



**REPORT TO COUNCIL**  
**City of Sacramento** **35**  
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915 I Street, Sacramento, CA 95814-2604

**Public Hearing**  
**July 15, 2008**

**Honorable Mayor and  
Members of the City Council**

**Title:** Appeal of the 'Metropolitan' Project (P05-205)

**Location/Council District:** 910 10<sup>th</sup> Street (northeast corner of 10<sup>th</sup> & J Streets),  
Council District 1

**Recommendation:** Conduct a public hearing and upon conclusion: 1) adopt a **Resolution** certifying an Environmental Impact Report (EIR) and approving the Mitigation Monitoring Program (MMP) under the California Environmental Quality Act; and 2) adopt a **Resolution** approving the 'Metropolitan' Project. This project is before the City Council for a de novo hearing on appeal.

**Contact:** Michael York, Associate Planner, (916) 808-8239; Evan Compton, Senior Planner, (916) 808-5260, Greg Bitter, Principal Planner, (916) 808-7816

**Presenters:** Evan Compton, Senior Planner, (916) 808-5260, Greg Bitter, Principal Planner, (916) 808-7816

**Department:** Development Services

**Division:** Current Planning

**Organization No:** 4885

**Description/Analysis**

**Issue:** The Metropolitan Project is a proposed high-rise tower, consisting of 320 residential condominium units **or** 190 residential condominium units/190 hotel rooms on 0.96+/- acres in the Central Business District Special Planning District (C-3-SPD) zone. The Planning Commission certified the EIR and approved the project on May 22, 2008 for development under either scenario. The following entitlements were approved:

- A. Environmental Determination: Environmental Impact Report;
- B. Mitigation Monitoring Plan;
- C. Tentative Map to designate the parcel for condominium purposes;
- D. Special Permit for a major project of 75,000 square feet or more in the Central Business District Special Planning District (C-3-SPD) zone;
- E. Special Permit for 320 condominium units or Special Permit for 190 condominium units/190 hotel rooms in the Central Business District Special Planning District (C-3-SPD) zone;
- F. Special Permit to allow tandem parking;

G. Variance to reduce parking maneuvering area from 26 feet to 25 feet within the parking garage.

Appeals were filed on the project on the grounds that CEQA procedures were not followed correctly, the EIR is inadequate in areas relating to greenhouse gases, energy conservation, storm water flows, hotel operations, traffic, and parking, and that the hotel user is not known.

**Policy Considerations:** The proposed project is consistent with the land use designations and applicable policies of the General Plan and Central City Community Plan, as well as the Central City Housing Strategy and Smart Growth Principles to increase densities in the Central Business District, create a vibrant 18 hour city, provide a better jobs/housing balance and provide ownership housing in the Central City. The project supports transit ridership by increasing residential densities within ¼ mile of an established light rail transit station.

**Committee/Commission Action:** The Project was approved at Planning Commission on October 25, 2007. The project was then appealed to City Council on the grounds that the DEIR should have been re-circulated. The Project was also called-up by the Mayor. The Project was then heard at City Council on January 8, 2008 directing the re-circulation of the Draft Environmental Impact Report (DEIR) prior to re-hearing by the Planning Commission and Design Commission. The appeal was withdrawn based on the project being sent back to the Planning Commission and Design Commission. The DEIR was re-circulated for 45 days. On May 22, 2008 the Planning Commission heard and considered the actions requested. The Planning Commission certified the Environmental Impact Report (EIR) and voted to support the request, subject to conditions (5-2-0). The Planning Commission approved development under either scenario. The Design Commission hearing is scheduled for July 16, 2008 and is only for approval of the design of the hotel/condominium scenario.

An appeal of the Planning Commission's May 22, 2008 decision was filed by William Kopper on May 28, 2008 and Local 49 on June 2, 2008. The hearing before the City Council is a de novo hearing on the project.

**Environmental Considerations:** In accordance with California Environmental Quality Act (CEQA) Guidelines, Section 15081, the City, as Lead Agency, determined that an Environmental Impact Report (EIR) should be prepared for the proposed project. The Draft EIR identified significant impacts due to short-term construction increases in PM10 emissions, potential loss or degradation of unknown prehistoric or historic resources, potential alteration or demolition of historic resources, disturbance of potentially contaminated soils during construction, construction noise at sensitive receptors, architectural damage to historic structures due to construction-induced vibration, exposure of new sensitive receptors to excessive interior noise levels, impacts to the Combined Sewer Service System due to construction dewatering, increased traffic on freeway mainlines and interchanges, temporary disturbance of various transportation modes during construction, and light and glare on roadways and sidewalks. Mitigation measures were identified to reduce project impacts to a less than significant impact; however, approval of the project will

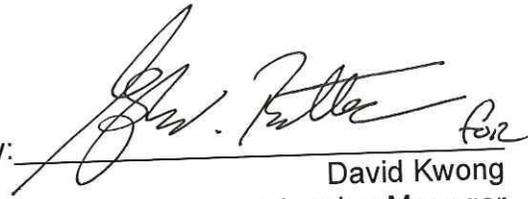
result in significant and unavoidable impacts due to temporary construction noise at sensitive receptors, and increased traffic on freeways. A Mitigation Monitoring Plan (MMP) that lists all of the mitigation measures and required implementing actions was prepared and is attached (Attachment 6, Exhibit B). The Environmental Impact Report evaluates both development scenarios.

**Rationale for Recommendation:** The project is consistent with the objectives of General Plan and Central City Community Plan policies to increase densities in the Central Business District to create a vibrant 18 hour city, provide a better jobs/housing balance, and provide ownership housing in the Central City. The impacts of the project were properly analyzed in the EIR and mitigation measures are required where feasible.

**Financial Considerations:** The project has no fiscal considerations.

**Emerging Small Business Development (ESBD):** No goods or services are being purchased under this report.

Respectfully Submitted by:



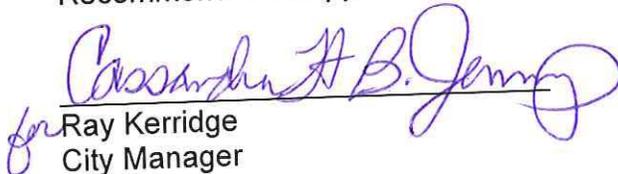
David Kwong  
Planning Manager

Approved by:



William Thomas  
Director of Development Services

Recommendation Approved:



for Ray Kerridge  
City Manager

**Table of Contents:**

	Report	Pg	1
<b>Attachments</b>			
<b>1</b>	Project Background Information	Pg	5
<b>2</b>	Staff responses to appeal letter	Pg	9
<b>3</b>	Vicinity Map	Pg	13
<b>4</b>	Land Use & Zoning Map	Pg	14
<b>5</b>	Local 49 Appeal Letter	Pg	15
<b>6</b>	William Kopper Appeal Letter	Pg	17
<b>7</b>	Resolution – Environmental Impact Report (EIR) Certification	Pg	91
	Exhibit A – CEQA Findings of Fact and Statement of Overriding Considerations	Pg	93
	Exhibit B – Mitigation Monitoring Program	Pg	131
<b>8</b>	Resolution – Project Approval	Pg	155
	Exhibit A – Tentative Map	Pg	176
	Exhibits B-U – 320 Condominium Scenario	Pg	177
	Exhibits B1-U1 – 190 Condo/190 Hotel Room Scenario	Pg	197
<b>9</b>	Planning Commission Staff Report (5-22-08)	Pg	217

## Attachment 1 – Project Background Information

There are currently five buildings located on the proposed project site. The buildings include the seven-story Plaza Building (circa 1906) at 921 10th Street, the three-story RCA Building (circa 1940) at the corner of 10th & J Streets, the three-story Biltmore Hotel (circa 1850) on J Street, the two-story Broiler Restaurant Building (circa 1850) on J Street, and the former State Office Building (circa 1965) also on J Street. All five of these buildings will be demolished to accommodate the proposed project. None of these buildings are listed on the City's Official Listing of Structures and Preservation Areas with Architectural or Historical Significance, and are reviewed as to their significance within the environmental document prepared for the project.

In the 1990's, a high rise was planned on the project site to accommodate a larger concentration of City agencies. The City ultimately constructed new City offices behind the historic City Hall on I Street.

In 2002, a developer came forward and requested an Early Policy Review on the historic nature of the Biltmore Hotel and the demolition of the building. At this time the developer was not pursuing a development on the site. The City Council voted to table the item until such a time that a project was proposed on the site. The buildings on the site have been vacant for several years, with the exception of 921 10th Street. Since then the vacant buildings have become significantly deteriorated. The project site was purchased by the current developer in 2005.

The Metropolitan project was submitted as both a Planning application (P05-205) and a Design Review application (DR05-402) on December 16, 2005 for the development of a 39 story high-rise tower consisting of 320 residential condominiums and approximately 13,000 square feet of retail uses. The entitlements were determined to be the following: A) Certification of the Environmental Impact Report; B) Adoption of the Mitigation Monitoring Plan; C) Tentative Map for condominium purposes; D) Special Permit for alternative housing; E) Special Permit for Major Project over 75,000 square feet; F) Special Permit to allow tandem parking; and G) Variance to reduce the required maneuvering area.

In March and April of 2006 the scope of work regarding the Environmental Impact Report was being reviewed by the City of Sacramento Environmental Services section. On April 10, 2006 the City issued a notice to proceed on the traffic study based on the scope of work for the Environmental Impact Report (EIR). It was anticipated the EIR would be finalized by October 2006 to allow for Planning Commission consideration in November 2006. The Draft Environmental Impact Report (DEIR) was circulated for public review and comment from July 11, 2006 to August 24, 2006.

The project was heard at the Design Review and Preservation Board (DRPB) on August 16, 2006 for review and comment. From that meeting the Board identified the following issues: 1) revisit the plaza design, 2) strengthen the base of the building, 3) avoid monotony at the tower, 4) provide more contrast in color, 5) reduce the massing at street level, 6) elaborate on the material types.

On November 15, 2006 the tentative map for the project was approved at the Subdivision Review Committee (SRC). Also, in November 2006 the FEIR was ready to be circulated.

Planning Commission was tentatively scheduled to consider the project on December 14, 2006. This hearing was continued to allow the applicant time to provide project revisions based on the DRPB's original comments. In early 2007 it was determined that the project should be heard by both the Planning Commission and the newly formed Design Commission for review and comment to give both commissions the opportunity to comment on the design changes.

In May of 2007 the applicant informed staff of a second development scenario that included a hotel component. The number of hotel rooms and condominium units were to be determined by what would fit within the parameters of the impacts identified in the existing EIR.

In May 2007, and subsequent to the release of the DEIR (July 2006), the applicant requested revision of the project description to include a second project option – the Mixed-Use Hotel option. This option would construct a maximum of 190 residential units and 190 hotel rooms in a building similar to that described in the Draft EIR. The mix of uses for the option was determined by the traffic analysis for the original project, with the goal to have the traffic generated by the option be the same, or slightly less than, the original project. The FEIR included analyses for all technical issue areas in the DEIR as to whether the option would alter impacts and mitigation measures outlined in the DEIR. The determination was that the impacts would be the same or slightly less and that no change in mitigation was necessary.

The revised project was heard by the Design Commission on June 20, 2007 for review and comment in order to provide this Design Commission an opportunity to review and comment on the project. The final summary of comments from the 6-20-07 meeting were: 1) Trellis design needs further integration into plaza design; 2) Plaza design needs to integrate entry as well as shading for solar gain at the corner; 3) Strengthen the base of the building; 4) Parking on J Street needs to be revisited in regards to material and interaction with the street; 5) Balcony design is good, but will entertain options to the balcony design; 6) Column proportions at the street wall need further review in regards to the pedestrian. A modification to the project for a potential condominium/hotel scenario was discussed at the hearing, but plans for this development scenario were not available for this meeting.

The project was heard by the Planning Commission on June 28, 2007 for review and comment in order to provide the commission an opportunity to review and comment on the project prior to the formal hearing. The Planning Commission was mainly concerned with the street wall of the building on both 10th and J Streets and the lighting effects from the garage. The Planning Commission was also concerned that the same architect was designing two high rises across the street from each other and wanted to ensure there would be adequate variation between the two buildings. The Planning Commission's comments were then forwarded to the Design Commission. A modification to the project for a potential condominium/hotel scenario was again discussed at the hearing, but plans for this development scenario were not available for this meeting.

On October 25, 2007, the Planning Commission considered both development scenarios for the project, the condominium/retail and condominium/hotel scenarios. Both of these scenarios were approved by the Planning Commission, as all the previously identified issues and concerns had been addressed in the overall project design. This approval was subsequently appealed to City Council and called-up by the Mayor.

The project had been scheduled for hearing at Design Commission on November 29, 2007. Due to the appeal and call-up status of the Planning Commission decision, the project was going to be withdrawn from the Design Commission agenda, but was heard as a review and comment item. After considering the project, the Design Commission made an intent motion to approve the project with the inclusion of refinements to the design. The following is summary of Design Commission comments from the November 29, 2007 hearing: 1) Prefer more detail on the 10th Street like the J Street; 2) 10th Street podium wall needs more depth and articulation of the fenestration; 3) Better articulation is needed at blank walls located at the main entry; 4) Need to revisit landscaping/plaza/seating areas by refining and reintroducing previous elements proposed; 5) Need to celebrate the main entry, a grander better delineated place of entry, more sense of place; 6) J Street street-wall needs additional reveals, further detailing, and planar changes. Glazing and mullion treatments need to be further articulated and the patterns varied along J Street; 7) Had concerns that the glass corner element is too similar to Cathedral Square; 8) Similarities between Metropolitan and Cathedral Square are differentiated through color and the curtain wall treatment; 9) Balconies should wrap the corners to better integrate into the design; 10) Had concerns with the massing of upper tower between floors 8-17 and also 18-35; 11) Top of the building needs further refinements to differentiate this building from others; 12) Air intakes and grilles need to be carefully located and shown on next plan set submitted to Design Review; 13) Utilities should be integrated into the building and not in the public right of way; 14) Clarify that there are two separate designs proposed clearly for easy comparison; 15) Intent motion to approve the project with modifications that were requested at the hearing in addition to staff's Conditions of Approval.

The appeal and call-up of the project was then heard at City Council on January 8, 2008. The Council directed staff that the Mixed Use Hotel option be included in the DEIR, and that the DEIR be circulated for public review, the re-circulation of the Draft Environmental Impact Report (DEIR) and upon conclusion of the public review period and formulation of a new Final EIR (FEIR) have the Planning Commission and Design Commission re-hear the project. The appeal was withdrawn based on the project being sent back to the Planning Commission and Design Commission. A Revised DEIR was prepared in accordance with Section 15088.5 of the CEQA Guidelines and the DEIR was re-circulated for 45 days.

At the close of the public review period, a FEIR was prepared that addressed the comments received on both the 2006 DEIR and the 2008 Revised DEIR. The project (including both development scenarios) was heard and approved by the Planning Commission on May 22, 2008. This approval was subsequently appealed to City Council based on the inadequacy of the EIR in areas relating to greenhouse gases, energy conservation, storm water flows, hotel operations, traffic, and parking, and that the exact user of the commercial use is not known.

The Design Commission hearing for approval of the hotel/condominium scenario only is currently scheduled for July 16, 2008.

## Attachment 2 – Staff responses to appeal letter

The following are staff responses to a letter, dated May 29, 2008, authored by Mr. William Kopper, Attorney at Law, on behalf of the appellants. The letter is regarding the, "Appeal of Planning Commission Approval for the Metropolitan Project (P05-205), Approval Date: May 22, 2008.

On Pages 2 and 3 of the appeal letter (Attachment 4) is the list of ten items upon which the action of the City Council was appealed. The following is a summary of Mr. Kopper's items and staff responses that reflect the numbering in Mr. Kopper's letter.

1. EIR did not consider feasible mitigation measures reduce the project's energy use and greenhouse gases. *The standard of significance for energy is whether a project would result in the "use of non-renewable resources in a wasteful and inefficient manner". The proposed project would comply with all requirements for energy conservation, such as Title 24, and would include additional features to reduce its energy demand, such as appliance energy efficiency standards and diesel-engine idling restrictions (see Page 5.1-6 of the Revised DEIR). Project-specific mitigation is not necessary because the project would not result in a significant impact. Due to the nature of global warming, there is no basis for determining what is locally and regionally cumulatively considerable that would typically lead to a CEQA threshold of significance (see Page 5.1-4 of the Revised DEIR).*
2. The City did not follow CEQA procedures in the circulation of the Final EIR. *The City did comply with CEQA procedures, in particular Section 15132(b) of the CEQA Guidelines, in that all comments and responses to all comments received on the Final EIR (2006 and 2008) were included in the 2008 Final EIR. In accordance with PRC Section 21092.5, the lead agency is to provide written proposed responses to each public agency with which commented on the EIR. The Lead Agency must provide the response at least 10 days prior to certification of the EIR. On May 12, 2008, the City faxed responses to the commenting public agencies, which met the 10-day review period. Mr. Kopper's response was faxed the next day. Because Mr. Kopper did not represent a public agency, the City was not required to send him the proposed responses; however, as a matter of policy the responses were faxed to him. The notice mailed to Mr. Kopper on May 12, 2008 was notification of the public hearing for the project. The notice erroneously stated that the EIR was available for review. The City's template for the public hearing notice was subsequently revised by City staff to remove the statement about the availability of the EIR. The Final EIR presented to the City Planning Commission was a complete document in compliance with Section 15132(b) of the CEQA Guidelines.*

3. The City failed to respond to comments that were labeled in the Final Environmental Impact Report as M-3 and M-11. *As mentioned in Response to Comment M-3 and M-11 in the FEIR, The site plan was reviewed by City's Development Engineering staff and found to be acceptable to the engineering standards. Queuing analysis were conducted to determine whether typical peak hour operation of the motor court would cause queuing into adjacent city street. For the hotel uses, the critical time period for entry to the motor court and the parking garage is during the A.M peak hour, as it is during this period the largest volume of entering traffic is anticipated. It is estimated that 51 vehicles will enter the garage during this hour. Assuming the 60% of the entering vehicles will be using the passenger pickup/drop of or valet parking spaces available, with an average service time is 3 minutes per vehicle, is expected at a better than 99 percent probability that a maximum of 3 cars will be at the drop off/ pick up area. The site plan provides 5 spaces for pick up/drop off passenger area*

*For residential garage, the critical time period for entry to the parking garage is during the P.M. peak hour, as it's during this period that the largest volume of entering traffic is anticipated. It is estimated that 44 vehicles will enter the garage during this hour. Assuming one entrance lane and gated entry control with an average service time of seven seconds per vehicle, is expected at a better than 99 percent probability that a maximum of one vehicle will be at the entry gate. .The site plan provides adequate space to locate the entry gate to allow for the queuing of two or more vehicles without extending into the adjacent alley. Further more, the site plan provides 3 parking spaces for short term parking spaces for residential drop off/ pick up in the motor court area.*

4. The EIR does not include a reasoned and good faith analysis related to rejection of feasible energy conservation measures. *See staff response No. 1, above. The Final EIR responds to the comments of Messrs Ehrlich and Hunt. Their comments, in general, state disagreement with the City's policies regarding energy conservation and efficiency for individual projects.*
5. The EIR does not include adequate information about storm water flows and mitigation of increased storm water and wastewater flows. *Page 5.5-3 of the Final EIR includes an analysis of how storm water and wastewater flows would be mitigated if needed City-wide the Combined Sewer Service System improvements are not made at the time needed by the Metropolitan project. The project would be required to either store project flows or pay the City's Combined System Development Fee to provide additional capacity in the City's system.*
6. The Project EIR fails to include an updated traffic analysis. *The traffic study was prepared shortly after the Notice to Proceed for the DEIR was published. Therefore, the traffic study used the available information at that time. The Metropolitan EIR analyzed the traffic in the baseline scenario with the proposed project trips and the cumulative scenario assumes the cumulative impacts of several projects in the downtown area known at the time the DEIR prepared to be most foreseeable. At this time, several projects of that list are not anticipated to be approved or are on hold. Therefore, the traffic study is considered conservative and no further action is required.*

7. The Project does not include adequate parking for the condominiums, the hotel rooms, the restaurant, the banquet facilities, and the conference facilities. *The proposed number of parking spaces in both scenarios complies with the City Zoning Ordinance. The City Zoning Ordinance residential parking ratio requires one (1) space per residential unit plus one (1) space per 15 units. Based on this ratio, the 320 condominium project scenario requires 342 parking spaces. The project provides 500 parking spaces under this scenario, a surplus of 158 parking spaces. The City Zoning Ordinance hotel parking ratio requires one (1) space per two (2) hotel rooms plus parking for additional services (restaurant, banquet facilities, etc.). The additional services parking requirement was based on 20,500 square feet of additional service space at one (1) space per 500 square feet for a total of 41 spaces. Based on the hotel ratio and the residential ratio, the 190 condominium/190 hotel room project scenario requires 339 parking spaces. The project provides 475 parking spaces under this scenario, a surplus of 136 parking spaces.*

*Based on the City Zoning Ordinance the project is adequately parked with a surplus of parking in either scenario. The surplus parking spaces can be used for visitor parking, valet parking for commercial retail uses in the building, or potentially as off-site parking for other uses in the area. A few surplus spaces could also be utilized for motorcycle/moped parking.*

8. The traffic study was not updated for the combined Hotel/Condominium Project. *As mentioned on the RDEIR, page 5.6-1, the potential amount of traffic generated by hotel and residential uses was used to determine the number of residential and hotel units for this option so that both the mixed use Hotel option and the Residential Option generate similar amount of traffic. For this reason, the Mixed Use Hotel would include 190 residential units and 190 hotel rooms. The trip comparison presented on Table 2, Appendix B of RDEIR, shows the Hotel Mixed Use alternative produces a net reduction in vehicle trips. Because there is a predominate net decrease in trips for the Mixed Use Hotel Option, the City anticipates there would be no new traffic impacts associated with this option beyond what was analyzed in the DEIR.*

*Regarding trip generation figures for the restaurant or the convention facilities, trip generation of the Mixed Use/ Hotel Option is based upon information compiled by the Institute of Transportation Engineer (Trip Generation Seventh Edition, Trip Generation Handbook). According to ITE, Land Use 310 ( Hotel), the description for hotels is: Hotels are places of lodging that provide sleeping accommodations and supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities and other retail and service shops( page 541, Trip Generation 7<sup>th</sup> edition, Volume 2).*

9. The Project EIR fails to include an analysis of the impacts of the truck loading facilities in the alley. *The project is required to install signs in the alleyway to prohibit loading and unloading in the alley during peak hours (A.M and P.M) to the satisfaction of the City's Development Services Division -Condition D-F- 11.*

10. The Project EIR should complete an updated traffic study that addresses the impacts of the hotel on traffic in the alley way. *Please see Response to Comment M-3 in the FEIR and see staff response to number 3 and 8 above.*