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17 September 2021

The Honorable Presiding Justice Judith McConnell
and Associate Justices
California Court of Appeal
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, CA 92101

Via TrueFiling

Re: ***Save Civita Because Sudberry Won't v. City of San Diego***
Court of Appeal Docket no. D077591
San Diego County Superior Court case no. 37-2017-00045044-CU-TT-CTL

Dear Honorable Justices:

On September 3, 2021, the Court directed the parties to file simultaneous supplemental letter briefs to address two questions: (1) whether the decisions of the City of San Diego ("City") at issue in this case were quasi-*adjudicatory* or quasi-*legislative* in nature; and (2) whether a determination that the City's decisions were quasi-*legislative* would foreclose appellant's procedural due-process claim. Plaintiff and Appellant Save Civita Because Sudberry Won't ("Save Civita") respectfully submits this letter in response.

As discussed herein, the City's decisions were quasi-*adjudicatory* in nature and therefore reviewable under Public Resources Code section 21168 and Code of Civil Procedure section 1094.5. Importantly, however, even if the decisions were considered quasi-*legislative* and reviewable under Public Resources Code section 21168.5 and Code of Civil Procedure section 1085, Save Civita's procedural due-process claim survives because procedural unfairness is actionable under both section 1085 and section 1094.5.¹

I. The City's Decisions Were Quasi-Adjudicatory

Taken separately or together, both the certification of the environmental impact report ("EIR")² under the California Environmental Quality Act ("CEQA") and the approval of the community-plan amendment in this case were quasi-*adjudicatory* in nature and therefore reviewable under section 1094.5.

¹ All unspecified code sections are to the Code of Civil Procedure.

² As discussed in Appellant's Opening Brief, there were three different EIRs for this Project. See AOB, p. 17 n.7. References to the "EIR" in this supplemental brief are to the final certified EIR.



document received by the CA 4th District Court of Appeal Division 1.

A. Consideration and certification of an EIR is a quasi-judiciary act

“In an action to set aside an agency’s determination under [CEQA], the appropriate standard of review is determined by the nature of the proceeding below.... [S]ection 21168 “establishes the standard of review in administrative mandamus proceedings” under Code of Civil Procedure section 1094.5 while section 21168.5 “governs traditional mandamus actions” under Code of Civil Procedure section 1085. [Citation.] The former section applies to proceedings normally termed “quasi-judiciary,” “in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency....” [Citations.] The latter section applies to all other actions taken pursuant to CEQA and generally encompasses “quasi-legislative” decisions made by a public agency.’ [Citations.]” *Gentry v. City of Murrieta*, 36 Cal. App. 4th 1359, 1374-1375 (1995) (citations omitted); *accord Western States Petroleum Assn. v. Superior Ct.*, 9 Cal. 4th 559, 566-567 (1995) (“*Western States*”). “Legislative actions are political in nature, declaring a public purpose and making provisions for the ways and means of its accomplishment. In contrast, adjudicative actions apply law that already exists to determine specific rights based on specific facts ascertained from evidence adduced at a hearing.” *Sierra Club v. Gilroy City Council*, 222 Cal. App. 3d 30, 39 (1990), *disapproved on other grounds of by Western States*, 9 Cal. 4th 559 (1995) (internal citations and quotation marks omitted).

“Consideration of a filed EIR’s adequacy is a judicial function.” *Plan. & Conservation League v. Dep’t of Water Res.*, 83 Cal. App. 4th 892, 911 (2000) (citation omitted); *compare Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist.*, 141 Cal. App. 4th 677, 693 (2006) (**exemption determinations** under CEQA are quasi-legislative actions).³ Where the agency’s CEQA determination requires it to make findings to support its decision, Public Resources Code section 21168 applies. *Ass’n for Prot. etc. v. City of Ukiah*, 2 Cal. App. 4th 720, 729 (1991); *CalBeach Advocs. v. City of Solana Beach*, 103 Cal. App. 4th 529, 539 (2002) (“Although the standard of review is identical in the two sections, ‘[s]ection 21168 requires the agency [to] make findings supporting its decision, while section 21168.5 does not.’”); *see also* CEQA Guidelines, § 15091(a), (b) (requiring public agencies to make written findings to justify approving project that has one or more significant environmental effects and requiring those findings to be supported by substantial evidence in record).⁴ “Section 1094.5 clearly contemplates that at minimum, the reviewing court must determine both whether substantial evidence supports the administrative agency’s findings and whether the findings support the agency’s decision.” *Topanga Assn. for a Scenic Cmty. v. Cty. of Los Angeles*, 11 Cal. 3d 506, 514-515 (1974). “The administrative agency must provide a record which shows how it arrived at its decision so that the public and the courts may review it.” *Dore v. Cty. of Ventura*, 23 Cal. App. 4th 320, 328 (1994). To that end, if an agency does not follow the mandates

³ “The City’s determination that the project was exempt from compliance with CEQA requirements was a quasi-legislative action, where no administrative hearing was held **or required**. A preliminary determination such as this is subject to judicial review under the abuse of discretion standard in Public Resources Code section 21168.5.” *Save Our Carmel River*, 141 Cal. App. 4th at 693 (emphasis added).

⁴ The CEQA Guidelines implement the provisions of CEQA and are codified in the California Code of Regulations, title 14, section 15000 *et seq.* (“CEQA Guidelines”).



of CEQA or if the agency's decision is not supported by substantial evidence in the administrative record, that decision cannot stand – regardless of whether the decision was in the agency's legislative discretion.

Here, the City was required to and did make findings as part of its certification of the EIR because the Project was found to result in “significant and unavoidable [environmental] impacts.” *See generally* AR 36 (resolution certifying the EIR and adopting attached findings, statement of overriding considerations, and mitigation, monitoring, and reporting program) & p. 381; *see also* San Diego Mun. Code (“SDMC”) § 128.0312 (incorporating CEQA Guidelines § 15091 into San Diego Municipal Code). The City was even required to “find that the . . . [EIR] reflects the independent judgment of the lead agency.” Pub. Res. Code § 21082.1(c)(3).

Accordingly, the CEQA process pulls this Project into the quasi-adjudicatory realm. By declaring that projects should not harm the environment, requiring an investigation into the environmental impacts, and requiring written findings and a statement of overriding considerations (when impacts cannot be avoided or mitigated), the Legislature intended the CEQA process for the certification of environmental impact reports to be quasi-adjudicatory in nature. As such, the City's certification of the EIR was a quasi-adjudicatory action.

B. Consideration and approval of a community-plan amendment is a quasi-adjudicatory act

Consideration of the community-plan amendment in this case is likewise a quasi-judicial function that requires a hearing, evidence, and the exercise of discretion. *See Rural Landowners Ass'n v. City Council*, 143 Cal. App. 3d 1013, 1019 n.4 (1983) (finding that hearing requirement under Government Code sections 65351 & 66451.3 met requirement for “hearing” under section 1094.5) (“*Rural Landowners*”); *cf. Friends of the Old Trees v. Dep't of Forestry & Fire Prot.*, 52 Cal. App. 4th 1383, 1390 n.5 (1997) (finding that hearing requirement under Public Resources Code § 4582.7(c) met requirements for “hearing” under section 1094.5).

The SDMC requires amendments to land-use plans to be initiated in accordance with the City's General Plan Land Use Element. SDMC § 122.0105(a). Thereunder, all plan amendments are **required** to be brought to a public hearing. AR 2355:37223 (page LU-28: Public Hearing Process for Plan Amendments); *see also* SDMC §§ 112.0301(c) & 112.0305 (notice requirements for plan amendments). Likewise, the City's Land Development Manual declares that any amendment to the City's General Plan, community plans, specific plans, or precise plans **require a public hearing** “to decide if the proposed new policy or amendment complies with state law and carries out the goals and policies of the City of San Diego.” City of San Diego Dev. Svcs. Dep't, Land Dev. Manual, Vol. I, Ch. 1, § 6, p. 1 (Updated Mar. 2021).⁵ Plan amendments require a two-step process: (1) initiation of the amendment; and (2) formal submission of the amendment. *Id.* “Once initiated in accordance

⁵ Section 6 of Chapter 1 of Volume I of the City's Land Development Manual can be accessed online at https://www.sandiego.gov/sites/default/files/dsdpsm_sec_06.pdf and is attached hereto for the Court's convenience. *See also* SDMC § 111.0106 (providing for establishment and maintenance of Land Development Manual).



with Section 122.0105(a), a decision on a *land use plan* or a *land use plan* amendment shall be made in accordance with Process Five.” SDMC § 122.0105(b) (italics in original).⁶ Process Five includes the following steps: (1) Application/Plan Submitted; (2) Staff Level Review; (3) Planning Commission Recommendation **Hearing**; and (4) City Council **Hearing**. SDMC § 112.0501, Diagram 112-05A. Notably, Process Five decisions require “**Public Notice** to all Property Owners, Tenants, Community Planning Groups within 300 Feet of the *development*, and Anyone Requesting Notice” after each step of the process. *Id.* (Key) (emphasis added); SDMC § 113.0103 (defining *development*). Subject to exceptions not applicable here, both the Planning Commission and the City Council **are required to hold public hearings** to consider an application subject to Process Five. *See* SDMC § 112.0509(b), (c).

Moreover, “[s]pecific plans ... shall be prepared pursuant to the California Government Code.” SDMC § 122.0107(a); *see also* Gov’t Code § 65451. The Government Code states that “[a] specific plan shall be prepared, adopted, and amended in the same manner as the general plan,” and general plan amendments require “the planning agency [to] provide opportunities for the involvement of citizens . . . through **public hearings**. . . .” Gov’t Code §§ 65453 & 65351 (emphasis added); *see also* Gov’t Code §§ 65353 (when city or county has planning commission, at least one public hearing is required), 65355 (requiring legislative body to hold at least one public hearing). In *Rural Landowners*, the court found that the hearing requirement for plan amendments under Government Code section 65351 brought the agency’s decision within the scope of section 1094.5. *See Rural Landowners*, 143 Cal. App. 3d at 1019 n.4. Therefore, even ignoring that the consideration and certification of the EIR brings the City’s decisions here within the scope of section 1094.5 (*i.e.*, makes it quasi-adjudicatory in nature), the decision to approve the community-plan amendment was also a quasi-adjudicatory action in its own right because, by law, the action required a public hearing, evidence, and the exercise of discretion to determine whether the proposed amendment “complies with state law and carries out the goals and policies of the City of San Diego.” *See* Land Dev. Manual, § 6, p. 1.⁷

Furthermore, although the proposed amendment was to a community plan, which is typically a broadly applicable policy document, the amendment referred to one specific project only – the road connection. *See* AR 2350:36341 (“the community plan amendment before [the Planning Commission] today is simply the connection of the road in the Serra Mesa area”). “[L]and use planning decisions less extensive than general rezoning could not be insulated from notice and hearing requirements by application of the ‘legislative act’ doctrine.” *Horn v. Cty. of Ventura*, 24 Cal. 3d 605, 614-615 (1979); *see also California Aviation Council v. City of Ceres*, 9 Cal. App. 4th 1384, 1392 (1992) (finding that “ordinance” dealing with application involving specifically defined and limited area of approximately 450 acres and not setting forth rules to be applied to all future cases of same type was reviewable under section 1094.5 and not section 1085).

⁶ Italicized terms in the SDMC are terms defined therein. “*Land use plans* means the General Plan and adopted community plans, specific plans, precise plans, and sub-area plans.” SDMC § 113.0103 (Definitions).

⁷ *See supra* note 5.



Here, the final Project description reads: “The proposed project consists of construction and operation of a four-lane major street, complete with bicycle lanes and pedestrian pathways, extending from Phyllis Place in Serra Mesa southward to Via Alta and Franklin Ridge Road in Mission Valley. The proposed project would also require an amendment to the [SMCP].” AR 2349:35815 (emphasis added). “Moreover, it has been held that the stricter standard of substantial evidence [*i.e.*, section 1094.5] is controlling where an agency decision involves both a judicial and a legislative function.” *City of Carmel-By-The-Sea v. Bd. of Supervisors*, 183 Cal. App. 3d 229, 239 (1986) (citing *Mountain Defense League v. Bd. of Supervisors*, 65 Cal. App. 3d 723, 729 (1977)).

Thus, regardless of the analytical path traveled, the City’s approval of the community-plan amendment was reviewable under section 1094.5.

In *Western States*, the California Supreme Court concluded that the adoption of air-quality **regulations** was a quasi-legislative action when it held that “extra-record evidence can never be admitted merely to contradict the evidence the administrative agency relied on in making a quasi-legislative decision or to raise a question regarding the wisdom of that decision.” *Western States*, 9 Cal. 4th at 579. This conclusion comports with the idea that “[l]egislative actions are political in nature, declaring a public purpose and making provisions for the ways and means of its accomplishment.” *Sierra Club*, 222 Cal. App. 3d at 39. The purpose of the regulations was to create a broadly applicable program to promote low-emission vehicles and clean fuels and to “establish a ‘reactivity adjustment factor’ to be applied to emission standards governing certain vehicles.” *Western States*, 9 Cal. 4th at 565. In contrast, the approval of the community-plan amendment here is distinguishable in that it did not involve a broadly applicable program or set of regulations. Rather, it involved a specific piece of land, one project, and required a hearing, evidence, and the exercise of discretion – all of which brought the City’s decisions within the scope of section 1094.5. Additionally, the evidence of procedural due-process violations complained of in this case was a part of the City’s own certified administrative record and, thus, not “extra-record.” *See also* IV AA 1368, lns. 16-18.

In *Save Lafayette Trees v. East Bay Regional Park District*, 66 Cal. App. 5th 21, 280 Cal. Rptr. 3d 679, 703 (2021),⁸ the court held that the quasi-legislative nature of the agency’s action is not impacted by the adjudicative-like process the agency uses. That case is readily distinguishable. There the agency decision involved the approval of a memorandum of understanding (“MOU”), and the court held that such a decision is “unquestionably” quasi-legislative in nature. *Id.* The statutes under which the agency was acting – Public Resources Code sections 5537, 5541, 5547, 5558 – do not include the same types of due-process requirements as the Government Code and SDMC for plan amendments discussed above (*e.g.*, hold a hearing, consider evidence, make findings, etc.). Also, with respect to CEQA, the MOU in *Save Lafayette Trees* was found to be exempt, which is a quasi-legislative decision subject to section 1085. *See Save Our Carmel River*, 141 Cal. App. 4th at 693 (exemption determinations are reviewable under Public Resources Code section 21168.5 and section 1085). Here, meanwhile, the relevant Government Code and SDMC provisions (as well as the limited scope of the community-plan amendment and the CEQA determination) move this case within the scope of section 1094.5.

⁸ Save Civita’s pin-cites are to the California Reporter.



Yost v. Thomas, 36 Cal. 3d 561 (1984), is also significantly distinguishable from the present case. There the question before the court was “[w]hether the changes to the general plan and the applicable zoning, as well as the specific plan, [were] subject to referendum. . . .” *Yost*, 36 Cal. 3d at 569. The Supreme Court held that the two resolutions and one ordinance approved by the city counsel were legislative acts subject to referendum. *Id.* at 565, 574. The High Court further held that the application of the California Coastal Act did not transform the city’s legislative acts into administrative action. *Id.* at 574. However, the decision did not address the applicability of sections 1085 or 1094.5, and it did not address any issues related to procedural due process and thus represents no binding precedent.⁹ See *In re Marriage of Cornejo*, 13 Cal. 4th 381, 388 (1996) (“It is axiomatic that cases are not authority for propositions not considered.”). That an agency’s decision is considered legislative for purposes of referendum does not necessarily answer the question of whether the agency’s decision is quasi-legislative or quasi-adjudicatory for purposes of procedural due-process protections (particularly when such protections are included in the agency’s own code). Indeed, “quasi” means “[s]eemingly but not actually; in some sense or degree; resembling; nearly.” QUASI, Black’s Law Dictionary (11th ed. 2019). A decision need not be completely adjudicatory to be quasi-adjudicatory. As discussed above, the City’s decisions in this case had all of the markings of a quasi-adjudicatory action.

II. Save Civita’s procedural due-process claim survives even if the City’s decisions were quasi-legislative acts

Even if the City’s decisions were quasi-*legislative* in nature,¹⁰ Save Civita’s procedural due process claim would not be foreclosed because procedural unfairness is actionable under either section 1085 or section 1094.5.

Generally speaking, “[q]uasi-legislative acts are not subject to procedural due process requirements. . . .” *Beck Dev. Co. v. S. Pac. Transportation Co.*, 44 Cal. App. 4th 1160, 1188 (1996); accord *Horn v. Cty. of Ventura*, 24 Cal. 3d 605, 613 (1979) (“Where a rule of conduct applies to more than a few people it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole.”). However, courts have repeatedly stated that procedural unfairness is actionable under section 1085. See also *Muzzy Ranch Co. v. Solano Cty. Airport Land Use Comm’n*, 164 Cal. App. 4th 1, 13 (2008) (“Our review [of a quasi-legislative act] is limited to determining whether the [agency’s] decision was ‘arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or **procedurally unfair**.’” (quoting *Fullerton Joint Union High Sch. Dist. v. State Bd. of Educ.*, 32 Cal. 3d 779, 786 (1982) (emphasis added))).

⁹ Notably, had *Yost* been brought under the Coastal Act itself, it would have been subject to review pursuant to section 1094.5. See Pub. Res. Code § 30801.

¹⁰ For all of the reasons discussed above, the City’s decision in this case was quasi-adjudicatory. Save Civita has maintained this position throughout this case. See I AA 56, lns. 21-25; AOB, p. 24; see also I AA 91, lns. 13-17 (City’s opposition brief below agreeing that Public Resources Code § 21168 applies); but see RB, p. 15 (citing Public Resources Code 21168.5 for the first time).



Notably, in *Western States*, the Supreme Court agreed with certain commentators who argued that extra-record evidence received different treatment by the courts depending on whether the petition was brought as a traditional mandamus (section 1085) or an administrative mandamus (section 1094.5). See *Western States*, 9 Cal. 4th at 575 (concluding that “the commentators are correct”). The Court went on to note that those same commentators “proposed several limited exceptions to the general rule excluding extra-record evidence in traditional mandamus actions challenging quasi-legislative administrative decisions” including *procedural unfairness* and agency misconduct. *Id.* at 575 n.5; see also *Muzzy Ranch Co.*, 164 Cal. App. 4th at 13 (reiterating the same).

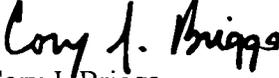
Thus, even under Public Resources Code section 21168.5 and section 1085, violations of procedural due process are actionable. Here, Councilmember Sherman was a biased decision-maker who put his proverbial thumb on the scale in favor of the Project well before it was ever officially before the City for review and long before the full body of evidence had been presented for consideration. While an elected official has “not only a right but an obligation to discuss issues of vital concern with his constituents and to state his views on matters of public importance,” decision-makers on land-use matters have crossed the line when they start advocating for or against a project. *Petrovich Dev. Co., LLC v. City of Sacramento*, 48 Cal. App. 5th 963, 974 (2020).

III. Conclusion

For all the reasons stated above, the City’s decisions were quasi-adjudicatory in nature and therefore reviewable under section 1094.5. However, even if the decisions are reviewable under section 1085, Save Civita’s procedural due process claim survives and is actionable.

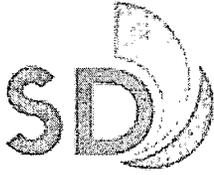
Respectfully submitted,

BRIGGS LAW CORPORATION


Cory J. Briggs

Attachment: City of San Diego’s Land Development Manual, Vol. I, Ch. 1, § 6





Development Services

MARCH 2021

LAND DEVELOPMENT MANUAL

Volume I, Chapter 1

Project Submittal Requirements

Section 6 Policy Approvals

DEVELOPMENT SERVICES DEPARTMENT

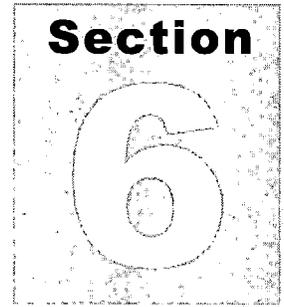
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Policy Approvals

Introduction

The following policy approvals require a public hearing to decide if the proposed new policy or amendment complies with state law and carries out the goals and policies of the City of San Diego.

A. LAND USE PLANS/LOCAL COASTAL PROGRAM AMENDMENTS

Land Use Plans include any and all public documents that contain policies and specific proposals for future land use. The list of City documents classified as Land Use Plans includes, but is not limited to:

- The General Plan
- Community Plans
- Specific Plans
- Precise Plans

Changes to any of these plans within the Coastal Overlay Zone also require a Local Coastal Program Amendment. The Policy Approvals' Submittal Matrix summarizes the submittal requirements for a Land Use Plan Amendment.

It is important to note that a proposed amendment to a Land Use Plan, such as a Community Plan Amendment, involves two steps. Step One is to initiate the amendment before the Planning Commission at a hearing. This step is fairly simple and does not require plans, or a Public Notice Package. However, it is an important step and requires a Letter of Initiation detailing your proposed amendment. Depending on

LAND DEVELOPMENT MANUAL PROJECT SUBMITTAL PROCESS

<u>Section 1</u>	Guide to the Project Submittal Process
<u>Section 2</u>	Construction Permits - Structures
<u>Section 2A</u>	Single Dwelling Unit/Duplex/Townhomes and Accessory Structures
<u>Section 3</u>	Construction Permits - Grading and Public Right-of-Way
<u>Section 4</u>	Development Permits/Approvals
<u>Section 5</u>	Subdivision Approvals
<u>Section 6</u>	Policy Approvals

the nature of your proposal, staff may request additional information necessary to evaluate the potential impacts of any plan amendment on the fulfillment of citywide land use goals during the initial review. The Planning Commission may approve the request to initiate if it determines that the application meets the "Criteria for Initiation of Amendments" (see General Plan Land Use and Community Planning Element, Section D, Policy LU-D.10. For additional information please see Policies LU-D.6, LU-D.8-9).

Step Two will require more detailed submittal information, including the Resolution of Initiation, as indicated by the Submittal Matrix. In most cases, a Land Use request (e.g., Community Plan Amendment) often involves or is associated with other types of permit requests such as Development Permit(s), Tentative Map, and/or a Rezone. If this is the case, it is recommended that the whole project (all the permit types) be submitted at the start of Step Two. This submittal is subject to Completeness Review.

PROJECT SUBMITTAL REQUIREMENTS

Rezoning

Rezoning involves any proposed change to the base zone or overlay zone of a property. A rezoning in the Coastal Overlay zone is also a Local Coastal Program Amendment. The Policy Approvals' Submittal Matrix summarizes the submittal requirements for a Rezoning.

Development Agreements

Development Agreements provide a process to allow consideration of proposals for orderly and planned growth and development through the provision of certainty in the development approval process by the City, and through corresponding assurances by developers.

Development agreements shall contain all of the provisions listed in the California Government Code including the specification of the party responsible for the cost of periodic review. See Land Development Chapter 12, Article 4, for Development Agreement procedures.

Submittal Requirements

The Submittal Matrix and the Minimum Submittal Requirements Checklist found in this section identify the forms, documents, and plans that are required. The Submittal Matrix is an easy-to-use tool to help you quickly identify items you need to submit to the City. The Submittal Requirements Checklist provides a detailed description of what the content of each of the required forms, documents, and plans must be. All items noted in the checklist must be provided unless not specifically required by the Submittal Matrix or the Checklist.

Completeness Review Required

It is necessary to evaluate all projects being submitted to ensure that all of the required information is provided in order to review the project. The completeness review for policy approvals will require submittal of all plans/documents as identified in the Submittal Requirements Matrix. This is known as the Submitted Completeness Review. The Public Notice

Package will be required as part of the Submitted Completeness Review. After the Submitted Completeness Review, staff will notify the applicant whether the application is ready to be deemed complete or whether additional information/clarification is required. This review typically takes ten (10) business days but can take up to 30 calendar days. Once it is determined that your submittal is complete, your application is accepted into plan check.

Guaranteed Second Opinion

If for any reason you disagree with the results of your completeness review, plan review comments, want some confirmation or to voice a concern, just ask for a second opinion. We guarantee a second opinion upon request.

PROJECT SUBMITTAL REQUIREMENTS

 City of San Diego Development Services www.sandiego.gov/development-services/	Submittal Requirements Matrix Policy Approvals				
APPROVAL TYPE					
See Minimum Submittal Requirements Checklist, Policy Approvals for detailed submittal requirements. Some documentation may be combined into single documents if the required information is clearly identified. *The Public Notice Package is required for submitted completeness review.	1.0	2.0	3.0	4.0	5.0
	General Application Package	Policy Documents	Public Notice Package*	Other Technical Studies	Fees & Deposits
LAND USE PLANS – ADOPTION OR AMENDMENT (122.0101) (122.0107)					
Step One - Initiation	✓	✓			✓
Step Two - Adoption / Amendment		✓	✓	(✓)	✓
LOCAL COASTAL PROGRAM AMENDMENTS (122.0106)	✓	✓	✓	(✓)	✓
DEVELOPMENT AGREEMENTS (124.0102)	✓	✓	✓	(✓)	✓
HISTORICAL RESOURCE DESIGNATION (123.0201)	See Information Bulletin 580 – Potential Historical Resource Review				
ZONING, REZONINGS & PREZONING (123.0102) (123.0111)	✓	✓	✓	(✓)	✓
LEGEND: ✓ = Required (✓) = Required if project meets the conditions as identified within the Minimum Submittal Requirements Checklist					

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City of San Diego
Development Services
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**Minimum Submittal Requirements Checklist
Policy Approvals**

This checklist must be used in conjunction with the Submittal Requirements Matrix. The Submittal Requirements Matrix establishes the documents/plans that are required and that must be provided, based upon the approval you are applying for. Acceptance of projects for review by the City of San Diego depends upon the accuracy and completeness of the submitted plans and documents. This Minimum Submittal Requirements Checklist establishes the minimum details that must be included in all plans and documents required by the City. Staff will review your documents against this checklist. The design professional should use this checklist when preparing project packages for review. Plans or documents missing any of the required detail will not be deemed complete (accepted into plan check). Additional information or clarification may be requested during the review process or prior to permit issuance.

Where the word "**Conditional**" appears before the document and/or detail, this information will be required if the proposed project meets those conditions. Where the word "**Recommended**" appears before the document and/or detail, the information is provided as a suggestion for improving the review process and is not required to accept your project for review. However, these items may be a plan check correction item and required to be submitted for subsequent reviews. It is recommended that you provide the documents and information to reduce the number of re-checks cycles. All other detail is required unless not applicable to your project.

Item No.	Requirements
1.0	GENERAL APPLICATION PACKAGE
1.1	General Application (DS-3032)
1.2	Deposit Account/Financially Responsible Party Form (DS-3242): See instructions on form for more detail
1.3	Ownership Disclosure Statement (DS-318): All applications for projects requiring discretionary action by a hearing body (i.e. Hearing Officer, Planning Commission, or City Council) must include a listing of all owners. The list must include the names and addresses of all individuals, corporate officers, and partners in a partnership who own the property. This is required to ensure that a decision maker does not have a conflict of interest that may affect the decision.
1.4	Proof of Ownership/Legal Lot Status: Provide a copy of the current Grant Deed as proof of current ownership and to verify legal lot status. If the property is described by a metes and bounds or as a portion of a lot, proof that the property was held in that configuration prior to March 4, 1972 is required. In these cases, also provide a Grant Deed bearing a County Assessor's Recording Date prior to March 4, 1972 and showing the property held in the same configuration as the current Grant Deed. NOTE: A Deed of Trust does <u>not</u> substitute for a Grand Deed.
1.6	Conditional - Affordable Housing Requirements Checklist (DS-530): Required for all Land Use Plan Amendments, Local Coastal Program Amendments, Development Agreements and/or rezones for residential projects proposing 10 or more dwelling units and to all condominium conversion development of 2 or more dwelling units.

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Item No.	Requirements
2.0	POLICY DOCUMENTS
2.1	Land Use
2.1.1	Step 1 - Letter of Initiation: Provide a letter requesting the initiation to adopt or amend a Land Use Plan, which details the proposal of the changes. The criteria for the initiation of amendments can be found in the General Plan, LU-D.10. See also Policies LU-D.6 and LU-D.8-9. Your proposal requires initiation prior to proceeding to Step 2.
2.1.2	Step 2 - Land Use Document: Provide a copy of the Resolution initiating your proposal and a strikeout underline of amendment text and plan change.
2.2	Local Coastal Program Amendment
2.2.1	Letter of Request: Provide a letter requesting the adoption or amendment of a Local Coastal Program and a detailed proposal of the changes.
2.2.2	Local Coastal Program Document: Provide a strikeout underline of amendment text and plan change.
2.3	Development Agreement
2.3.1	Development Agreement Letter: Provide in detail the proposal for the consideration.
2.3.2	Statement of Consent to Proceed: See Land Development Code Section 124.0102(a).
2.3.3	Grant Deed: Provide a current Deed showing proof of ownership.
2.3.4	Development Agreement Supplemental Form (DS-3038): See instructions on the form for more detail.
2.4	Zoning, Rezoning and Prezoning
2.4.1	Letter of Request: Provide a letter when requesting the adoption of a zone, amending an existing zone, or proposing a prezone. The letter should detail the proposed request, including the existing zone and the proposed zone.
2.4.2	Zone/Rezone Exhibit: Provide maps which graphically indicate the boundary of the proposed zone and existing surrounding zones.
2.5	Designation of Historical Resources
2.5.1	Nomination: See Land Development Code Section 123.0202 (a).
2.5.2	Public Notice to Owner: See Land Development Code Section 123.0202 (b).
2.5.3	Historical Evaluation Report: See Land Development Code Section 123.0202 (c).
3.0	PUBLIC NOTICE PACKAGE: A public notice package is required for all actions requiring a Notice of Future Decision (Process 2) or a Notice of Public Hearing (Process 3, 4 and 5). See Information Bulletin 512 for information on how to obtain public noticing information and formatting. Note: This package is required for submitted completeness review.
3.1	Assessors Map(s): Provide assessors map(s) with 300-foot noticing radius outlined.
3.2	Address lists: Provide owner/occupant information.
3.3	Supplemental Discretionary Application (DS-3035). Complete, sign, and date.

Item No.	Requirements
4.0	OTHER TECHNICAL STUDIES: These studies may or may not be required at the time of project submittal. Depending on the nature of your project, they may be required after the first review cycle.
4.1	Recommended - Drainage Study: A drainage study includes determination of storm run-off (hydrology) and design and sizing of the storm drain facilities (hydraulics). A drainage study is also known as hydrology or hydraulic calculations, prepared by a registered civil engineer per the latest edition of the Drainage Design Manual. A design map(s) should be prepared for each drainage study.
4.2	Recommended - Water & Sewer Studies: Separate Water and Sewer Studies may be required when new mains are proposed and when connections are proposed to existing City mains. The water and sewer studies are prepared by a registered civil engineer, per the Water and Sewer Design Guides, and are reviewed for acceptance by the Water and Wastewater Review Sections. The studies must be separate and include drawings of all existing and proposed work and new/existing roadways. Calculations for determining water and/or sewer main sizes in regards to the designated zoning areas (i.e., commercial, residential) must also be included. Where proposed sewer mains are deeper than 12 feet, a soils analysis is also required.
4.3	Recommended - Transportation Impact Study: A transportation impact study may be required if any intersection or roadway segment affected by a project would operate at a Level of Service E or F under either direct or cumulative conditions. For more information see the City of San Diego Significance Determination Guidelines under CEQA, Appendix A of Land Development Manual .
4.4	Recommended - Noise Study/Report: A noise study may be required if the proposed project produces or would be subject to noise levels exceeding 65 dB CNEL at exterior areas or 45dB CNEL for interior areas. For more information see the City of San Diego Significance Determination Guidelines and the City of San Diego Acoustical Report Guidelines under CEQA, Appendix A of Land Development Manual .
4.5	Recommended - Biological Survey/Report: If biological resources are present on your site, a survey must be conducted to determine the nature and extent of the biological resources. The survey/report should identify the number and extent of each type of biological resource found on the site. For more information see the City of San Diego Significance Determination Guidelines under CEQA, Appendix A of Land Development Manual , City of San Diego Guidelines for Conducting Biological Surveys, and the Land Development Manual Biology Guidelines .
4.6	Recommended - Historical Survey/Archaeological Report: If historical resources are present on your site, a historical survey may be required to determine the nature and extent of the historical resources. For more information, see the City of San Diego Historical Resources Guidelines .
5.0	DEPOSIT/FEES [See Information Bulletin 503] The deposit and application fees as identified in Information Bulletin 503 must be paid at the time the project is submitted. Checks must be made payable to the "City Treasurer" for the exact amount owed. Invoices can also be paid using our on-line payment system through OpenDSD .

PROOF OF SERVICE

1. My name is Keri Taylor. I am over the age of eighteen. I am employed in the State of California, County of San Bernardino.

2. My business _____ residence address is Briggs Law Corporation, 99 East "C" Street, Suite 111 Upland, California 91786.

3. On September 17, 2021, I served _____ an original copy a true and correct copy of the following documents: Supplemental Letter Brief

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

by personal service. I personally delivered the documents to the person(s) at the address(es) indicated on the list.

by U.S. mail. I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

deposited the envelope/package with the U.S. Postal Service

placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of Upland, California.

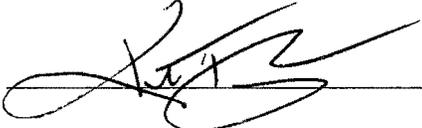
by overnight delivery. I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

by facsimile transmission. Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

by e-mail delivery. Based on the parties' agreement or a court order or rule, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws _____ of the United States of the State of California that the foregoing is true and correct.

Date: September 17, 2021

Signature: 

SERVICE LIST

Court of Appeal Fourth Appellate District Division One Case No. D077591
Save Civita Because Sudberry Won't v. City of San Diego
San Diego County Superior Court Case No. 37-2017-00045044-CU-WM-CTL

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Superior Court Judge