact Report (EIR) that was certified by the City Council on July 9, 2012, for the Plaza de Panama project contained analyses of four alternatives to the Plaza de Panama project that included the closure of the Cabrillo Bridge.⁴ These alternatives, collectively called the "Pedestrianize Cabrillo Bridge Alternatives," include the No New Parking Structure Alternative (Alt. 3A), Organ Pavilion Parking Structure Alternative (Alt. 3B), West Mesa Parking Structure Alternative (Alt. 3C), and Inspiration Point Parking Structure Alternative (Alt. 3D). EIR at 9-1 – 9-146. A comparison of the potentially significant environmental effects of the alternatives is summarized in Table 9-1 of the EIR. EIR at 9-17 – 9-26.

¹ By way of contrast, a ministerial project, which is not subject to CEQA, is defined as the "mere [] appli[cation of] the law to the facts as presented" involving "no special discretion or judgment in reaching a decision." Cal. Pub. Res. Code § 21080(b)(1); CEQA Guidelines § 15369. A ministerial decision involves only the use of fixed standards or objective measurements; the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. *Id.*

² Cal. Code Regs., title 14, §§ 15000 to 15387 (CEQA Guidelines).

³ CEQA applies to decisions by any person or group of people within a public agency permitted by law to approve or disapprove the project at issue. CEQA Guidelines § 15356.

⁴ Although the Plaza de Panama project EIR contained an analysis of these alternatives and has been certified in accordance with CEQA, before any project with significant, unmitigated impacts can be approved, findings and a statement of overriding considerations must be made. CEQA Guidelines §§ 15091, 15093. While the City Council adopted findings and a statement of overriding considerations for the Plaza de Panama project, the City Council did not do so for any alternative discussed in the EIR. Therefore, if a different project is considered that would have significant, unmitigated impacts, the decision-maker must adopt additional findings and a statement of overriding considerations before that project could be approved.

Each of the Pedestrianize Cabrillo Bridge Alternatives has significant, unmitigated impacts related to traffic capacity. EIR at 9-20 – 9-21. The traffic mitigation for impacts to the intersections was based on weekend counts (worst case), to provide a more accurate indicator of actual traffic, although roadway segments were analyzed and mitigated for weekday impacts. EIR at 9-75, 9-94, 9-115, 9-134 – 135.

Regarding the traffic capacity impacts in 2015, the significant, unmitigable traffic capacity impact would be to A Street, between Sixth Avenue and Park Boulevard (except for the Inspiration Point Parking Structure Alternative). EIR at 9-76, 9-94, 9-116, 9-135. In addition, the traffic analyses for all of the Pedestrianize Cabrillo Bridge Alternatives demonstrate that there would be various other traffic capacity impacts that could be mitigated to below a level of significance. EIR at 9-76, 9-94, 9-115, 9-135. This Office is not aware whether any review of potential traffic impacts has occurred for the BPTP. Therefore, there could be additional, significant, unmitigated traffic capacity impacts due to the implementation of the BPTP.

There are also numerous significant, unmitigable traffic capacity impacts in 2030. However, at the Budget hearing, it was represented that the BPTP was a temporary plan, and that re-evaluation of the BPTP would occur when the Cabrillo Bridge is re-opened after the seismic retrofit scheduled to be completed by Caltrans in approximately May 2014. For that reason, the 2030 impacts are not discussed herein.⁵

It has been suggested that because the BPTP is temporary, CEQA review need not occur. The definition of “significant effect” does not directly take into account the duration of a project; instead, public agencies are to consider the “substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project” CEQA Guidelines § 15382.

Although the duration of an environmental effect is one fact that may affect the significance of that effect, short term effects may nevertheless be of such significance as to require an EIR. *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 85 (1974). Recently, the San Diego Unified School District’s argument that a project’s parking impacts did not constitute a significant impact on the physical environment because the impact was temporary was rejected. *Taxpayers for Accountable Sch. Bond Spending v. San Diego Unified Sch. Dist.*, No. D060999, 2013 WL 1767674 (Cal. App. Mar. 26, 2013). The court determined that temporary impacts caused by parking are appropriately reviewed under CEQA, because the vehicles “constitute physical conditions in an area that may be affected by the proposed project, thereby requiring a lead

⁵The significant, unmitigable 2030 traffic capacity impacts are to the intersection of Park Boulevard/Space Theater Way, Sixth Avenue between Robinson and Upas Street, Sixth Avenue between Upas Street and Quince Drive, Robinson Avenue between Vermont Street and Park Boulevard (except for the West Mesa Parking Structure Alternative), and A Street between Sixth Avenue and Park Boulevard. EIR, pg. 9-76, 9-94-95, 9-116. In addition, the Inspiration Point Parking Structure Alternative will have significant, unmitigable impacts to the intersection of Park Boulevard and the SR-163 Northbound on-ramp, and the intersection of Park Boulevard and Space Theater Way. EIR at 9-135.

agency to study whether a project's impacts on parking may cause a significant effect on parking and thus the environment."⁶ *Id* at 22.

CEQA contains a categorical exemption for minor alterations to land for "minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes," such as the "use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc." CEQA Guidelines § 15304(e). However, a categorical exemption cannot be used when an exception to the exemptions applies. CEQA Guidelines § 15300.2. A possibly relevant exception in this case is that a categorical exemption may not be used where there is a reasonable probability that the activity will have a significant effect on the environment due to unusual circumstances. CEQA Guidelines § 15300.2(c). Although the City has no proactive duty to determine that the exceptions to the exemptions are inapplicable, the City cannot ignore evidence of unusual circumstances. Stephen L. Kostka & Michael H. Zischke, *Practice Under the California Environmental Quality Act*, § 5.71 (Cont. Ed. Bar 2012). The exception to the exemption is a two step inquiry into whether there are unusual circumstances, and if there is a reasonable possibility of a significant effect on the environment due to the unusual circumstances. *Banker's Hill, et al. v. City of San Diego*, 139 Cal. App. 4th 249 (2006). A determination as to whether the circumstances regarding the proposed application of an exemption are unusual will be based on whether there is some feature of the project that distinguishes it from others in the exempt class. *Voices for Rural Living v. El Dorado Irr. Dist.*, 209 Cal. App. 4th 1096, 1109 (2012). In considering whether there is any reasonable possibility that the project may have a significant effect on the environment, the court will consider whether the record contains any substantial evidence supporting a fair argument that the project will have a significant effect on the physical environment. *Banker's Hill*, 139 Cal. App. 4th at 281. There already exists substantial evidence before the City that closure of the Cabrillo Bridge would result in significant, unmitigable traffic capacity impacts based on the analysis in the Plaza de Panama Project EIR. In addition, the Metro San Diego Community Development Corporation recently submitted a letter to the City Council regarding the BPTP and the significant, unmitigable traffic and parking impacts to the communities adjacent to Balboa Park, in the event of the closure of Cabrillo Bridge. See Attachment 3.

The potential traffic impacts caused by Phase I, the closure of the Cabrillo Bridge, are discussed in this memorandum separately from the potential environmental impacts caused by other phases of the proposed BPTP. However, CEQA requires the analysis of the entire project, that is, the whole of the action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. CEQA Guidelines § 15378. There is some discretion in CEQA regarding the timing of the analysis, so that the analysis may be performed early enough in the decision making to influence the project,

⁶ It has also been suggested that the closure of the Cabrillo Bridge for the BPTP is no different than the closure of the Bridge for various Special Events. This comparison is not at all helpful; the City is currently in litigation regarding its pattern and practice of failing to perform CEQA review before issuing Special Event Permits. *Coastal Environment Rights Foundation, Inc. (CERF II) v. City of San Diego*, No. 37-2010-00102574-CU-WM-CTL (San Diego Super. Ct.)

but late enough to provide meaningful information for the analysis, however, breaking the environmental review of the significant impacts of a larger project into smaller components, "piecemealing," is forbidden by CEQA. CEQA Guidelines § 15004; *Banning Ranch Conservancy v. City of Newport Beach*, 211 Cal. App. 4th 1209, 1222 (2012). The CEQA analysis must include "the environmental effects of future expansion or other actions if (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." *Laurel Heights Improvement Ass'n v. Regents of the University of California*, 47 Cal. 3d 376, 396 (1988). Nevertheless, separate environmental review of projects which seem related may be conducted when the two projects serve separate purposes or can be implemented independently. *Banning Ranch Conservancy*, 211 Cal. App. 4th at 1223. A key factor in determining whether the CEQA analysis has been improperly piecemealed is whether one project is a reasonably foreseeable consequence of another. *Laurel Heights*, 47 Cal. 3d at 396. Regardless of whether the projects could be undertaken independently of each other, they will likely not be found to have independent utility if they are actually implemented together. *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonoma*, 155 Cal. App. 4th 1214, 1229-31 (2007). The components of the BPTP could be implemented separately; however, they have been presented as one project, to be implemented in phases. CEQA requires a review of the entire BPTP.

B. Closure of the Bridge Pursuant to the Authority in the Vehicle Code

California Vehicle Code section 21101(e) allows the temporary closure of a street for "celebrations, parades, local special events, and other purposes when, in the opinion of local authorities having jurisdiction or a public officer or employee that the local authority designates by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing." Cal. Veh. Code § 21101(e). A street is defined in the Vehicle Code as "a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Street includes highway." Cal. Veh. Code § 590. The Cabrillo Bridge is publicly maintained and is currently open to the public for the purposes of vehicular traffic.⁷ Neither the California Vehicle Code nor the courts have defined the word "temporary." However, a standard definition of "temporary" is "[l]asting, used, or enjoyed for a limited time." Webster's II New College Dictionary 1163 (3d ed. 2005).

The San Diego Municipal Code authorizes the City Manager to close streets temporarily "upon a determination that a public or community event, including a block party, sponsored by a non-profit community or civic organization or business improvement organization, town council, recreation council, civic planning group, city-sponsored organization or any similar organization is to take place," with the issuance of a Special Event Permit. SDMC § 82.23. Other than this authority, which is contingent on the issuance of a Special Event Permit under certain circumstances, this Office is not aware of any other general delegation of the authority provided

⁷ These provisions of the California Vehicle Code apply to roads within parks. 1988 City Att'y MOL 117 (88-163; Feb. 25, 1988); 1988 City Att'y MOL 236 (88-16; Mar. 28, 1988).

in California Vehicle Code section 21101(e) to temporarily close roads. In addition, specific road closures pursuant to this authority have received City Council approval in the past. *See, e.g.*, San Diego Resolution R-261185 (July 16, 1984); San Diego Resolution R-277332 (Feb. 11, 1991). The provisions of the California Vehicle Code are binding on municipalities, which may not enact any ordinance or resolution on matters covered by the California Vehicle Code, except as expressly authorized. Cal. Veh. Code § 21; *Rumford v. City of Berkeley*, 31 Cal. 3d 545 (1982).

II. ALCAZAR LOT IMPROVEMENTS

A. Site Development Permit

There are no details regarding the extent of the improvements to the Alcazar Lot, although the IBA Report states that the parking lot would be expanded and reconfigured to accommodate ADA accessible parking. IBA Report at 157, attached as Attachment 2. The Plaza de Panama project also included improvements to the Alcazar Lot, which impacted .001 acres of environmentally sensitive lands. EIR at 4.1-22. That impact triggered the requirement to obtain a Site Development Permit. SDMC § 126.0504. If improvements to the Alcazar Lot as envisioned pursuant to the BPTP will also impact environmentally sensitive lands, a Site Development Permit will be required. A Site Development Permit that is triggered based on deviations to the environmentally sensitive lands regulations must be approved by the Planning Commission in accordance with Process Four. SDMC § 126.0502(d).

B. ADA

Under the Americans with Disabilities Act (ADA) and related regulations, the City is permitted to remove the accessible parking from Plaza de Panama if it is removing all parking spaces from that lot. However, the accessible parking proposed to be relocated to the Alcazar Parking Lot must meet accessible parking requirements and have an accessible path of travel from the parking spaces to the area of alteration (Plaza de Panama) and any other areas of the park served by the Alcazar Parking Lot. 28 C.F.R. § 35.151(b)(4); 2010 ADA Standards for Accessible Design § 208.3.1. There is also potential liability for the City if accessible parking that meets accessibility standards is removed from Plaza de Panama and replaced with noncompliant parking in another area.

The ADA and other Federal civil rights laws require that accessible features be maintained in working order so that they are accessible to and usable by those people they are intended to benefit. 28 C.F.R. § 35.133(a). The City may not take parking spaces that were accessible out of Plaza de Panama and remove them without first putting in new fully compliant spaces, as doing so could be construed as failing to maintain previously accessible parking spaces. If regrading the new parking spaces in the Alcazar Parking Lot is required to meet access standards, the lot must be regraded prior to the relocation of the disabled parking spaces. Accessible parking spaces are also required to have cross slopes and surfaces that are stable and slip resistant with no changes in level. 2010 ADA Standards for Accessible Design § 502.4. Additionally, the access aisles connected to disabled parking spaces must be level to provide a surface for wheelchair transfer to and from vehicles. *Id.*

Not only are the parking spaces themselves required to be accessible, but also the path of travel to and from the parking spaces and the altered area, Plaza de Panamá. 28 C.F.R. § 35.151(b)(4). In this situation, the path of travel to and from the parking spaces to other primary function areas within the park (i.e. museums, gardens, etc.), would also need to be accessible, in keeping with general accessible parking requirements. 2010 ADA Standards for Accessible Design § 208.3.1. Additionally, in parking facilities that do not serve a particular building or facility, such as the Alcazar Parking Lot, parking spaces must be located on the shortest accessible route to an accessible pedestrian entrance to the parking facility. *Id.* The path of travel adjacent to the proposed accessible parking spaces in the Alcazar Parking Lot would need to be evaluated, and slope and cross slope issues addressed, in conjunction with relocating the parking spaces.

C. Contracting of Work

Although there is no indication at this point that any contracts will be let for any portion of the BPTP, a review of the Mayor's contracting authority is provided. Minor public works contracts, which are those public works contracts valued at \$500,000 or less, are within the Mayor's authority to award. SDMC § 22.3102(d). A public works contract is a contract for the construction, reconstruction or repair of public buildings, streets, utilities and other public works, including design-build contracts, construction manager at risk contracts, and job order contracts. SDMC § 22.3003. Therefore, the described improvements to the Alcazar Lot would be a public works. However, public works projects are not required to be contracted out. In fact, some of the work described above may be able to be performed by City forces, thus requiring that the work be evaluated for any meet and confer requirements before a contract may be awarded. *Building Material & Constr. Teamsters' Union v. Farrell*, 41 Cal. 3d 651, 654 (1986).

Consultant contracts that do not exceed \$250,000 may be awarded by the City's Purchasing Agent. SDMC § 22.3207(a). A consultant contract is one in which expert or professional services are provided, including, but not limited to, accounting, architectural, engineering, marketing, public relations, management, financial, and legal services. SDMC § 22.3003. Consultant services may be necessary to provide engineering services relating to the expansion or reconfiguration of the Alcazar Lot.

III. OTHER CONSIDERATIONS

A. Other Environmental Impacts

Table 9-1 of the EIR indicates that the Pedestrianize Cabrillo Bridge Alternatives have significant, unmitigated impacts to land use (plan consistency) and noise (temporary construction noise). EIR at 9-17, 9-25. In addition, these four Pedestrianize Cabrillo Bridge Alternatives have significant and mitigated impacts to archeological resources and biological resources. EIR at 9-18, 9-22. As noted previously, this Office is not aware whether any review of potential traffic impacts has occurred for the BPTP. Therefore, there could be additional impacts due to the implementation of the BPTP.

B. Authority to Relocate Valet Parking

The lease for the House of Hospitality building requires the City to use its best efforts to designate a public parking lot in Balboa Park for the restaurant's customers' non-exclusive use, through a right-of-entry permit issued by the City's Park and Recreation Department at no charge, which is to designate a public parking lot in Balboa Park from which the lessee can operate valet parking or shuttle service to and from the restaurant. City Clerk Document RR-289141, Lease § 1.12. Further, the lease provides that the lessee "understands that it may not reserve parking spaces and that availability of parking spaces is not guaranteed," and upon prior notice, the City may designate a different public parking lot in Balboa Park, and the choice of parking lot shall be determined in the sole and absolute discretion of the Park and Recreation Department. *Id.* The restaurant and catering portion of the lease was later subleased with the consent of the City; the sublease specifically states that it is subject to the conditions set forth in the lease and Section 1.8, Parking, of the sublease reiterates section 1.12, Parking, of the lease.

A Right of Entry Permit was entered into between the City and the sublessee with an effective date of September 15, 2005 (ROE Permit). The ROE Permit, which expired on September 15, 2010, allowed the sublessee to use portions of the property located at Plaza de Panama and at the Organ Pavilion, Federal Building, and Inspiration Point parking lots. Specifically, the ROE allows the use of four loading zone lanes in the Plaza de Panama for loading and unloading of passengers, and use the Federal Building and Organ Pavilion parking lots, on a nonexclusive, first-come, first-served basis, for the storage of vehicles. In addition, during periods of high demand, the Inspiration Point parking lot may be used on a non-exclusive, first-come, first-served basis, for the storage of vehicles. The ROE Permit states that no other parking lots could be used but that upon prior written notice to the sublessee, the Park and Recreation Department may, in its sole discretion, designate an alternative parking lot in Balboa Park, or in close proximity, for valet/shuttle service.

Therefore, the City, through the Park and Recreation Department, may relocate the valet parking operations through a Right of Entry Permit and without any amendments to the existing leases.

CONCLUSION

This memorandum is intended to be a preliminary review of some of the topics that may arise during discussions about the BPTP and is based on currently known facts. Should further details about the BPTP become available, or should the BPTP be revised, this Office is available to provide further analysis.

JAN I. GOLDSMITH, CITY ATTORNEY

By Shannon M. Thomas
Shannon M. Thomas
Deputy City Attorney

Honorable Mayor and City Councilmembers
May 16, 2013
Page 9

SMT:als

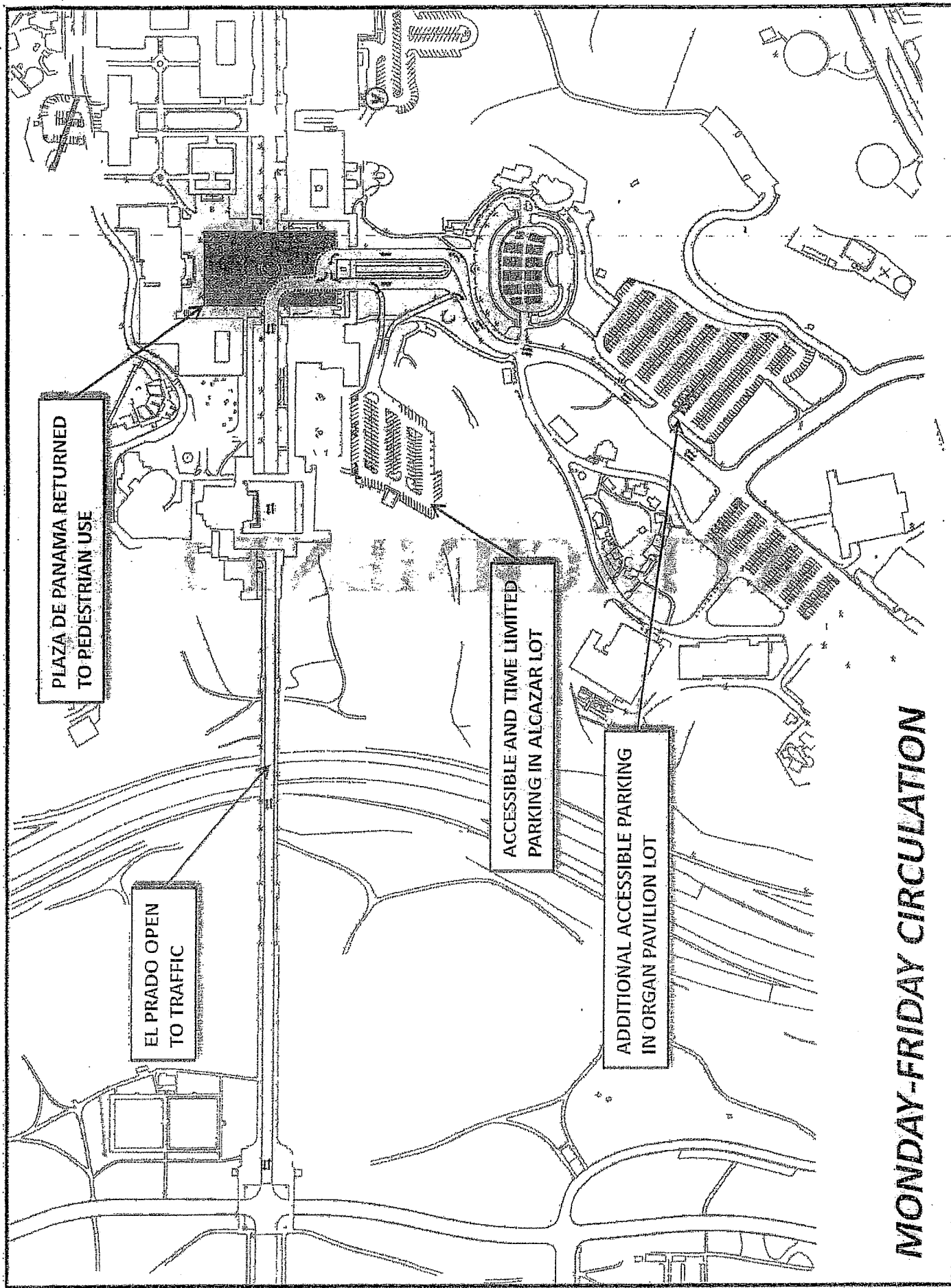
Attachments: Attachment 1: Proposed Balboa Park Transportation Plan

Attachment 2: Independent Budget Analyst Report

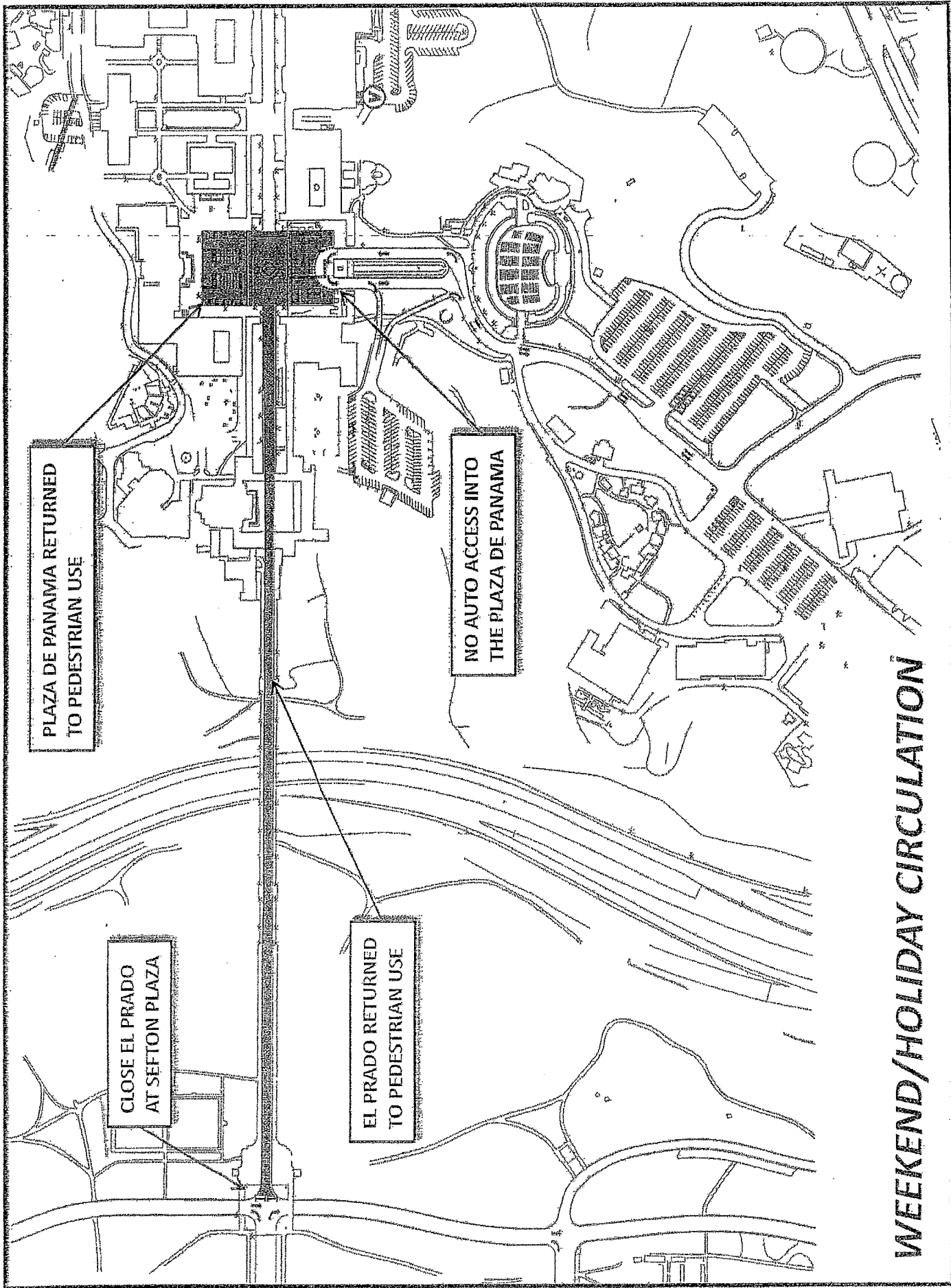
Attachment 3: Metro-San-Diego CDC Letter to City Council

Doc. No.: 559672_3

ATTACHMENT 1



MONDAY-FRIDAY CIRCULATION



PLAZA DE PANAMA RETURNED
TO PEDESTRIAN USE

NO AUTO ACCESS INTO
THE PLAZA DE PANAMA

CLOSE EL PRADO
AT SEFTON PLAZA

EL PRADO RETURNED
TO PEDESTRIAN USE

WEEKEND/HOLIDAY CIRCULATION

PARK BOULEVARD

ACCESS FROM PARK BLVD

R.H. FLEET
SCIENCE
CENTER

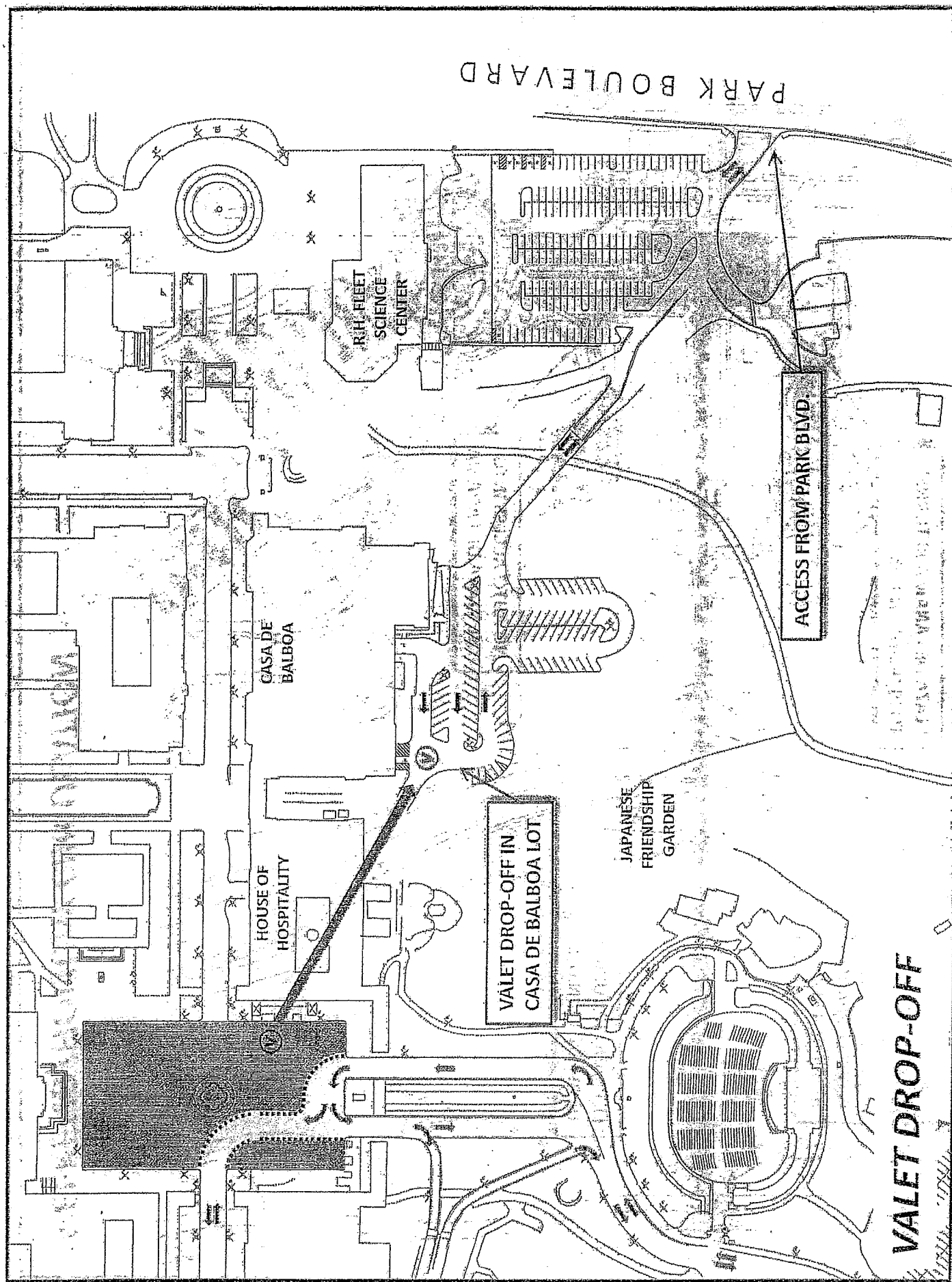
CASA DE
BALBOA

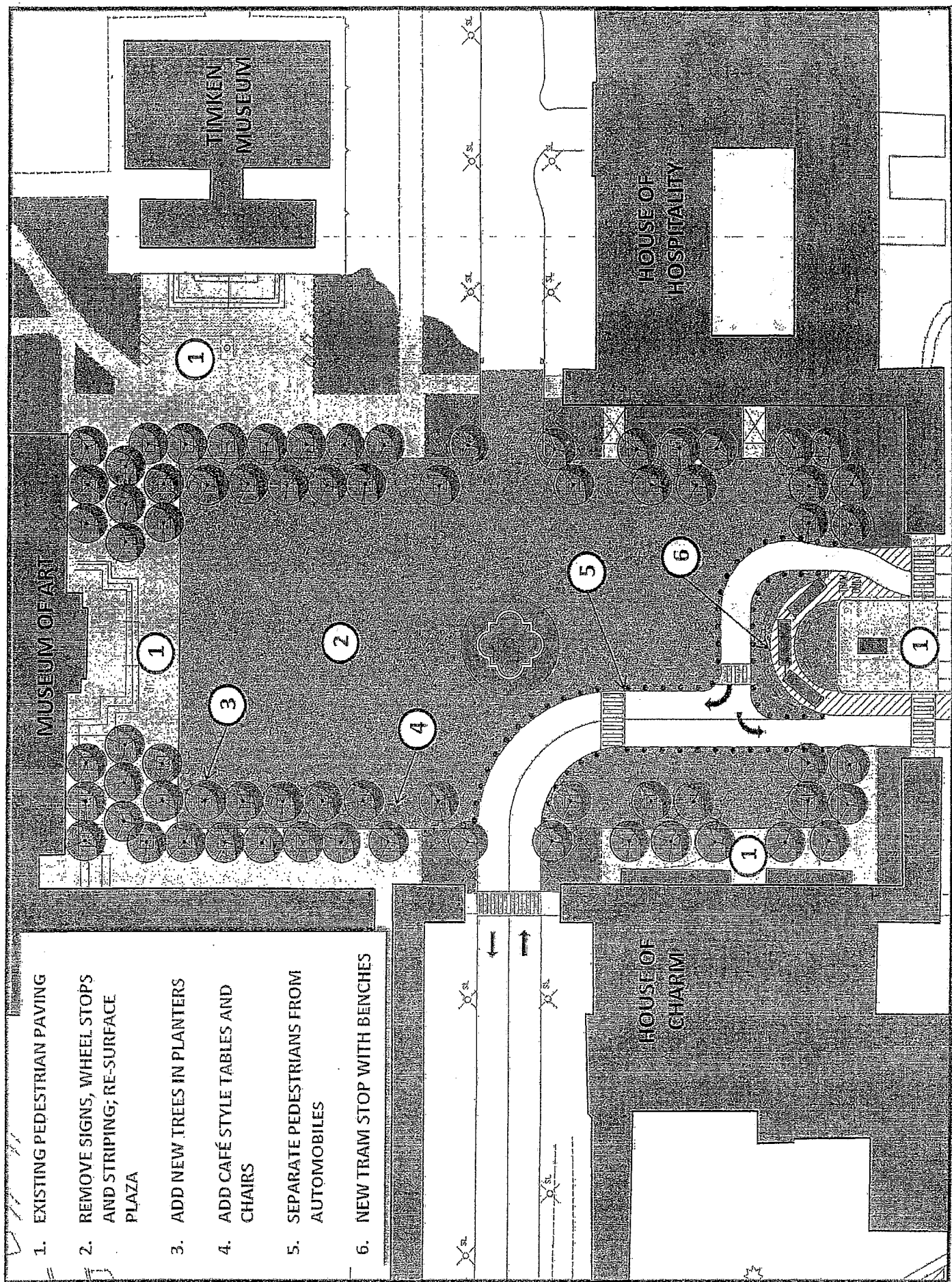
HOUSE OF
HOSPITALITY

VALET DROP-OFF IN
CASA DE BALBOA LOT

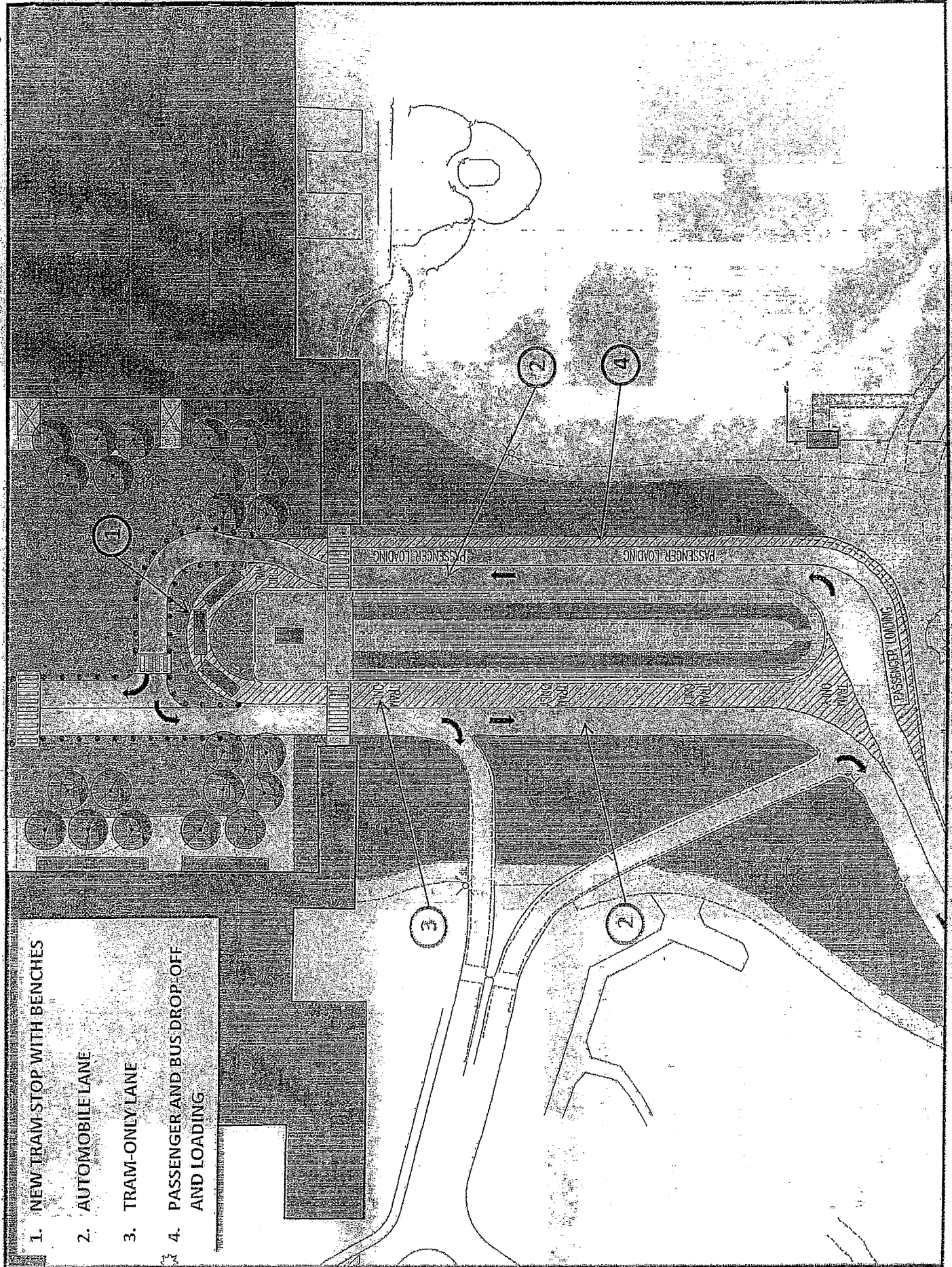
JAPANESE
FRIENDSHIP
GARDEN

VALET DROP-OFF





1. EXISTING PEDESTRIAN PAVING
2. REMOVE SIGNS, WHEEL STOPS AND STRIPING; RE-SURFACE PLAZA
3. ADD NEW TREES IN PLANTERS
4. ADD CAFÉ STYLE TABLES AND CHAIRS
5. SEPARATE PEDESTRIANS FROM AUTOMOBILES
6. NEW TRAM STOP WITH BENCHES



1. NEW TRAM STOP WITH BENCHES

2. AUTOMOBILE LANE

3. TRAM-ONLY LANE

4. PASSENGER AND BUS DROP-OFF
AND LOADING

ATTACHMENT 2

27/11/2011

Department Review

Park & Recreation

Mayor's FY 2014 Proposed Adjustments

The FY 2014 Proposed Budget for the Park and Recreation Department totals approximately \$89.2 million in the General Fund, an increase of approximately \$3.2 million and 12.91 FTEs over the FY 2013 Adopted Budget. Department General Fund revenues are projected to total \$34.1 million, reflecting a decrease of approximately \$3.2 million from the FY 2013 Adopted Budget.

The Department has several other funds including the Golf Course Fund, the Los Penasquitos Reserve Fund, and the Environmental Growth Funds. When all the departmental funds are combined, the Department budget totals \$117.2 million, an increase of approximately \$3.7 million from the FY 2013 Adopted Budget.

The Park and Recreation Department operates and maintains the City's recreation centers, playgrounds, athletic fields, swim-

ming pools, regional parks, and all of the City's recreational facilities. With the vital roles that these facilities and programs play within the communities, the City Council has made it a priority to restore some previously reduced service hours due to budgetary constraints in prior years.

During FY 2012 mid-year budget actions, five additional hours were added to the weekly hours for each recreation center, increasing the average weekly hours from 40 hours to 45 hours. The FY 2014 Proposed Budget proposes to continue to fund the recreation centers to provide an average of 45 service hours per week for every recreation center.

Balboa Park

In 1915, Balboa Park was the venue for the Panama - California Exposition to celebrate the opening of the Panama Canal and the City of San Diego as the first U.S. port-of-call for northbound maritime trade. To celebrate the 100th anniversary of the 1915

SUMMARY OF PARK AND RECREATION BUDGET				
	FTE	FY 2013 BUDGET	FY 2014 PROPOSED	CHANGE
General Fund				
Administrative Services	15.00	\$ 2,254,732	\$ 2,367,288	\$ 112,556
Community Parks I	162.43	20,546,140	21,136,926	590,786
Community Parks II	231.51	21,387,139	21,100,774	(286,365)
Developed Regional Parks	313.87	33,356,203	34,886,977	1,530,774
Open Space	59.25	8,427,636	9,665,098	1,237,462
Subtotal General Fund	782.06	85,971,850	89,157,063	3,185,213
Non-General Fund				
Environmental Growth Fund 1/3		4,408,198	3,962,339	(445,859)
Environmental Growth Fund 2/3		8,078,081	8,229,966	151,885
Golf Course Fund	98.00	14,757,337	15,623,529	866,192
Los Penasquitos Canyon Preserve Fund	2.00	201,804	219,902	18,098
Subtotal Non-General Fund	100.00	27,445,420	28,035,736	590,316
TOTAL PARK AND RECREATION	882.06	\$ 113,417,270	\$ 117,192,799	\$ 3,775,529

Office of the Independent Budget Analyst

April 2013

Department Review

Exposition ("Centennial Celebration"), the City of San Diego entered into an agreement with Balboa Park Celebration, Inc. ("2015 Committee") to be the official and sole organizer of the Centennial Celebration. The 2015 Committee has been tasked with planning, organizing, and implementing the planned events related to the Centennial Celebration. See the Balboa Park Centennial section for additional information related to the Centennial Celebration.

The FY 2014 Proposed Budget includes 3.00 limited FTEs (1.00 Program Manager, 1.00 District Manager, and 1.00 Clerical Assistant II) to support the logistical coordination of the Centennial Celebration within Balboa Park. It is anticipated the additional positions will prepare for and carry out the events working with other City departments and necessary outside agencies such as San Diego Gas & Electric. They will report directly to the Deputy Director of De-

veloped Regional Parks (which includes Balboa Park).

Traffic Management Plan

The FY 2014 Proposed Budget includes \$300,000 for a traffic management plan related to vehicle traffic within Balboa Park.

On April 24, 2013, the Mayor provided preliminary details on the proposed traffic management plan ("Traffic Plan") to the Balboa Park Committee. On weekdays, the Traffic Plan proposes to restrict vehicular traffic to the southwest corner of the Plaza de Panama, while allowing for two-way traffic to cross the Cabrillo Bridge. On weekends and holidays, the Cabrillo Bridge would be closed to vehicle traffic and vehicles would not be allowed in the Plaza de Panama. Vehicles traveling north on the Pan American Road would have to perform a U-turn just south of the Plaza de Panama fountain.

The current ADA accessible parking located

SUMMARY OF PARK AND RECREATION BUDGET CHANGES					
	FTE	PE	NPE	Total	Revenue
Fiscal Year 2013 Budget	769.15	\$ 51,609,881	\$ 34,620.93	\$ 86,230,762	\$ 31,280,754
Mayor's Fiscal Year 2014 Proposed Budget Changes					
Salaries & Benefit Adjustments	(0.18)	2,168,301		2,168,301	
Non-Discretionary and Info Technology Adjustments			204,271	204,271	
Addition staff to support the Balboa Park Centennial Celebration	3.00	364,545	21,000	385,545	
Support for the Balboa Park Traffic Management Plan			300,000	300,000	
Addition staff for additional acreage at North Mission Trails Regional Park	5.00	386,643	241,000	627,643	
Addition staff for additional Open Space Acreage (East Elliot and Otay)	2.00	173,756	48,000	221,756	49,700
Support for the Children's Pool Permit Processing			25,000	25,000	
Additional staff to support the expansion of Memorial Pool	0.75	21,989	5,000	26,989	2,500
Additional staff to support the West Maple Canyon Mini-Park	0.04	1,404	1,200	2,604	
New Global Positioning System Contract			25,200	25,200	
General Benefit Contribution to the Maintenance Assessment District			123,122	123,122	
Restoration of Winter Restroom Service	0.22	6,974		6,974	
One-Time Reductions and Annualizations			(958,700)	(958,700)	(742,982)
Revenue adjustment					(2,510,864)
Non-Standard Hour Personnel Funding	2.08	26,508		26,508	
Mayor's Fiscal Year 2014 Proposed Budget	772.06	\$ 54,759,951	\$ 34,397,412	\$ 89,157,363	\$ 34,078,108
Difference from 2013 to 2014	12.91	\$ 3,150,170	\$ 35,093	\$ 3,185,213	\$ (2,011,646)

Office of the Independent Budget Analyst

April 2013

Department Review

in the Plaza de Panama would be relocated to the Alcazar Parking lot and valet parking would be relocated from the Plaza de Panama to the parking lot located south of the Casa de Balboa.

Transportation via the new trams would be available from the Inspiration Point Parking lot to the Plaza de Panama, with multiple stops in route; however the trams will not travel beyond the Plaza de Panama.

Additional signage is anticipated as well as distinctive borders to separate vehicle routes from pedestrian areas. New landscaping (trees) and tables are planned for the cleared area within the Plaza de Panama.

As this is the preliminary Traffic Plan, the definitive details are still to be determined. However an outline of the proposed implementation phases has been developed.

Summarily, the first phase of the Traffic Plan is to commence closing the Cabrillo bridge on weekends and holidays. This is intended to commence on May 25, 2013.

The second phase is to eliminate the parking from the Plaza de Panama by diverting traffic solely through the southwest corner of the Plaza de Panama. It is anticipated that this would occur by late June / early July 2013.

The third phase would be to expand / reconfigure the Alcazar Parking lot to accommodate ADA accessible parking. No time estimate was provided for the completion of this phase.

No detailed cost estimates were provided beyond the request of \$300,000 in the FY 2014 Proposed Budget. Cost estimates have

been reduced from the \$500,000 originally requested by the Mayor in the FY 2013 Mid-Year budget adjustments. The Mayor has indicated that he plans to provide many additional opportunities for public input into the Traffic Plan though no timeline was provided.

Our office can only provide a limited review of the Traffic Plan for this report. As additional details are developed through the public input process and presented by the Mayor's Office, our office will conduct additional review.

In anticipation of the undertaking of the Plaza de Panama Project, several new pedestrian trams were ordered to assist in the transportation of pedestrians throughout the parking lots and the Plaza de Panama. The new trams are incorporated into the new Traffic Plan. The annual lease payment of \$150,000 is included in the FY 2014 Proposed Budget, however the operation of the trams, the operational costs, and the corresponding funding to address the operational costs of the trams has yet to be determined.

Other Budget Adjustments

The FY 2014 Proposed Budget includes the following significant budget adjustments:

- An increase of 7.00 FTEs (5.00 Park Rangers, 1.00 Drafting Aide, and 1.00 Pesticide Applicator) and approximately \$850,000 in expenditures to support additional open space acreage acquired by the City. According to a study conducted by the department, other large cities have open space acreage to park ranger ratio of approximately 650 acres

Department Review

to one park ranger. The City's current open space acreage to park ranger ratio is approximately 1,500 acres to one park ranger. The Drafting Aide positions will be partially funded by the Maintenance Assessment Districts (MADs) and will support the City and the MADs in defining, mapping, and zoning of land parcels.

- An increase of \$25,000 in expenditures related to the completion of the permitting process to close the beach at the Children's Pool during seal pupping season. Funding of \$30,000 was provided for this process during the FY 2012 Mid-Year Budget adjustments; however, any unexpended funds from this funding will revert to the General Fund at the end of FY 2013. The additional funding will ensure funds are available in FY 2014 for the completion of the permitting process.
- An increase of 0.79 FTEs (0.75 Pool Guard II and 0.04 Grounds Maintenance Worker II) and \$29,593 in expenditures to support the expansion of the Memorial Pool (40 year-old pool) and additional acreage at the West Maple Canyon Mini-Park;
- An increase of 0.22 FTEs (Ground Maintenance Worker position) to reinstate restroom service in the winter months (November 1 to March 30) for the restrooms located at South Kellogg and North Mission Beach; and
- A revenue reduction of approximately \$2.5 million to reflect FY 2014 revenue projections. The largest items contribu-

tion to the reduced revenue is a reduction of approximately \$1.7 million of TOT funding for tourist-related expenditures and a reduction of \$650,000 from the transfer from the Environmental Growth Fund 1/3 to the General Fund per revised projections.

Issues to Consider

Parks System Master Plan

The priority for the department in the FY 2014 Proposed Budget is securing the current service levels and service hours in the FY 2014 Proposed Budget, however a potentially beneficial strategic tool that should be considered is the development of a Park System Master Plan.

A Park System Master Plan would provide comprehensive evaluations of the parks and open space systems' existing conditions. It would also identify opportunities and constraints; articulate a method and prioritization for the equitable distribution of facilities and services citywide; recommend recreation programming; and define capital improvements and funding strategies to meet the needs of our residents and visitors. The last Park System Master Plan that was done for the City of San Diego was completed in 1956. Currently the citywide parks and open space inventory and conditions assessment is performed by internal staff in conjunction with the Development Services Department.

Recreation Center Hours

Recreation center hours continue at 45 hours per week, per recreation center, in the FY 2014 Proposed Budget. Council members have had a high interest in restor-

Department Review

ing past reductions to recreation center hours which were budgeted at 62.3 hours per week in FY 2001. If there is interest in considering some level of restoration for FY 2014, we have included this on the list of potential revisions to the Proposed Budget and will work with the department to identify costs.

User Fees

In FY 2013, the Park and Recreation Department engaged a consultant to assist in a comprehensive study of all the Department's fees, with the exception of those related to the Golf Division. Findings and recommendations from this comprehensive study are anticipated to be ready for Council consideration in mid-FY 2014. The FY 2014 Proposed Budget does not include any proposed fee revisions for the Park and Recreation Department pending the outcome of this study.

Capital Improvements

It is anticipated that approximately \$16.1 million will be expended on capital improvement projects related to the Park and Recreation Department in FY 2014. The projects include facilities at Balboa and Torrey Pines golf courses, ADA upgrades (Chicano Park), and community park upgrades and improvements. Projects anticipated to expend large dollar amounts in FY 2014 include the North Park mini-park and streetscape improvement projects for construction/document work (approximately \$2.2 million); and construction work on the Central Avenue mini-park (approximately \$1.2 million).

Environmental Growth

The Environmental Growth Funds (EGFs) are projected to receive approximately \$11.8 million in franchise fees from San Diego Gas & Electric, representing one-quarter of the total SDG&E franchise fees received by the City, in accordance with Charter Section 103.1a. This is a reduction of approximately \$842,000 from FY 2013. The reduction in revenue is attributed to a decline in natural gas prices. Additional information related to the franchise fees can be found in the Franchise Fee portion of the General Revenues Section in Volume I of the FY 2014 Proposed Budget.

The EGFs are allocated into a one-third and two-thirds portion, to reflect Charter provisions that up to two-thirds of revenues can be pledged for bonds for acquisition, improvement and maintenance of park or recreational open space.

In FY 2009 the EGF (two-thirds portion) retired the 1994 San Diego Open Space Facilities District No.1 General Obligation Bonds. To the extent funds exist over and above the requirements for debt service, the Charter provides that they may be used for other purposes so long as it preserves and enhances the environment and is approved by the City Council.

Since the time the bonds have been repaid, available revenues have been utilized to reimburse the General Fund for eligible park and open space maintenance activities. For FY 2014, \$9.2 million is budgeted to reimburse the General Fund for park expenses, with \$2.3 million budgeted for Regional

Department Review

Park and Open Space Maintenance which that would otherwise be funded by the General Fund. Additional funds are budgeted for reimbursement to Maintenance Assessment Districts and for transfer to the Los Penasquitos Canyon Preserve Fund.

Golf Course

The FY 2014 Proposed Budget for the Golf Course Fund totals \$15.6 million, an increase of 1.00 FTE and approximately \$866,000 over the FY 2013 Adopted Budget. Department revenues are anticipated to increase by approximately \$1.8 million to \$18.4 million from \$16.6 million in FY 2013.

Significant Budget Adjustments

The FY 2014 Proposed Budget includes the following budget adjustments:

An increase of 1.00 FTE (Public Information Officer) and \$102,446 in expenditures to develop and implement a marketing plan to increase golf play at City-operated golf courses. The 2013 Golf Plan, approved by the City Council in November 2012, provided rate flexibility for the Golf Division to entice additional rounds. Additional revenue of \$200,000 is projected as a result of the Public Information Officer position implementing a new marketing plan and increasing usage of the rate flexibility within the City-operated golf courses to optimize golf play/rounds.

An increase of approximately \$1.6 million in revenue projections due to facility and course improvements and improvements in the financial environment. The revenue pro-

jections do not anticipate any increase in golf rates to achieve the increase in revenue.

Issues to Consider

In preparation of the FY 2012 budget, the City Council adopted a resolution requesting that the Mayor report to the Council on the feasibility, reasonableness and/or potential cost savings associated with eight specific budgetary proposals, including the review and potential revision of the lease payment formula for payments from the Golf Enterprise Fund to the General Fund.

On March 16, 2011, the City Attorney presented a report to the Budget and Finance Committee on options to increase General Fund revenues from the City's golf courses. The report described the formula utilized to determine the land use payment which was established in 1995. The land use payment formula includes two components: a fixed annual rate of \$1,806 per acre plus 9.9% of gross revenues, subject to review every five years. The per acre component was adjusted from \$1,500 to \$1,806 in December 2009 based on annual CPI increase since 2003 when it was last reviewed.

According to the City Attorney report, the annual rate component is comparable to the revenue expected under a lease arrangement similar to the one at Mission Trails. The gross revenue percentage was developed to replace the revenue the General Fund would have received from the operation of the Torrey Pines and Balboa Park Golf Courses as municipal facilities.

The report also noted that other factors could be considered if the formula was to

Department Review

be revisited, including the fair market value of the property.

Though discussed at the March 16, 2011 Budget and Finance Committee meeting, no follow up action was requested. Should the City Council continue to be interested in this concept, the Real Estate Assets Department would need to update its appraisals for the golf properties in order to evaluate the lease payment formula.

THE HISTORY OF THE

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ATTACHMENT 3

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METRO

SAN DIEGO CDC

1901 First Avenue, Suite 420
San Diego, California 92101-0311
(619) 231-4495

May 5, 2013

Honorable City Council President Gloria and Members of the City Council
220 C Street, 10th Floor
San Diego, California 92101

Re: Mayor's Temporary Traffic Management Plan Proposal to Close Cabrillo Bridge;
Required CEQA Review

Dear Council President Gloria and Members of the City Council:

This letter is written on behalf of the Metro San Diego Community Development Corporation ("Metro San Diego CDC") whose 12-member Board of Directors, and 40-member Charter Committee, includes representatives of commercial and residential property owners, and businesses representing over 19 full blocks of the Bankers Hill/Park West community adjacent to the west side of Balboa Park.

Approximately 20 members of the Metro San Diego CDC attended the Mayor's announcement of his 3-phased Plaza de Panama "Temporary" Traffic Management Plan Proposal ("Mayor's Proposal") on April 24, 2013 – a summary outline of which was provided only a few hours prior to the announcement at a Special Meeting of the Balboa Park Committee. The Metro San Diego CDC is presently evaluating the Mayor's Proposal and is diligently preparing initial comments for consideration by the City Council before any funds are committed to the Mayor's Proposal in its current form.

An initial question from the Metro San Diego CDC is how will the City conduct the required environmental review of the Mayor's Proposal pursuant to CEQA? The Environmental Impact Report ("EIR") for the Plaza de Panama project approved by the City Council expressly found that *there would be significant unmitigated traffic and parking impacts to communities adjacent to Balboa Park if the Cabrillo Bridge were closed.* Although the Plaza de Panama project was found by a Superior Court Judge (Case No. 2012-00102270) to violate a City

historic preservation ordinance, the Judge in the case expressly stated in his decision that the Plaza de Panama Project EIR "was more than sufficient as an informational document" (p. 8), and further found that the EIR's consideration of project alternatives (including finding there would be unmitigated negative impacts resulting from closing the Cabrillo Bridge to vehicular traffic) "to have been above reproach" (p. 9).

Although the Plaza de Panama Project may not be built as proposed on account of the Judge's interpretation of the historic preservation ordinance, the Plaza de Panama Project EIR was adopted by the City Council and is the current controlling CEQA review document for the Balboa Park Master Plan, as amended by the City Council in 2012. The Plaza de Panama Project EIR unequivocally states that the closure of the Cabrillo Bridge to vehicular traffic will result in unmitigated traffic and parking impacts in areas adjacent to Balboa Park. These clearly identified negative impacts will need to be specifically addressed, and mitigated to a level of insignificance, prior to implementation of the first phase of the Mayor's Proposal to close the Cabrillo Bridge to vehicular traffic on weekends.

If the Mayor's Office contends that the Mayor's Proposal is exempt from CEQA review pursuant to a statutory or categorical exemption of any kind; then the specific exemption, and reasons why it is applicable, should be documented; as well as the justification it might provide for ignoring the express findings stated in the clearly applicable EIR. If an exemption is claimed, of course, statement of exemption must also be filed pursuant to CEQA. If funds are authorized, presumably a CEQA analysis would apply to the scope of the entire project contemplated by the Mayor's Proposal. If the Mayor's Proposal is indeed temporary in nature, the City Council should naturally make a finding as to when it is expected to end.

In making this request for compliance with CEQA prior to commitment of City funds, the Metro San Diego CDC is not taking a position regarding the merits of all or any parts of the Mayor's Proposal at this time. Instead, it is requesting sufficient information be developed in the context of a CEQA review to evaluate the Mayor's Proposal, and further requesting that adequate mitigation measures will be identified and put in place prior to potential implementation.

Sincerely yours,

Leo Wilson
Administrator
Metro San Diego CDC

EXHIBIT E

I THINK



City of San Diego
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101
(619) 446-5210

RECEIVED
CITY CLERK'S OFFICE
JUN -5 PM 3:41

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
OCTOBER 2012

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- ☐ Process Two Decision - Appeal to Planning Commission
☐ Process Three Decision - Appeal to Planning Commission
☐ Process Four Decision - Appeal to City Council
☒ Environmental Determination - Appeal to City Council
☐ Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one ☐ Applicant ☐ Officially recognized Planning Committee ☒ "Interested Person" (Per M.C. Sec. 113.0103)

Name:
B. Michael Seidel

E-mail Address:
seidel@cox.net

Address:
3535 First Ave #10A

City:
San Diego

State: Zip Code:
CA 92103

Telephone:
(619) 955-5569

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

City of San Diego, Park and Recreation Director

4. Project Information

Permit/Environmental Determination & Permit/Document No.:

Date of Decision/Determination:

City Project Manager:

Balboa Park Central Valet Service

May 22, 2013

Ryan Robertson

Decision (describe the permit/approval decision):

Environmental determination that Balboa Park Central Valet Service Project is exempt from CEQA review pursuant to Section 15301

5. Grounds for Appeal (Please check all that apply)

- ☐ Factual Error
☒ Conflict with other matters
☒ Findings Not Supported
☐ New Information
☐ City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

The decision that the project is exempt pursuant to Section 15301 violates the CEQA prohibition on "piecemealing" larger projects into components for the purposes of CEQA review.

As stated in the attached City Attorney Memorandum, dated May 16, 2013, breaking the environmental review of a project with significant environmental impacts into small components constitutes "piecemealing", and is forbidden by CEQA. The Balboa Park Central Valet Service is a component of the Balboa Park Transportation Plan, which was presented as one project and therefore needs to be subject to CEQA review as one entire project. As such, it violates CEQA to issue a determination that one component of the entire project is exempt pursuant to Section Section 15301.

The attached City Attorney memorandum, dated May 16, 2013, is incorporated by reference in this appeal, as it provides the legal basis of why the Balboa Park Central Valet Service environmental determination violates CEQA.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:

Date: June 5, 2013

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: May 16, 2013
TO: Honorable Mayor and City Councilmembers
FROM: City Attorney
SUBJECT: -- Balboa Park Transportation Plan

INTRODUCTION

This memorandum is in response to various concerns raised at the City Council Park & Recreation budget hearing on May 5, 2013, regarding a budget proposal of \$300,000 for the proposed Balboa Park Transportation Plan (BPTP). The memorandum briefly highlights potential legal issues related to the BPTP, and is provided as preliminary legal guidance only. Upon further refinement or direction from the Mayor or City Council, this Office will provide additional legal review and analysis.

The May 5, 2013 budget hearing did not involve the approval of any specific project; therefore, the description of the project in this memorandum is based on a presentation made by the Mayor to the Balboa Park Committee as well as additional information regarding the project details that was contained in the Independent Budget Analyst's (IBA) Report. See Attachments 1 and 2.

The BPTP consists of three phases. Phase I is the closure of the Cabrillo Bridge to vehicular traffic on weekends and holidays beginning on Saturday May 25th. Phase II is the removal of parking from the Plaza de Panama, with traffic re-routed to flow through the southwest quadrant of the Plaza de Panama during the weekdays. On weekends and holidays, when the Cabrillo Bridge is closed, traffic heading north into the Plaza de Panama would have to make a u-turn upon entering the Plaza de Panama. Phase II is anticipated to occur in late June or early July 2013. Phase III is the expansion of the accessible parking in the Alcazar Parking Lot, along with the resurfacing of a portion of the lot. This Office is unaware of a timeframe for Phase III. The BPTP also includes the relocation of the valet parking drop-off from directly west of the House of Hospitality to the parking lot directly south of the Casa de Balboa, and the installation

of tables, chairs, and other amenities in the Plaza de Panama. It is unknown which phase of the BPTP will implement these aspects.

Should further details about the BPTP become available, or should the BPTP be revised, this Office is available to provide further analysis.

ANALYSIS

I. CLOSURE OF THE CABRILLO BRIDGE

A. CEQA Analysis of Effects

The primary concern with the proposed closure of the Cabrillo Bridge to vehicular traffic is whether the potential effects of the closure on the environment have been properly considered in accordance with the California Environmental Quality Act (CEQA). Unless otherwise exempt, CEQA applies to discretionary projects proposed to be carried out. Cal. Pub. Res. Code § 21080(a). A discretionary project is "a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations."¹ CEQA Guidelines² § 15357. The closure of the Cabrillo Bridge is an exercise of judgment or deliberation by the Mayor.³

The Environmental Impact Report (EIR) that was certified by the City Council on July 9, 2012, for the Plaza de Panama project contained analyses of four alternatives to the Plaza de Panama project that included the closure of the Cabrillo Bridge.⁴ These alternatives, collectively called the "Pedestrianize Cabrillo Bridge Alternatives," include the No New Parking Structure Alternative (Alt. 3A), Organ Pavilion Parking Structure Alternative (Alt. 3B), West Mesa Parking Structure Alternative (Alt. 3C), and Inspiration Point Parking Structure Alternative (Alt. 3D). EIR at 9-1 – 9-146. A comparison of the potentially significant environmental effects of the alternatives is summarized in Table 9-1 of the EIR. EIR at 9-17 – 9-26.

¹ By way of contrast, a ministerial project, which is not subject to CEQA, is defined as the "mere [] appli[cation of] the law to the facts as presented" involving "no special discretion or judgment in reaching a decision." Cal. Pub. Res. Code § 21080(b)(1); CEQA Guidelines § 15369. A ministerial decision involves only the use of fixed standards or objective measurements; the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. *Id.*

² Cal. Code Regs., title 14, §§ 15000 to 15387 (CEQA Guidelines).

³ CEQA applies to decisions by any person or group of people within a public agency permitted by law to approve or disapprove the project at issue. CEQA Guidelines § 15356.

⁴ Although the Plaza de Panama project EIR contained an analysis of these alternatives and has been certified in accordance with CEQA, before any project with significant, unmitigated impacts can be approved, findings and a statement of overriding considerations must be made. CEQA Guidelines §§ 15091, 15093. While the City Council adopted findings and a statement of overriding considerations for the Plaza de Panama project, the City Council did not do so for any alternative discussed in the EIR. Therefore, if a different project is considered that would have significant, unmitigated impacts, the decision-maker must adopt additional findings and a statement of overriding considerations before that project could be approved.

Each of the Pedestrianize Cabrillo Bridge Alternatives has significant, unmitigated impacts related to traffic capacity. EIR at 9-20 – 9-21. The traffic mitigation for impacts to the intersections was based on weekend counts (worst case), to provide a more accurate indicator of actual traffic, although roadway segments were analyzed and mitigated for weekday impacts. EIR at 9-75, 9-94, 9-115, 9-134 – 135.

Regarding the traffic capacity impacts in 2015, the significant, unmitigable traffic capacity impact would be to A Street, between Sixth Avenue and Park Boulevard (except for the Inspiration Point Parking Structure Alternative). EIR at 9-76, 9-94, 9-116, 9-135. In addition, the traffic analyses for all of the Pedestrianize Cabrillo Bridge Alternatives demonstrate that there would be various other traffic capacity impacts that could be mitigated to below a level of significance. EIR at 9-76, 9-94, 9-115, 9-135. This Office is not aware whether any review of potential traffic impacts has occurred for the BPTP. Therefore, there could be additional, significant, unmitigated traffic capacity impacts due to the implementation of the BPTP.

There are also numerous significant, unmitigable traffic capacity impacts in 2030. However, at the Budget hearing, it was represented that the BPTP was a temporary plan, and that re-evaluation of the BPTP would occur when the Cabrillo Bridge is re-opened after the seismic retrofit scheduled to be completed by Caltrans in approximately May 2014. For that reason, the 2030 impacts are not discussed herein.

It has been suggested that because the BPTP is temporary, CEQA review need not occur. The definition of “significant effect” does not directly take into account the duration of a project; instead, public agencies are to consider the “substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project . . .” CEQA Guidelines § 15382.

Although the duration of an environmental effect is one fact that may affect the significance of that effect, short term effects may nevertheless be of such significance as to require an EIR. *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 85 (1974). Recently, the San Diego Unified School District’s argument that a project’s parking impacts did not constitute a significant impact on the physical environment because the impact was temporary was rejected. *Taxpayers for Accountable Sch. Bond Spending v. San Diego Unified Sch. Dist.*, No. D060999, 2013 WL 1767674 (Cal. App. Mar. 26, 2013). The court determined that temporary impacts caused by parking are appropriately reviewed under CEQA, because the vehicles “constitute physical conditions in an area that may be affected by the proposed project, thereby requiring a lead

⁵The significant, unmitigable 2030 traffic capacity impacts are to the intersection of Park Boulevard/Space Theater Way, Sixth Avenue between Robinson and Upas Street, Sixth Avenue between Upas Street and Quince Drive, Robinson Avenue between Vermont Street and Park Boulevard (except for the West Mesa Parking Structure Alternative), and A Street between Sixth Avenue and Park Boulevard. EIR, pg. 9-76, 9-94-95, 9-116. In addition, the Inspiration Point Parking Structure Alternative will have significant, unmitigable impacts to the intersection of Park Boulevard and the SR-163 Northbound on-ramp, and the intersection of Park Boulevard and Space Theater Way. EIR at 9-135.

agency to study whether a project's impacts on parking may cause a significant effect on parking and thus the environment."⁶ *Id* at 22.

CEQA contains a categorical exemption for minor alterations to land for "minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes," such as the "use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc." CEQA Guidelines § 15304(e). However, a categorical exemption cannot be used when an exception to the exemptions applies. CEQA Guidelines § 15300.2. A possibly relevant exception in this case is that a categorical exemption may not be used where there is a reasonable probability that the activity will have a significant effect on the environment due to unusual circumstances. CEQA Guidelines § 15300.2(c). Although the City has no proactive duty to determine that the exceptions to the exemptions are inapplicable, the City cannot ignore evidence of unusual circumstances. Stephen L. Kostka & Michael H. Zischke, *Practice Under the California Environmental Quality Act*, § 5.71 (Cont. Ed. Bar 2012). The exception to the exemption is a two step inquiry into whether there are unusual circumstances, and if there is a reasonable possibility of a significant effect on the environment due to the unusual circumstances. *Banker's Hill, et al. v. City of San Diego*, 139 Cal. App. 4th 249 (2006). A determination as to whether the circumstances regarding the proposed application of an exemption are unusual will be based on whether there is some feature of the project that distinguishes it from others in the exempt class. *Voices for Rural Living v. El Dorado Irr. Dist.*, 209 Cal. App. 4th 1096, 1109 (2012). In considering whether there is any reasonable possibility that the project may have a significant effect on the environment, the court will consider whether the record contains any substantial evidence supporting a fair argument that the project will have a significant effect on the physical environment. *Banker's Hill*, 139 Cal. App. 4th at 281. There already exists substantial evidence before the City that closure of the Cabrillo Bridge would result in significant, unmitigable traffic capacity impacts based on the analysis in the Plaza de Panama Project EIR. In addition, the Metro San Diego Community Development Corporation recently submitted a letter to the City Council regarding the BPTP and the significant, unmitigable traffic and parking impacts to the communities adjacent to Balboa Park, in the event of the closure of Cabrillo Bridge. See Attachment 3.

The potential traffic impacts caused by Phase I, the closure of the Cabrillo Bridge, are discussed in this memorandum separately from the potential environmental impacts caused by other phases of the proposed BPTP. However, CEQA requires the analysis of the entire project, that is, the whole of the action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. CEQA Guidelines § 15378. There is some discretion in CEQA regarding the timing of the analysis, so that the analysis may be performed early enough in the decision making to influence the project,

⁶ It has also been suggested that the closure of the Cabrillo Bridge for the BPTP is no different than the closure of the Bridge for various Special Events. This comparison is not at all helpful; the City is currently in litigation regarding its pattern and practice of failing to perform CEQA review before issuing Special Event Permits. *Coastal Environment Rights Foundation, Inc. (CERF II) v. City of San Diego*, No. 37-2010-00102574-CU-WM-CTL (San Diego Super. Ct.)

but late enough to provide meaningful information for the analysis, however, breaking the environmental review of the significant impacts of a larger project into smaller components, "piecemealing," is forbidden by CEQA. CEQA Guidelines § 15004; *Banning Ranch Conservancy v. City of Newport Beach*, 211 Cal. App. 4th 1209, 1222 (2012). The CEQA analysis must include "the environmental effects of future expansion or other actions if (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." *Laurel Heights Improvement Ass'n v. Regents of the University of California*, 47 Cal. 3d 376, 396 (1988). Nevertheless, separate environmental review of projects which seem related may be conducted when the two projects serve separate purposes or can be implemented independently. *Banning Ranch Conservancy*, 211 Cal. App. 4th at 1223. A key factor in determining whether the CEQA analysis has been improperly piecemealed is whether one project is a reasonably foreseeable consequence of another. *Laurel Heights*, 47 Cal. 3d at 396. Regardless of whether the projects could be undertaken independently of each other, they will likely not be found to have independent utility if they are actually implemented together. *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonoma*, 155 Cal. App. 4th 1214, 1229-31 (2007). The components of the BPTP could be implemented separately; however, they have been presented as one project, to be implemented in phases. CEQA requires a review of the entire BPTP.

B. Closure of the Bridge Pursuant to the Authority in the Vehicle Code

California Vehicle Code section 21101(e) allows the temporary closure of a street for "celebrations, parades, local special events, and other purposes when, in the opinion of local authorities having jurisdiction or a public officer or employee that the local authority designates by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing." Cal. Veh. Code § 21101(e). A street is defined in the Vehicle Code as "a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Street includes highway." Cal. Veh. Code § 590. The Cabrillo Bridge is publicly maintained and is currently open to the public for the purposes of vehicular traffic.⁷ Neither the California Vehicle Code nor the courts have defined the word "temporary." However, a standard definition of "temporary" is "[l]asting, used, or enjoyed for a limited time." Webster's II New College Dictionary 1163 (3d ed. 2005).

The San Diego Municipal Code authorizes the City Manager to close streets temporarily "upon a determination that a public or community event, including a block party, sponsored by a non-profit community or civic organization or business improvement organization, town council, recreation council, civic planning group, city-sponsored organization or any similar organization is to take place," with the issuance of a Special Event Permit. SDMC § 82.23. Other than this authority, which is contingent on the issuance of a Special Event Permit under certain circumstances, this Office is not aware of any other general delegation of the authority provided

⁷ These provisions of the California Vehicle Code apply to roads within parks. 1988 City Att'y MOL 117 (88-163; Feb. 25, 1988); 1988 City Att'y MOL 236 (88-16; Mar. 28, 1988).

in California Vehicle Code section 21101(e) to temporarily close roads. In addition, specific road closures pursuant to this authority have received City Council approval in the past. *See, e.g.,* San Diego Resolution R-261185 (July 16, 1984); San Diego Resolution R-277332 (Feb. 11, 1991). The provisions of the California Vehicle Code are binding on municipalities, which may not enact any ordinance or resolution on matters covered by the California Vehicle Code, except as expressly authorized. Cal. Veh. Code § 21; *Rumford v. City of Berkeley*, 31 Cal. 3d 545 (1982).

II. ALCAZAR LOT IMPROVEMENTS

A. Site Development Permit

There are no details regarding the extent of the improvements to the Alcazar Lot, although the IBA Report states that the parking lot would be expanded and reconfigured to accommodate ADA accessible parking. IBA Report at 157, attached as Attachment 2. The Plaza de Panama project also included improvements to the Alcazar Lot, which impacted .001 acres of environmentally sensitive lands. EIR at 4.1-22. That impact triggered the requirement to obtain a Site Development Permit. SDMC § 126.0504. If improvements to the Alcazar Lot as envisioned pursuant to the BFTP will also impact environmentally sensitive lands, a Site Development Permit will be required. A Site Development Permit that is triggered based on deviations to the environmentally sensitive lands regulations must be approved by the Planning Commission in accordance with Process Four. SDMC § 126.0502(d).

B. ADA

Under the Americans with Disabilities Act (ADA) and related regulations, the City is permitted to remove the accessible parking from Plaza de Panama if it is removing all parking spaces from that lot. However, the accessible parking proposed to be relocated to the Alcazar Parking Lot must meet accessible parking requirements and have an accessible path of travel from the parking spaces to the area of alteration (Plaza de Panama) and any other areas of the park served by the Alcazar Parking Lot. 28 C.F.R. § 35.151(b)(4); 2010 ADA Standards for Accessible Design § 208.3.1. There is also potential liability for the City if accessible parking that meets accessibility standards is removed from Plaza de Panama and replaced with noncompliant parking in another area.

The ADA and other Federal civil rights laws require that accessible features be maintained in working order so that they are accessible to and usable by those people they are intended to benefit. 28 C.F.R. § 35.133(a). The City may not take parking spaces that were accessible out of Plaza de Panama and remove them without first putting in new fully compliant spaces, as doing so could be construed as failing to maintain previously accessible parking spaces. If regrading the new parking spaces in the Alcazar Parking Lot is required to meet access standards, the lot must be regraded prior to the relocation of the disabled parking spaces. Accessible parking spaces are also required to have cross slopes and surfaces that are stable and slip resistant with no changes in level. 2010 ADA Standards for Accessible Design § 502.4. Additionally, the access aisles connected to disabled parking spaces must be level to provide a surface for wheelchair transfer to and from vehicles. *Id.*

Not only are the parking spaces themselves required to be accessible, but also the path of travel to and from the parking spaces and the altered area. Plaza de Panama 28 C.F.R. § 35.151(b)(4). In this situation, the path of travel to and from the parking spaces to other primary function areas within the park (i.e. museums, gardens, etc.); would also need to be accessible, in keeping with general accessible parking requirements. 2010 ADA Standards for Accessible Design § 208.3.1. Additionally, in parking facilities that do not serve a particular building or facility, such as the Alcazar Parking Lot, parking spaces must be located on the shortest accessible route to an accessible pedestrian entrance to the parking facility. *Id.* The path of travel adjacent to the proposed accessible parking spaces in the Alcazar Parking Lot would need to be evaluated, and slope and cross slope issues addressed, in conjunction with relocating the parking spaces.

C. Contracting of Work

Although there is no indication at this point that any contracts will be let for any portion of the BPTP, a review of the Mayor's contracting authority is provided. Minor public works contracts, which are those public works contracts valued at \$500,000 or less, are within the Mayor's authority to award. SDMC § 22.3102(d). A public works contract is a contract for the construction, reconstruction or repair of public buildings, streets, utilities and other public works, including design-build contracts, construction manager at risk contracts, and job order contracts. SDMC § 22.3003. Therefore, the described improvements to the Alcazar Lot would be a public works. However, public works projects are not required to be contracted out. In fact, some of the work described above may be able to be performed by City forces, thus requiring that the work be evaluated for any meet and confer requirements before a contract may be awarded. *Building Material & Constr. Teamsters' Union v. Farrell*, 41 Cal. 3d 651, 654 (1986).

Consultant contracts that do not exceed \$250,000 may be awarded by the City's Purchasing Agent. SDMC § 22.3207(a). A consultant contract is one in which expert or professional services are provided, including, but not limited to, accounting, architectural, engineering, marketing, public relations, management, financial, and legal services. SDMC § 22.3003. Consultant services may be necessary to provide engineering services relating to the expansion or reconfiguration of the Alcazar Lot.

III. OTHER CONSIDERATIONS

A. Other Environmental Impacts

Table 9-1 of the EIR indicates that the Pedestrianize Cabrillo Bridge Alternatives have significant, unmitigated impacts to land use (plan consistency) and noise (temporary construction noise). EIR at 9-17, 9-25. In addition, these four Pedestrianize Cabrillo Bridge Alternatives have significant and mitigated impacts to archeological resources and biological resources. EIR at 9-18, 9-22. As noted previously, this Office is not aware whether any review of potential traffic impacts has occurred for the BPTP. Therefore, there could be additional impacts due to the implementation of the BPTP.

B. Authority to Relocate Valet Parking

The lease for the House of Hospitality building requires the City to use its best efforts to designate a public parking lot in Balboa Park for the restaurant's customers' non-exclusive use, through a right-of-entry permit issued by the City's Park and Recreation Department at no charge, which is to designate a public parking lot in Balboa Park from which the lessee can operate valet parking or shuttle service to and from the restaurant. City Clerk Document RR-289141, Lease § 1.12. Further, the lease provides that the lessee "understands that it may not reserve parking spaces and that availability of parking spaces is not guaranteed," and upon prior notice, the City may designate a different public parking lot in Balboa Park, and the choice of parking lot shall be determined in the sole and absolute discretion of the Park and Recreation Department. *Id.* The restaurant and catering portion of the lease was later subleased with the consent of the City; the sublease specifically states that it is subject to the conditions set forth in the lease and Section 1.8, Parking, of the sublease reiterates section 1.12, Parking, of the lease.

A Right of Entry Permit was entered into between the City and the sublessee with an effective date of September 15, 2005 (ROE Permit). The ROE Permit, which expired on September 15, 2010, allowed the sublessee to use portions of the property located at Plaza de Panama and at the Organ Pavilion, Federal Building, and Inspiration Point parking lots. Specifically, the ROE allows the use of four loading zone lanes in the Plaza de Panama for loading and unloading of passengers, and use the Federal Building and Organ Pavilion parking lots, on a nonexclusive, first-come, first-served basis, for the storage of vehicles. In addition, during periods of high demand, the Inspiration Point parking lot may be used on a non-exclusive, first-come, first-served basis, for the storage of vehicles. The ROE Permit states that no other parking lots could be used but that upon prior written notice to the sublessee, the Park and Recreation Department may, in its sole discretion, designate an alternative parking lot in Balboa Park, or in close proximity, for valet/shuttle service.

Therefore, the City, through the Park and Recreation Department, may relocate the valet parking operations through a Right of Entry Permit and without any amendments to the existing leases.

CONCLUSION

This memorandum is intended to be a preliminary review of some of the topics that may arise during discussions about the BPTP and is based on currently known facts. Should further details about the BPTP become available, or should the BPTP be revised, this Office is available to provide further analysis.

JAN I. GOLDSMITH, CITY ATTORNEY

By Shannon M. Thomas
Shannon M. Thomas
Deputy City Attorney

SMT:als

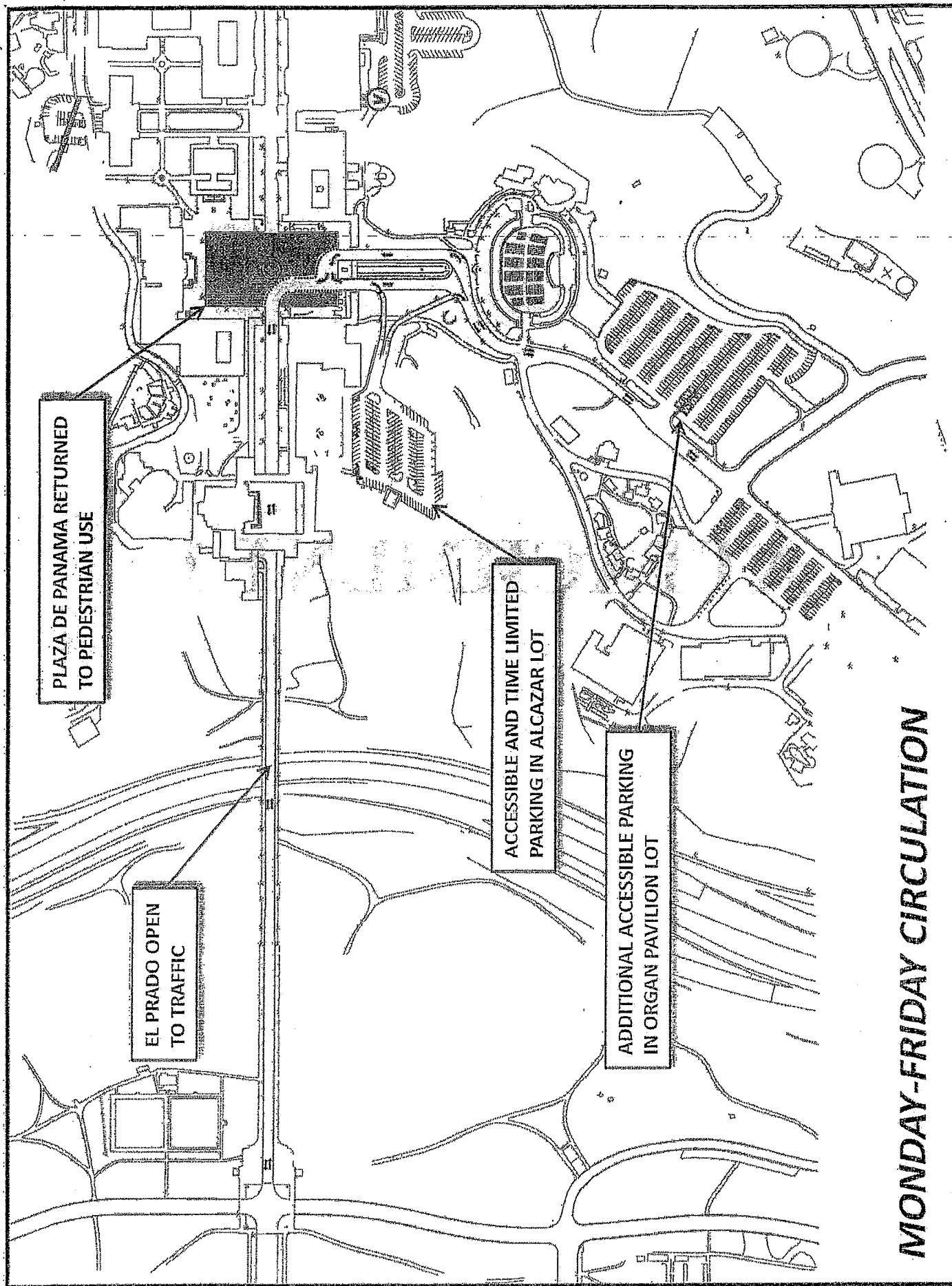
Attachments: Attachment 1: Proposed Balboa Park Transportation Plan

Attachment 2: Independent Budget Analyst Report

Attachment 3: Metro San Diego CDC Letter to City Council

Doc. No.: 559672-3

ATTACHMENT 1



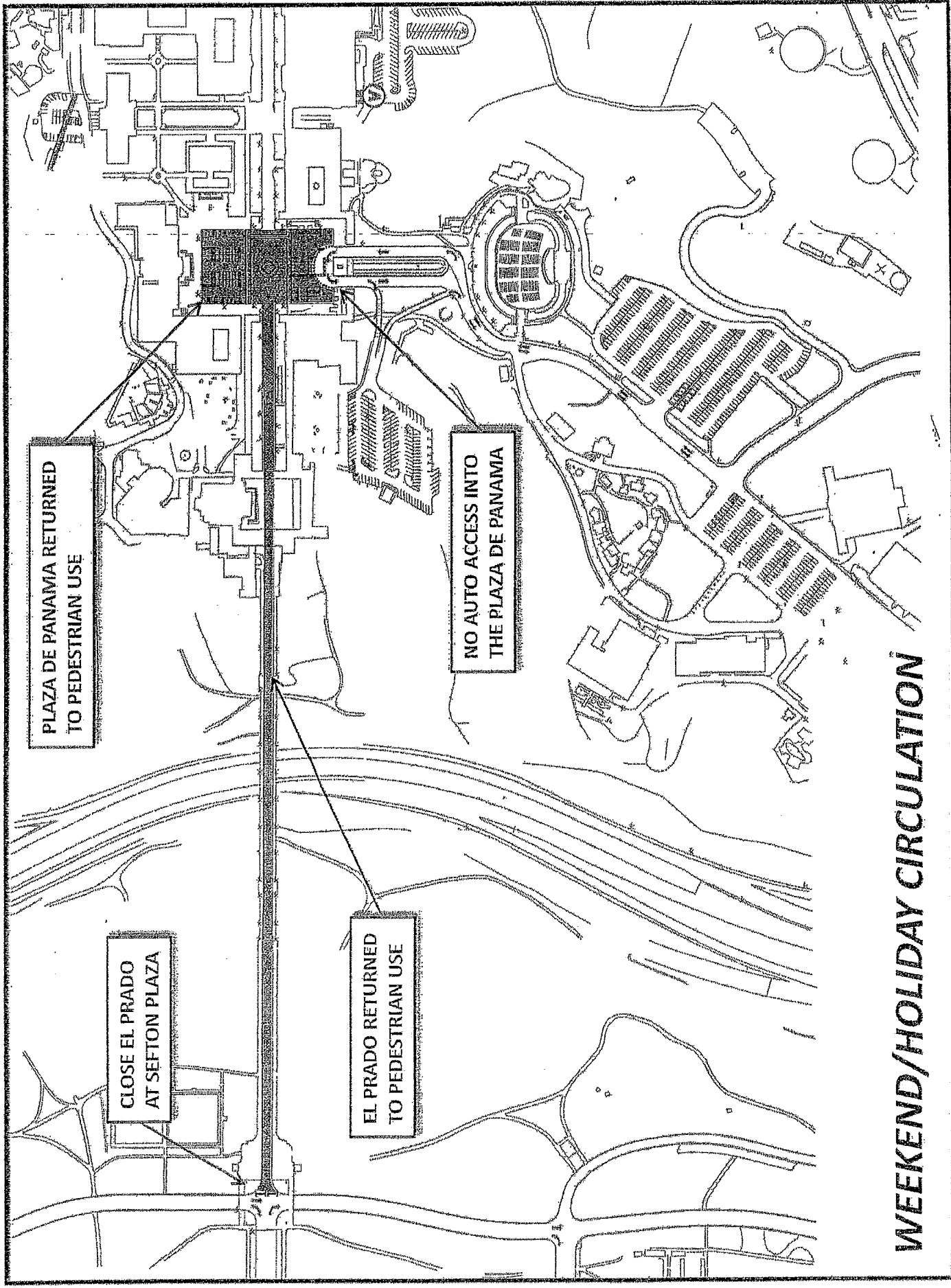
PLAZA DE PANAMA RETURNED
TO PEDESTRIAN USE

EL PRADO OPEN
TO TRAFFIC

ACCESSIBLE AND TIME LIMITED
PARKING IN ALCAZAR LOT

ADDITIONAL ACCESSIBLE PARKING
IN ORGAN PAVILION LOT

MONDAY-FRIDAY CIRCULATION



PLAZA DE PANAMA RETURNED
TO PEDESTRIAN USE

NO AUTO ACCESS INTO
THE PLAZA DE PANAMA

CLOSE EL PRADO
AT SEFTON PLAZA

EL PRADO RETURNED
TO PEDESTRIAN USE

WEEKEND/HOLIDAY CIRCULATION

PARK BOULEVARD

ACCESS FROM PARK BLVD.

R.H. FLEET
SCIENCE
CENTER

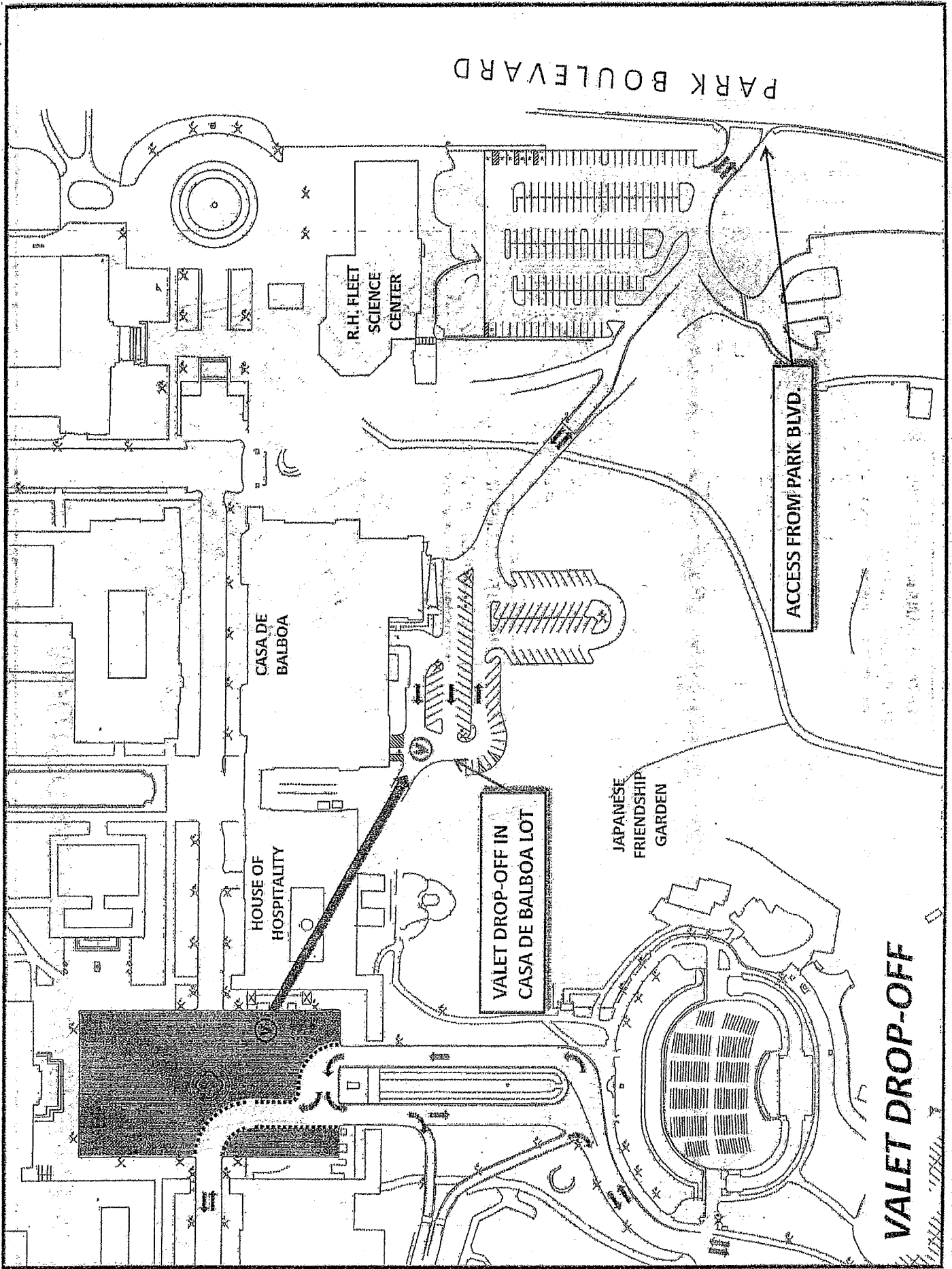
CASA DE
BALBOA

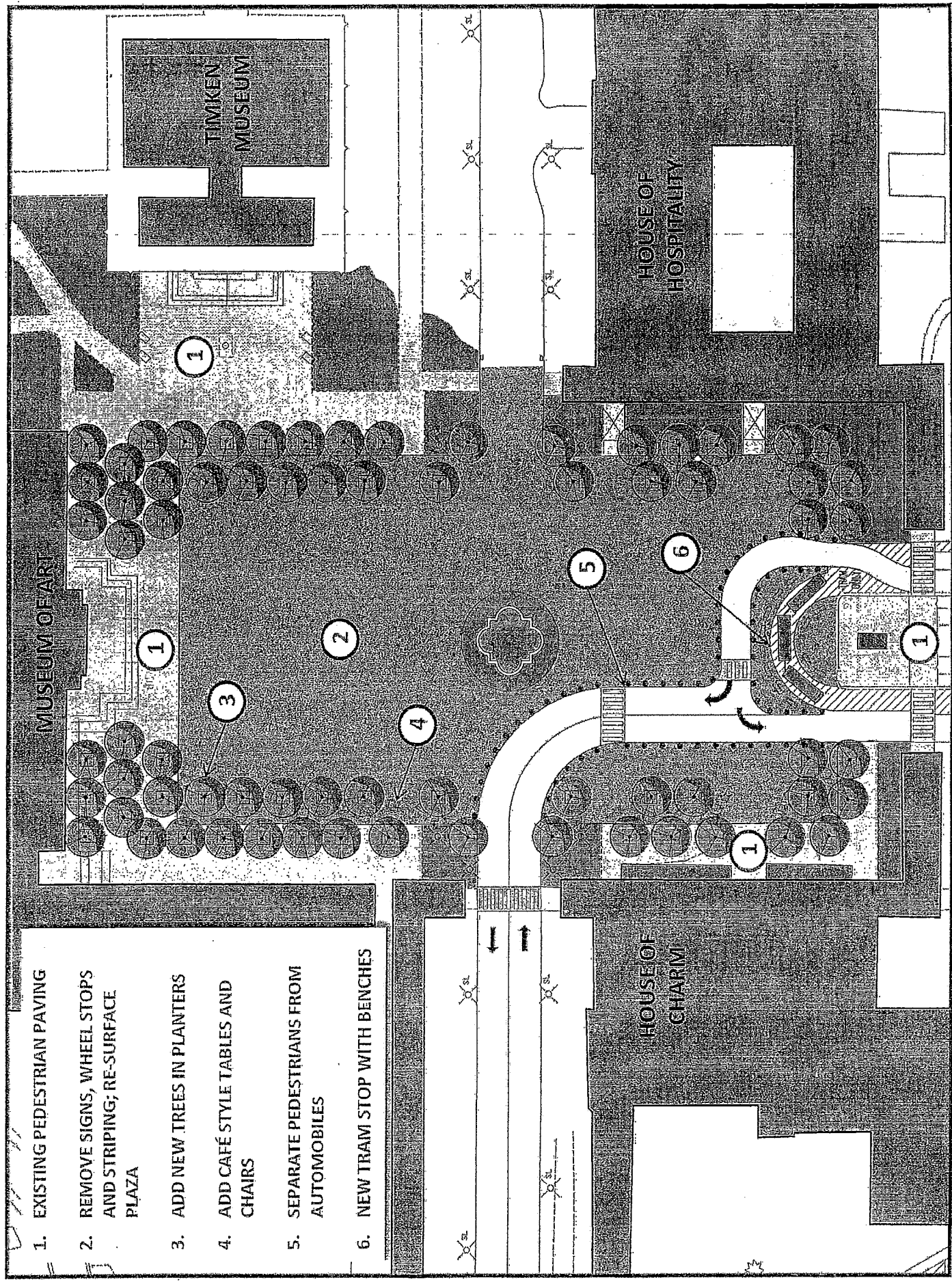
HOUSE OF
HOSPITALITY

VALET DROP-OFF IN
CASA DE BALBOA LOT

JAPANESE
FRIENDSHIP
GARDEN

VALET DROP-OFF





1. EXISTING PEDESTRIAN PAVING

2. REMOVE SIGNS, WHEEL STOPS AND STRIPING; RE-SURFACE PLAZA

3. ADD NEW TREES IN PLANTERS

4. ADD CAFÉ STYLE TABLES AND CHAIRS

5. SEPARATE PEDESTRIANS FROM AUTOMOBILES

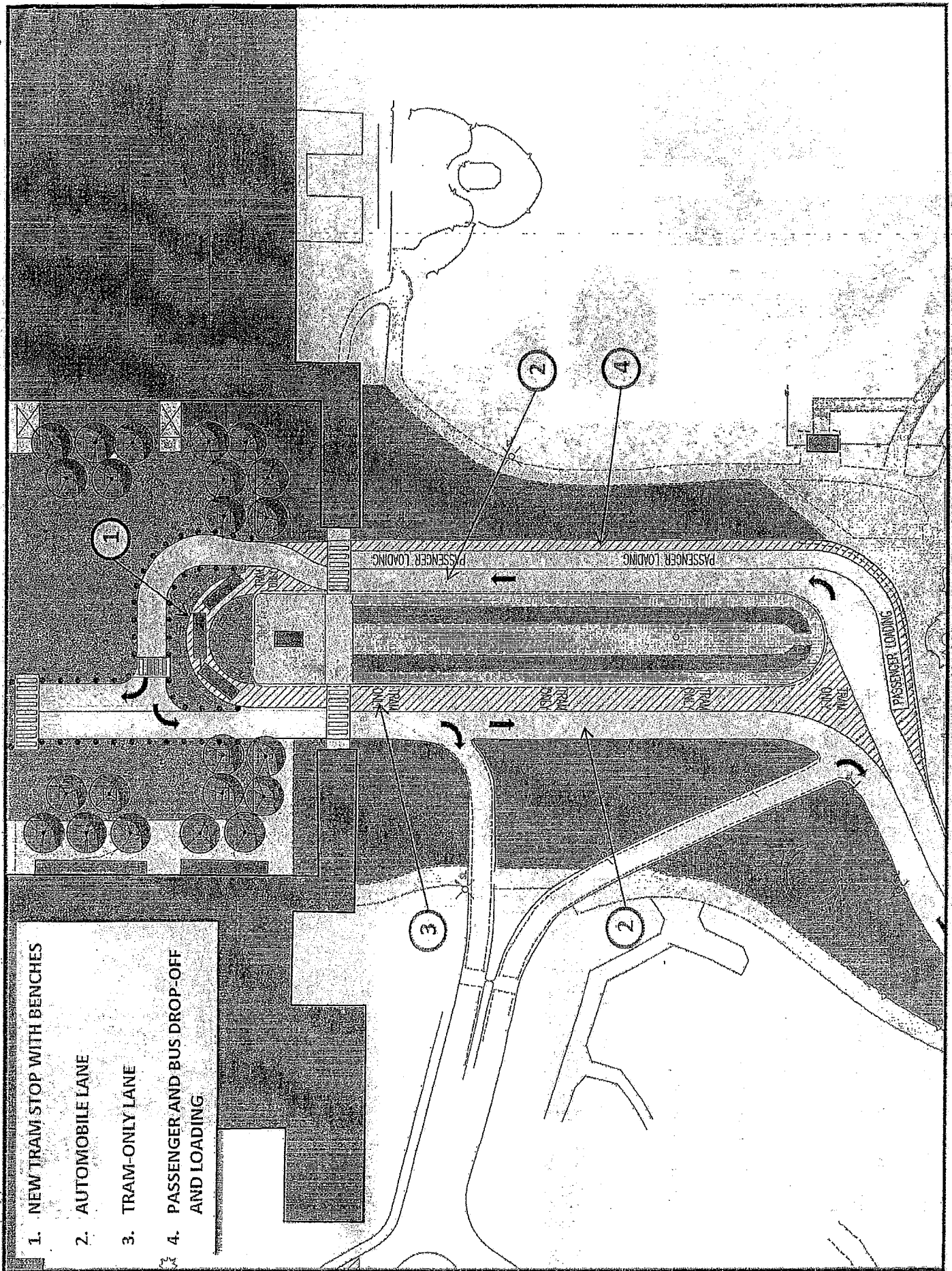
6. NEW TRAM STOP WITH BENCHES

1. NEW TRAM STOP WITH BENCHES

2. AUTOMOBILE LANE

3. TRAM-ONLY LANE

4. PASSENGER AND BUS DROP-OFF
AND LOADING



ATTACHMENT 2

Department Review

Park & Recreation

Mayor's FY 2014 Proposed Adjustments

The FY 2014 Proposed Budget for the Park and Recreation Department totals approximately \$89.2 million in the General Fund, an increase of approximately \$3.2 million and 12.91 FTEs over the FY 2013 Adopted Budget. Department General Fund revenues are projected to total \$34.1 million, reflecting a decrease of approximately \$3.2 million from the FY 2013 Adopted Budget.

The Department has several other funds including the Golf Course Fund, the Los Penasquitos Reserve Fund, and the Environmental Growth Funds. When all the departmental funds are combined, the Department budget totals \$117.2 million, an increase of approximately \$3.7 million from the FY 2013 Adopted Budget.

The Park and Recreation Department operates and maintains the City's recreation centers, playgrounds, athletic fields, swim-

ming pools, regional parks, and all of the City's recreational facilities. With the vital roles that these facilities and programs play within the communities, the City Council has made it a priority to restore some previously reduced service hours due to budgetary constraints in prior years.

During FY 2012 mid-year budget actions, five additional hours were added to the weekly hours for each recreation center, increasing the average weekly hours from 40 hours to 45 hours. The FY 2014 Proposed Budget proposes to continue to fund the recreation centers to provide an average of 45 service hours per week for every recreation center.

Balboa Park

In 1915, Balboa Park was the venue for the Panama - California Exposition to celebrate the opening of the Panama Canal and the City of San Diego as the first U.S. port-of-call for northbound maritime trade. To celebrate the 100th anniversary of the 1915

SUMMARY OF PARK AND RECREATION BUDGET				
	FTE	FY 2013 BUDGET	FY 2014 PROPOSED	CHANGE
General Fund				
Administrative Services	15.00	\$ 2,254,732	\$ 2,367,288	\$ 112,556
Community Parks I	162.43	20,546,140	21,136,926	590,786
Community Parks II	231.51	21,387,139	21,100,774	(286,365)
Developed Regional Parks	313.87	33,356,203	34,886,977	1,530,774
Open Space	59.25	8,427,636	9,665,098	1,237,462
Subtotal General Fund	782.06	85,971,850	89,157,063	3,185,213
Non-General Fund				
Environmental Growth Fund 1/3		4,408,198	3,962,339	(445,859)
Environmental Growth Fund 2/3		8,078,081	8,229,966	151,885
Golf Course Fund	98.00	14,757,337	15,623,529	866,192
Los Penasquitos Canyon Preserve Fund	2.00	201,804	219,902	18,098
Subtotal Non-General Fund	100.00	27,445,420	28,035,736	590,316
TOTAL PARK AND RECREATION	882.06	\$ 113,417,270	\$ 117,192,799	\$ 3,775,529

Office of the Independent Budget Analyst

April 2013

Department Review

Exposition ("Centennial Celebration"), the City of San Diego entered into an agreement with Balboa Park Celebration, Inc. ("2015 Committee") to be the official and sole organizer of the Centennial Celebration. The 2015 Committee has been tasked with planning, organizing, and implementing the planned events related to the Centennial Celebration. See the Balboa Park Centennial section for additional information related to the Centennial Celebration.

The FY 2014 Proposed Budget includes 3.00 limited FTEs (1.00 Program Manager, 1.00 District Manager, and 1.00 Clerical Assistant II) to support the logistical coordination of the Centennial Celebration within Balboa Park. It is anticipated the additional positions will prepare for and carry out the events working with other City departments and necessary outside agencies such as San Diego Gas & Electric. They will report directly to the Deputy Director of De-

veloped Regional Parks (which includes Balboa Park).

Traffic Management Plan

The FY 2014 Proposed Budget includes \$300,000 for a traffic management plan related to vehicle traffic within Balboa Park.

On April 24, 2013, the Mayor provided preliminary details on the proposed traffic management plan ("Traffic Plan") to the Balboa Park Committee. On weekdays, the Traffic Plan proposes to restrict vehicular traffic to the southwest corner of the Plaza de Panama, while allowing for two-way traffic to cross the Cabrillo Bridge. On weekends and holidays, the Cabrillo Bridge would be closed to vehicle traffic and vehicles would not be allowed in the Plaza de Panama. Vehicles traveling north on the Pan American Road would have to perform a U-turn just south of the Plaza de Panama fountain.

The current ADA accessible parking located

SUMMARY OF PARK AND RECREATION BUDGET CHANGES					
	FTE	PE	NPE	Total	Revenue
Fiscal Year 2013 Budget	769.15	\$ 5,160,881	\$ 24,362,092	\$ 85,971,050	\$ 37,280,754
Mayor's Fiscal Year 2014 Proposed Budget Changes					
Salaries & Benefit Adjustments	(0.18)	2,168,301		2,168,301	
Non-Discretionary and Info Technology Adjustments			204,271	204,271	
Addition staff to support the Balboa Park Centennial Celebration	3.00	364,545	21,000	385,545	
Support for the Balboa Park Traffic Management Plan			300,000	300,000	
Addition staff for additional acreage at North Mission Trails Regional Park	5.00	386,643	241,000	627,643	
Addition staff for additional Open Space Acreage (East Elliot and Otay)	2.00	173,756	48,000	221,756	49,700
Support for the Children's Pool Permit Processing			25,000	25,000	
Additional staff to support the expansion of Memorial Pool	0.75	21,989	5,000	26,989	2,500
Additional staff to support the West Maple Canyon Mini-Park	0.04	1,404	1,200	2,604	
New Global Positioning System Contract			25,200	25,200	
General Benefit Contribution to the Maintenance Assessment District			123,122	123,122	
Restoration of Winter Restroom Service	0.22	6,974		6,974	
One-Time Reductions and Annualizations			(958,700)	(958,700)	(742,982)
Revenue adjustment					(2,510,864)
Non-Standard Hour Personnel Funding	2.08	26,508		26,508	
Mayor's Fiscal Year 2014 Proposed Budget	782.06	\$ 5,759,951	\$ 24,397,112	\$ 89,197,063	\$ 34,078,108
Difference from 2013 to 2014	12.91	\$ 3,150,120	\$ 35,093	\$ 3,185,213	\$ (3,201,646)

Office of the Independent Budget Analyst

April 2013

Department Review

in the Plaza de Panama would be relocated to the Alcazar Parking lot and valet parking would be relocated from the Plaza de Panama to the parking lot located south of the Casa de Balboa.

Transportation via the new trams would be available from the Inspiration Point Parking lot to the Plaza de Panama, with multiple stops in route; however the trams will not travel beyond the Plaza de Panama.

Additional signage is anticipated as well as distinctive borders to separate vehicle routes from pedestrian areas. New landscaping (trees) and tables are planned for the cleared area within the Plaza de Panama.

As this is the preliminary Traffic Plan, the definitive details are still to be determined. However an outline of the proposed implementation phases has been developed.

Summarily, the first phase of the Traffic Plan is to commence closing the Cabrillo bridge on weekends and holidays. This is intended to commence on May 25, 2013.

The second phase is to eliminate the parking from the Plaza de Panama by diverting traffic solely through the southwest corner of the Plaza de Panama. It is anticipated that this would occur by late June / early July 2013.

The third phase would be to expand / reconfigure the Alcazar Parking lot to accommodate ADA accessible parking. No time estimate was provided for the completion of this phase.

No detailed cost estimates were provided beyond the request of \$300,000 in the FY 2014 Proposed Budget. Cost estimates have

been reduced from the \$500,000 originally requested by the Mayor in the FY 2013 Mid-Year budget adjustments. The Mayor has indicated that he plans to provide many additional opportunities for public input into the Traffic Plan though no timeline was provided.

Our office can only provide a limited review of the Traffic Plan for this report. As additional details are developed through the public input process and presented by the Mayor's Office, our office will conduct additional review.

In anticipation of the undertaking of the Plaza de Panama Project, several new pedestrian trams were ordered to assist in the transportation of pedestrians throughout the parking lots and the Plaza de Panama. The new trams are incorporated into the new Traffic Plan. The annual lease payment of \$150,000 is included in the FY 2014 Proposed Budget, however the operation of the trams, the operational costs, and the corresponding funding to address the operational costs of the trams has yet to be determined.

Other Budget Adjustments

The FY 2014 Proposed Budget includes the following significant budget adjustments:

- An increase of 7.00 FTEs (5.00 Park Rangers, 1.00 Drafting Aide, and 1.00 Pesticide Applicator) and approximately \$850,000 in expenditures to support additional open space acreage acquired by the City. According to a study conducted by the department, other large cities have open space acreage to park ranger ratio of approximately 650 acres

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to one park ranger. The City's current open space acreage to park ranger ratio is approximately 1,500 acres to one park ranger. The Drafting Aide positions will be partially funded by the Maintenance Assessment Districts (MADs) and will support the City and the MADs in defining, mapping, and zoning of land parcels.

- An increase of \$25,000 in expenditures related to the completion of the permitting process to close the beach at the Children's Pool during seal pupping season. Funding of \$30,000 was provided for this process during the FY 2012 Mid-Year Budget adjustments; however, any unexpended funds from this funding will revert to the General Fund at the end of FY 2013. The additional funding will ensure funds are available in FY 2014 for the completion of the permitting process.
- An increase of 0.79 FTEs (0.75 Pool Guard II and 0.04 Grounds Maintenance Worker II) and \$29,593 in expenditures to support the expansion of the Memorial Pool (40 year old pool) and additional acreage at the West Maple Canyon Mini-Park;
- An increase of 0.22 FTEs (Ground Maintenance Worker position) to reinstate restroom service in the winter months (November 1 to March 30) for the restrooms located at South Kellogg and North Mission Beach; and
- A revenue reduction of approximately \$2.5 million to reflect FY 2014 revenue projections. The largest items contribu-

tion to the reduced revenue is a reduction of approximately \$1.7 million of TOT funding for tourist-related expenditures and a reduction of \$650,000 from the transfer from the Environmental Growth Fund 1/3 to the General Fund per revised projections.

Issues to Consider

Parks System Master Plan

The priority for the department in the FY 2014 Proposed Budget is securing the current service levels and service hours in the FY 2014 Proposed Budget, however a potentially beneficial strategic tool that should be considered is the development of a Park System Master Plan.

A Park System Master Plan would provide comprehensive evaluations of the parks and open space systems' existing conditions. It would also identify opportunities and constraints; articulate a method and prioritization for the equitable distribution of facilities and services citywide; recommend recreation programming; and define capital improvements and funding strategies to meet the needs of our residents and visitors. The last Park System Master Plan that was done for the City of San Diego was completed in 1956. Currently the citywide parks and open space inventory and conditions assessment is performed by internal staff in conjunction with the Development Services Department.

Recreation Center Hours

Recreation center hours continue at 45 hours per week, per recreation center, in the FY 2014 Proposed Budget. Council members have had a high interest in restor-

Department Review

ing past reductions to recreation center hours which were budgeted at 62.3 hours per week in FY 2001. If there is interest in considering some level of restoration for FY 2014, we have included this on the list of potential revisions to the Proposed Budget and will work with the department to identify costs.

User Fees

In FY 2013, the Park and Recreation Department engaged a consultant to assist in a comprehensive study of all the Department's fees, with the exception of those related to the Golf Division. Findings and recommendations from this comprehensive study are anticipated to be ready for Council consideration in mid-FY 2014. The FY 2014 Proposed Budget does not include any proposed fee revisions for the Park and Recreation Department pending the outcome of this study.

Capital Improvements

It is anticipated that approximately \$16.1 million will be expended on capital improvement projects related to the Park and Recreation Department in FY 2014. The projects include facilities at Balboa and Torrey Pines golf courses, ADA upgrades (Chicano Park), and community park upgrades and improvements. Projects anticipated to expend large dollar amounts in FY 2014 include the North Park mini-park and streetscape improvement projects for construction/document work (approximately \$2.2 million); and construction work on the Central Avenue mini-park (approximately \$1.2 million).

Environmental Growth

The Environmental Growth Funds (EGFs) are projected to receive approximately \$11.8 million in franchise fees from San Diego Gas & Electric, representing one-quarter of the total SDG&E franchise fees received by the City, in accordance with Charter Section 103.1a. This is a reduction of approximately \$842,000 from FY 2013. The reduction in revenue is attributed to a decline in natural gas prices. Additional information related to the franchise fees can be found in the Franchise Fee portion of the General Revenues Section in Volume I of the FY 2014 Proposed Budget.

The EGFs are allocated into a one-third and two-thirds portion, to reflect Charter provisions that up to two-thirds of revenues can be pledged for bonds for acquisition, improvement and maintenance of park or recreational open space.

In FY 2009 the EGF (two-thirds portion) retired the 1994 San Diego Open Space Facilities District No.1 General Obligation Bonds. To the extent funds exist over and above the requirements for debt service, the Charter provides that they may be used for other purposes so long as it preserves and enhances the environment and is approved by the City Council.

Since the time the bonds have been repaid, available revenues have been utilized to reimburse the General Fund for eligible park and open space maintenance activities. For FY 2014, \$9.2 million is budgeted to reimburse the General Fund for park expenses, with \$2.3 million budgeted for Regional

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Park and Open Space Maintenance which that would otherwise be funded by the General Fund. Additional funds are budgeted for reimbursement to Maintenance Assessment Districts and for transfer to the Los Penasquitos Canyon Preserve Fund.

Golf Course

The FY 2014 Proposed Budget for the Golf Course Fund totals \$15.6 million, an increase of 1.00 FTE and approximately \$866,000 over the FY 2013 Adopted Budget. Department revenues are anticipated to increase by approximately \$1.8 million to \$18.4 million from \$16.6 million in FY 2013.

Significant Budget Adjustments

The FY 2014 Proposed Budget includes the following budget adjustments:

An increase of 1.00 FTE (Public Information Officer) and \$102,446 in expenditures to develop and implement a marketing plan to increase golf play at City-operated golf courses. The 2013 Golf Plan, approved by the City Council in November 2012, provided rate flexibility for the Golf Division to entice additional rounds. Additional revenue of \$200,000 is projected as a result of the Public Information Officer position implementing a new marketing plan and increasing usage of the rate flexibility within the City-operated golf courses to optimize golf play/rounds.

An increase of approximately \$1.6 million in revenue projections due to facility and course improvements and improvements in the financial environment. The revenue pro-

jections do not anticipate any increase in golf rates to achieve the increase in revenue.

Issues to Consider

In preparation of the FY 2012 budget, the City Council adopted a resolution requesting that the Mayor report to the Council on the feasibility, reasonableness and/or potential cost savings associated with eight specific budgetary proposals, including the review and potential revision of the lease payment formula for payments from the Golf Enterprise Fund to the General Fund.

On March 16, 2011, the City Attorney presented a report to the Budget and Finance Committee on options to increase General Fund revenues from the City's golf courses. The report described the formula utilized to determine the land use payment, which was established in 1995. The land use payment formula includes two components: a fixed annual rate of \$1,806 per acre, plus 9.9% of gross revenues, subject to review every five years. The per acre component was adjusted from \$1,500 to \$1,806 in December 2009 based on annual CPI increase since 2003 when it was last reviewed.

According to the City Attorney report, the annual rate component is comparable to the revenue expected under a lease arrangement similar to the one at Mission Trails. The gross revenue percentage was developed to replace the revenue the General Fund would have received from the operation of the Torrey Pines and Balboa Park Golf Courses as municipal facilities.

The report also noted that other factors could be considered if the formula was to

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be revisited, including the fair market value of the property.

Though discussed at the March 16, 2011 Budget and Finance Committee meeting, no follow up action was requested. Should the City Council continue to be interested in this concept, the Real Estate Assets Department would need to update its appraisals for the golf properties in order to evaluate the lease payment formula.

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ATTACHMENT 3

THE UNIVERSITY OF CHICAGO

METRO

SAN DIEGO CDC

1901 First Avenue, Suite 420
San Diego, California 92101-0311
(619) 231-4495

May 5, 2013

Honorable City Council President Gloria and Members of the City Council
220 C Street, 10th Floor
San Diego, California 92101

Re: Mayor's Temporary Traffic Management Plan Proposal to Close Cabrillo Bridge;
Required CEQA Review

Dear Council President Gloria and Members of the City Council:

This letter is written on behalf of the Metro San Diego Community Development Corporation ("Metro San Diego CDC") whose 12-member Board of Directors, and 40-member Charter Committee, includes representatives of commercial and residential property owners, and businesses representing over 19 full blocks of the Bankers Hill/Park West community adjacent to the west side of Balboa Park.

Approximately 20 members of the Metro San Diego CDC attended the Mayor's announcement of his 3-phased Plaza de Panama "Temporary" Traffic Management Plan Proposal ("Mayor's Proposal") on April 24, 2013 -- a summary outline of which was provided only a few hours prior to the announcement at a Special Meeting of the Balboa Park Committee. The Metro San Diego CDC is presently evaluating the Mayor's Proposal and is diligently preparing initial comments for consideration by the City Council before any funds are committed to the Mayor's Proposal in its current form.

An initial question from the Metro San Diego CDC is how will the City conduct the required environmental review of the Mayor's Proposal pursuant to CEQA? The Environmental Impact Report ("EIR") for the Plaza de Panama project approved by the City Council expressly found that *there would be significant unmitigated traffic and parking impacts to communities adjacent to Balboa Park if the Cabrillo Bridge were closed.* Although the Plaza de Panama project was found by a Superior Court Judge (Case No. 2012-00102270) to violate a City

historic preservation ordinance, the Judge in the case expressly stated in his decision that the Plaza de Panama Project EIR "was more than sufficient as an informational document" (p. 8), and further found that the EIR's consideration of project alternatives (including finding there would be unmitigated negative impacts resulting from closing the Cabrillo Bridge to vehicular traffic) "to have been above reproach" (p. 9).

Although the Plaza de Panama Project may not be built as proposed on account of the Judge's interpretation of the historic preservation ordinance, the Plaza de Panama Project EIR was adopted by the City Council and is the current controlling CEQA review document for the Balboa Park Master Plan, as amended by the City Council in 2012. The Plaza de Panama Project EIR unequivocally states that the closure of the Cabrillo Bridge to vehicular traffic will result in unmitigated traffic and parking impacts in areas adjacent to Balboa Park. These clearly identified negative impacts will need to be specifically addressed, and mitigated to a level of insignificance, prior to implementation of the first phase of the Mayor's Proposal to close the Cabrillo Bridge to vehicular traffic on weekends.

If the Mayor's Office contends that the Mayor's Proposal is exempt from CEQA review pursuant to a statutory or categorical exemption of any kind; then the specific exemption, and reasons why it is applicable, should be documented; as well as the justification it might provide for ignoring the express findings stated in the clearly applicable EIR. If an exemption is claimed, of course, statement of exemption must also be filed pursuant to CEQA. If funds are authorized, presumably a CEQA analysis would apply to the scope of the entire project contemplated by the Mayor's Proposal. If the Mayor's Proposal is indeed temporary in nature, the City Council should naturally make a finding as to when it is expected to end.

In making this request for compliance with CEQA prior to commitment of City funds, the Metro San Diego CDC is not taking a position regarding the merits of all or any parts of the Mayor's Proposal at this time. Instead, it is requesting sufficient information be developed in the context of a CEQA review to evaluate the Mayor's Proposal, and further requesting that adequate mitigation measures will be identified and put in place prior to potential implementation.

Sincerely yours,

Leo Wilson
Administrator
Metro San Diego CDC