

ATTACHMENT 5
2016 Modified and Restated Amended Disposition and Development and
Owner Participation Agreement (MRADDOPA)
CEQA Guidelines Findings and Analysis

FINDINGS

1. Pursuant to CEQA Guidelines Section 15051, the City of Sunnyvale is the "Lead Agency" with respect to the Sunnyvale Town Center Project (the "Project") for CEQA purposes. Because the Successor Agency's discretionary action is required to approve the MRADDOPA, it is the "Responsible Agency" for CEQA purposes.
2. At a public hearing on May 23, 2016, the Lead Agency found that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c)(2) and that subsequent environmental review is not required. The Lead Agency further found that no EIR or negative declaration was required for the Project, because it is categorically exempt from CEQA.
3. Based upon the testimony and information presented at the Successor Agency hearing on June __, 2016, including the staff report prepared in advance of the hearing, which is incorporated by reference ("Staff Report"), and upon review and consideration of the environmental documentation prepared, including but not limited to the Program EIR for the "Downtown Improvement Program Update" certified on June 17, 2003 as amended and the Special Development Permit MND adopted on August 17, 2004, which are incorporated by reference, the Successor Agency has considered the environmental effects of the Project in accordance with CEQA Guidelines Section 15096 and finds that that no subsequent or supplemental environmental review is required for the Project because none of the conditions described in CEQA Guidelines Section 15168 have occurred; therefore, the Successor Agency further finds subsequent environmental review is not required.
4. The Successor Agency finds that, for the reasons set forth in the Staff Report, the Project meets each of the required conditions to qualify for a categorical exemption from CEQA as project resulting in minor alterations to land and minor alterations in land use limitations described in Sections 15304 and 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred; therefore, the Successor Agency finds that no EIR or negative declaration need be prepared for the Project because it is categorically exempt from CEQA.

DISCUSSION

Adoption of the Modified and Restated Amended Disposition and Development and Owner Participation Agreement (MRADDOPA) for the Sunnyvale Town Center Project (the "Project") is considered a "project" for purposes of the California Environmental Quality Act, Public Resources Code § 21000, et seq. ("CEQA"). However, as explained in more detail below, in accordance with CEQA Guidelines Sections 15096(d)(3) and 15168(c)(2), the Project is within the scope of previous environmental analysis, and subsequent environmental review is not required. In addition, the Project is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15304 and 15305, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred. Therefore, no additional analysis is required to comply with CEQA before the Successor Agency takes action regarding the Project.

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Previous Environmental Analysis

Pursuant to CEQA Guidelines Section 15051, the City of Sunnyvale is the "Lead Agency" with respect to the Project for CEQA purposes. Accordingly, in 2003, the City prepared a Program EIR for the "Downtown Improvement Program Update" project (the "Program EIR"). The Downtown Improvement Program Update included amendments to the General Plan, Downtown Specific Plan and the Downtown Redevelopment Plan to accommodate a build-out of approximately 2,520 residential units, 1.4 million square feet of retail and entertainment uses, 1.3 million square feet of office uses, and 12,240 square feet of public facility uses within a 150-acre area that includes the current Project site. The Program EIR fully analyzed the environmental effects of the Downtown Improvement Program Update, and the City certified the Final Program EIR on June 17, 2003. The Program EIR was modified by an addendum on July 13, 2004 to increase the build-out by an additional 98,000 square feet of office uses and 100 residential units (the "First Addendum").

The following year, the City approved an SDP for the development of approximately 1 million square feet of retail and entertainment uses, 275,000 square feet of office uses, and 292 residential units on the Project site, the impacts of which were analyzed in a Mitigated Negative Declaration tiered off of the Program EIR pursuant to CEQA Guidelines Section 15168(d) (the "2004 MND"). The 2004 MND and site-specific mitigation measures were approved on August 17, 2004. At the same time, the former Sunnyvale Redevelopment Agency (the "Former Agency") adopted a Disposition and Development and Owner Participation Agreement ("DDOPA") that reflected the land use approvals in the SDP and found that the provisions of the DDOPA did not raise any additional impacts beyond those already analyzed in the Program EIR and 2004 MND.

In 2007, the City prepared a second addendum to the Program EIR to analyze the impact of an SDP amendment to increase the office uses permitted on the Project site by an additional 40,000 square feet and adding a 200-room hotel in lieu of an equivalent amount of office space analyzed in the Program EIR (the "Second Addendum"). On February 6, 2007, the City approved the Second Addendum, concluding that the modifications would not result in any significant environmental effects that had not been analyzed in the Program EIR (as modified by the First Addendum) and the 2004 MND. The City approved the SDP amendment, and the Former Agency approved an Amended and Restated Disposition and Development and Owner Participation Agreement ("ARDDOPA") which amended the DDOPA for consistency with the amended SDP. Prior to approving the ARDDOPA, the Former Agency found that the amended provisions did not raise any additional impacts beyond those already analyzed in the Program EIR, 2004 MND and Second Addendum.

Later that year, the City approved an amended SDP for the development of approximately 931,000 square feet of retail and entertainment uses, 315,000 square feet of office uses, 292 residential units, and a 200-room hotel on the Project site pursuant to a third addendum to the Program EIR adopted on July 9, 2007 (the "Third Addendum," or collectively with the First and Second Addenda, the "Addenda"). The City concluded that the Third Addendum would not result in any significant environmental effects that had not been analyzed in the Program EIR (as modified by the First and Second Addenda) and the 2004 MND. The City determined that subsequent minor modifications to the SDP for the Project in 2008 were within the scope of the Program EIR (as modified by the Addenda) and the 2004 MND and that none of the conditions

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specified in CEQA Guidelines Section 15162 requiring subsequent environmental review had occurred.

In 2010, the Former Agency approved an Amended Disposition and Development and Owner Participation Agreement ("ADDOPA") that amended the ARDDOPA. The Former Agency found that the ADDOPA was within the scope of the Program EIR (as modified by the Addenda) and the 2004 MND, and it did not introduce any additional impacts, involve any substantial change in circumstances or involve new information that would require subsequent environmental review.

Project's Effects Compared to Previous Environmental Analysis

At public hearings on May 23, 2016 and June 21, 2016, the City approved amendments to the SDP to permit the previously-approved residential units to be developed as rental units instead of for-sale units. The SDP amendment also permitted temporary landscaping and parking improvements to be installed on Redwood Square within the Project site until the full program of previously-approved uses is ready to be developed and imposed minor modifications to the previously-approved land use conditions to reflect the City's current standard conditions of approval and contemporary environmental and infrastructure standards. None of the Project's changes to the SDP modified the height, type, or intensity of the uses previously approved or analyzed in the Program EIR (as modified by the Addenda) and the 2004 MND. Accordingly, the City found that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c)(2) and that subsequent environmental review is not required.

The Project also includes of an amendment to the ADDOPA (the "MRADDOPA") to reflect the land-use changes approved by the City. In addition, the MRADDOPA includes terms related to the obligations of the Developer to complete a defined "Minimum Project" (which is within the scope of the development authorized under the SDP, as amended) and outlines the responsibilities of the Developer and Successor Agency to construct the Project in accordance with the SDP.

Because the Successor Agency's discretionary action is required to approve the MRADDOPA, it is the "Responsible Agency" for CEQA purposes. Pursuant to CEQA Guidelines Section 15096(e)(3), a Responsible Agency may not require subsequent environmental review after a Lead Agency prepares an EIR or a Negative Declaration unless the conditions described in CEQA Guidelines Section 15162 have occurred. As explained below, none of the conditions specified in CEQA Guidelines Section 15162 requiring subsequent or supplemental environmental analysis have occurred; therefore, no new environmental analysis is required to comply with CEQA.

Specifically, the Project does not include any substantial changes in the Downtown Improvement Program Update of the previously-approved SDP, and there is no evidence in the record that the Project would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects necessitating major revisions to the Program EIR (as modified by the Addenda) or the 2004 MND. Similarly, there is no evidence in the record that substantial changes have occurred with respect to the circumstances under which the Project is to be undertaken that will require major revisions of the Program EIR (as modified by the Addenda) or the 2004 MND. Finally, there is no new information of

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substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Program EIR (as modified by the Addenda) and the 2004 MND were adopted, in the record that shows new or considerable different significant effects, mitigation measures, or alternatives than were analyzed in the Program EIR (as modified by the Addenda) and the 2004 MND.

Because no new effects could occur or no new mitigation measures would be required under CEQA Guidelines Section 15162, CEQA Guidelines Section 15096 permits the Successor Agency to adopt the MRADDOPA as part of the Project, and no new environmental document is required.

Categorical Exemptions

In addition to the fact that the Project is within the scope of the Program EIR pursuant to CEQA Guidelines Sections 15096(e)(3) and 15168(c)(2), the Project is also categorically exempt from further CEQA review. Although the MRADDOPA would not directly address the minor private alterations in the condition of land and vegetation or the minor alterations in land use limitations contemplated as part of the Project, its adoption would delete portions of the ADDOPA that are inconsistent with the physical improvements approved by the City in the SDP. However, pursuant to CEQA Guidelines Section 15304, the Project qualifies for an exemption for minor private alterations in the condition of land and vegetation (a "Class 4 Exemption"), and pursuant to CEQA Guidelines Section 15305, the Project qualifies for an exemption for minor alterations in land use limitations (a "Class 5 Exemption").

Minor Alterations to Land

A Class 4 Exemption may be used to permit minor alterations to land, which expressly includes new gardening or landscaping and minor temporary use of land having negligible or no permanent effects on the environment, as long as the alterations do not involve the removal of healthy, mature, scenic trees. The Project's proposed temporary improvements to Redwood Square consist of the installation of new landscaping and temporary surface parking that will be removed when the previously-approved uses for the area are ready for development. The proposed placement of temporary landscaping and hardscape within the areas currently occupied by partially-built steel structures constitutes a minor alteration of the condition of land and/or vegetation. In addition, no healthy, mature, scenic trees would be removed or negatively affected by the alterations. Therefore, the Project qualifies for a Class 4 Exemption.

Minor Alterations in Land Use Limitations

A Class 5 Exemption may be used to permit minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density. The Project site has an average slope of less than 20%, and the Project's proposed land use limitation alterations would not affect the land uses or density of development permitted on the site. The proposed alteration to permit rental housing units in place of for-sale housing units does not qualify as a change in land use as that term is used in CEQA Guidelines Section 15305, since the change in the ownership structure does not affect the underlying use in the land. Furthermore, CEQA Guidelines Section 15301(k) explicitly exempts the conversion of rental housing to for-sale housing, which supports the conclusion that modifying a residential

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land use's form of ownership is not a change that would result in a significant effect to the environment requiring the application of CEQA. Therefore, the Project qualifies for a Class 5 Exemption.

Exemption Exceptions

Finally, none of the exceptions to the exemption specified in CEQA Guidelines Section 15300.2 have occurred. Specifically, the Project site is not in a location where it would have any impact on: an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies; scenic highways; or historical resources. There is no evidence in the record that the Project would contribute to a cumulative impact, nor that unusual circumstances would cause the Project to result in a significant effect. Finally, the Project site is not located on a hazardous waste site. Therefore, the exceptions to the exemptions are inapplicable, and no further environmental analysis is required under CEQA.