



City of San Diego

Although It Generally Followed Requirements for Reviewing Permits, It Could Do More to Protect Historical Resources and to Notify the Public Properly About Its Actions

Report 2012-109

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April 25, 2013

2012-109

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor (state auditor) presents this audit report concerning the City of San Diego (San Diego) and its compliance with existing laws and regulations when it issues permits. San Diego's Development Services Department (Development Services) is responsible for managing the majority of San Diego's review of development projects, and it issues permits that allow construction or development within the city.

This report concludes that Development Services generally followed applicable requirements when it reviewed permits. However, Development Services cannot be certain that all project sites that require historical resource reviews are receiving those evaluations. Specifically, Development Services relies on the applicants seeking permits to provide information about the historical resources at the applicants' project sites, but it does not require them to supply documentation that supports the information on the applications. The City of San Diego Municipal Code (municipal code) requires Development Services to review all projects that include modification to structures that are 45 or more years old for potential designation as a historical resource. Of the 19 projects we examined, five had applications that lacked the year of construction for the structures on the project sites and 10 had applications with information that conflicted with the records of the County of San Diego's assessor/recorder/county clerk (county). Consequently, Development Services risks not identifying project sites with potential historical resources.

Development Services did not consistently adhere to the municipal code when it approved four of the 10 construction changes to building permits we reviewed. Development Services did not require building permits for two construction change projects that involved adding new structures, as the municipal code requires. Moreover, Development Services did not require a construction permit, or perform a historical resource review to ensure the changes were consistent with the U.S. Secretary of the Interior's Standards for Rehabilitation, for a project with a structure located within a historic district, as the municipal code requires. For these three construction change projects, Development Services stated that it followed its *Information Bulletin 118*, issued in June 2011, which describes its process for construction changes to approved plans. However, Development Services' information bulletins cannot supersede the municipal code requirements.

Development Services is also responsible for assessing projects in accordance with the California Environmental Quality Act (CEQA). We reviewed six projects that were subject to CEQA and found that Development Services did not always provide the public with proper notice as required by state regulations that implement CEQA, known as the CEQA guidelines. In particular, the CEQA guidelines specify that, within five days of the final approval of a project, an agency must prepare and file a Notice of Determination (determination notice) with the county. Of the six projects, Development Services either did not file the determination notice or did not file it in a timely manner for four of these projects.

Finally, Development Services did not ensure that certain employees disclose their financial interests on the Statement of Economic Interests, commonly known as Form 700, in accordance with the Political Reform Act of 1974 in a timely manner. Specifically, Form 700s submitted by four of the 15 employees we selected for review were between one month and more than 12 months late.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

In reviewing permits applicable to construction and development projects for the City of San Diego (San Diego), its Development Services Department (Development Services) generally followed applicable requirements. However, Development Services did not collect sufficient information to ensure that all appropriate projects underwent reviews to determine whether the project sites possess historical resources, make certain that the public receives mandatory notices about environmental determinations for approved projects, or verify that each employee required to complete a Statement of Economic Interests, commonly known as Form 700, submits the form at the appropriate time. As a result, Development Services did not consistently meet state and municipal requirements imposed upon it.

Development Services is responsible for managing the majority of San Diego's review of development projects, and it issues permits that allow construction or development within the city. The City of San Diego Municipal Code (municipal code) defines *development* generally as any act dividing a parcel, adding or altering existing facilities, or changing the layout or vegetation of the land. Each development project requires either an approval or a permit. In addition, the municipal code specifies that *construction permits*, which constitute one category of permits, must undergo a *ministerial review process*, which involves determining whether the project meets a series of predetermined requirements and involves little or no personal judgment by the public official. The other category of permits, *development permits*, is subject to *discretionary review processes*, which require decision makers to exercise judgment and deliberation when deciding to approve or disapprove a project.

Although Development Services generally followed San Diego's permit review processes, it cannot be certain that all project sites that require historical resource reviews are receiving those evaluations. The U.S. Secretary of the Interior establishes standards for rehabilitation of historical resources, and Development Services reviews permit applications for projects that involve designated and potential historical resources to ensure that the projects comply with those standards.¹ The municipal code requires Development Services to review all projects that include modification to structures that are 45 or more years old for potential designation as a historical resource. Development Services relies on the applicants seeking permits to

¹ The City of San Diego's Historical Resources Board designates certain sites and districts as historical resources.

Audit Highlights . . .

Our review of the permit review process for the City of San Diego (San Diego) found that its Development Services Department (Development Services):

- » *Generally followed San Diego's permit review process.*
- » *Did not collect sufficient information to ensure that all appropriate projects underwent reviews to determine whether the project sites possess historical resources. Specifically, of the 19 applications for projects in San Diego that we examined, five had incomplete information on historical resources, and in 10 the information provided conflicted with the records of the County of San Diego's assessor/recorder/county clerk.*
- » *Did not consistently adhere to the City of San Diego Municipal Code when approving four of the 10 construction changes we reviewed.*
- » *Did not make certain that the public receives mandatory notices about environmental determinations for approved projects.*
 - *For three of the six projects we reviewed that were subject to the California Environmental Quality Act, Development Services filed the Notice of Determination between 12 business days and more than 90 business days late.*
 - *Development Services does not post a Notice of Right to Appeal Environmental Determination for projects that have been reviewed by hearing officers because it believes it is not required to do so.*

continued on next page . . .

- » *Did not verify that each employee required to complete a Statement of Economic Interests, commonly known as Form 700, submits the form at the appropriate time. Specifically, four of the 15 Development Services designated employees we selected for review submitted their Form 700, required upon assuming or leaving office, between one month and more than 12 months late.*
- » *Our review of the City of San Diego's Ethics Commission found that it does not ensure employees who must attend ethics training do so biennially by March 31, as the policy of the San Diego City Council requires. Six of the seven employees we selected for review attended the required ethics training between four and 18 months after the March 31 deadline.*

provide information about the historical resources at the project sites, but it does not require applicants to supply documentation that supports the information on the applications. In fact, of the 19 applications for projects in San Diego that we examined, five had incomplete information on historical resources, and in 10 the information provided conflicted with the records of the County of San Diego's assessor/recorder/county clerk (county). Consequently, Development Services risks not identifying project sites with potential historical resources.

In the case of the five projects with incomplete information about potential historical resources, the projects' general applications lacked the year of construction for the structures on the project sites. Of these five projects, only two received a historical resource review by Development Services, because its staff had prior knowledge of the project sites. The historical resource reviews that Development Services performed appear to comply with processes outlined in the municipal code and San Diego's *Land Development Manual*.

Our review of 10 construction changes to building permits found that Development Services did not consistently adhere to the municipal code when approving four of these changes. One project involved adding a chain-link fence that was taller than allowed without a building permit, and the second involved adding a retaining wall that similarly should have had a building permit due to its height. Although Development Services referred us to its *Information Bulletin 118*, issued in June 2011, which describes its process for construction changes to approved plans, it did not specifically address our concern that the height of the structures did not conform to the municipal code requirements. Two other construction change applications that should have received a historical resource review did not. For one of these projects, Development Services staff indicated that the changes were minor and did not require a historical resource review in accordance with *Information Bulletin 118*. However, this decision is inconsistent with the municipal code. Further, Development Services' information bulletins, which are free publications that provide the public with certain information, cannot supersede the municipal code requirements. For the second, Development Services staff were unable to explain why a historical resource review was not conducted.

Development Services is also responsible for assessing projects in accordance with the California Environmental Quality Act (CEQA). Among other objectives, the purpose of CEQA is to inform governmental decision makers and the public about projects' potentially significant environmental impacts. Of the 19 projects we reviewed, nine related to development permits. Three of the nine projects were exempt from CEQA. For these three projects, Development Services generally complied with the applicable CEQA public notice requirements for exempt projects.

However, for the six projects subject to CEQA, Development Services did not always provide the public with proper notice. The CEQA guidelines—the state regulations that implement CEQA—specify that within five days of the final approval of a project, an agency must prepare and file with the county clerk a Notice of Determination (determination notice), which remains posted for 30 days.² The determination notice describes the project, states that the determination was made pursuant to CEQA, and indicates whether any mitigation measures must be undertaken as a condition of approval. For one of the six projects we reviewed that was subject to CEQA, Development Services did not file a determination notice. For three other projects we reviewed that were subject to CEQA, Development Services filed the determination notices between 12 business days and more than 90 business days late.

Each of the project managers for these three projects believes that the delays occurred because the applicants did not submit the filing fee for their determination notice in a timely manner. According to the assistant deputy director for project management, Development Services requires applicants to submit a check made payable to the county clerk to cover the filing fees for the determination notice. However, the CEQA guidelines do not provide exceptions, including late payment of the filing fee, to the requirement that the determination notice be filed within five days of the final approval of a project. When a determination notice is not filed or filed significantly late, the public may be unaware that a determination has been made, and therefore it may not exercise its right to challenge the decision.

In addition, the municipal code requires Development Services to post a Notice of Right to Appeal Environmental Determination (appeal notice) for projects following certain discretionary permit review processes. However, Development Services does not post these appeal notices for projects that have been reviewed by hearing officers, because it believes it is not required to do so. We disagree with this conclusion because it is inconsistent with the municipal code. Although the assistant deputy director stated that Development Services intends to clarify the municipal code to align with its practice, Development Services is not complying with the municipal code as currently written. As a result, the public is not receiving proper notice of its ability to appeal environmental determinations made by the hearing officers.

Development Services is also subject to certain state and municipal code requirements regarding conflicts of interest. Specifically, certain Development Services employees—whose positions are

² Because CEQA guidelines refer to each jurisdiction's county clerk, this discussion uses the title *county clerk* to refer to the county.

designated in Development Services' conflict-of-interest code—must disclose their financial interests on Form 700 in accordance with California's Political Reform Act of 1974 (Political Reform Act). The Political Reform Act requires public employees to file a Form 700 within 30 days of assuming or leaving a designated position. However, four of the 15 Development Services designated employees we selected for review submitted their Form 700 required upon assuming or leaving office between one month and more than 12 months late. These delays occurred because Development Services' filing liaisons consistently failed to notify the Office of the City Clerk (city clerk) about employees who were leaving or assuming designated positions. One of the filing liaisons stated that they are not always aware of employees who assume or leave a designated position because they rely on Development Services' payroll staff to provide them with this information. The filing liaison also stated that the liaisons are working with the payroll staff to develop procedures to ensure that they effectively communicate information on employees who assume or leave a designated position. Until Development Services implements these procedures, the city clerk cannot ensure that it collects the Form 700s required upon assuming and leaving office from all designated employees in a timely manner.

Finally, the City of San Diego Ethics Commission (commission) does not ensure that employees who must attend ethics training do so biennially by March 31, as the policy of the San Diego City Council (city council) requires. San Diego's municipal code states that the commission is responsible for providing training and education on governmental ethics laws, such as local laws that govern conflicts of interest and financial disclosure. However, six of the seven employees we selected for review attended ethics training between four and 18 months after the March 31 deadline. The program manager believes the commission maintains the spirit of the policy by providing the training shortly after an employee becomes subject to the commission's jurisdiction and every two years thereafter. However, until the commission seeks and obtains changes to the city council's policy to align the policy with its current practice, it is not complying with the policy and is not meeting the city council's expectations for enforcement of its ethics training requirement.

Recommendations

To ensure that it properly identifies potential historical resources for the structures on project sites and conducts reviews in accordance with the municipal code, Development Services should require applicants to submit documentation, such as the county's property records, with their applications or it should obtain the information directly from the county so that it can determine whether the project requires a historical resource review.

To comply with the municipal code requirements for construction permits such as building permits, Development Services should align *Information Bulletin 118*, issued in June 2011, which describes its process for construction changes to approved plans, with the municipal code requirements for issuing permits and conducting historical resource reviews.

To provide the public proper notice of San Diego's environmental determinations within five days of the final approval of a project in accordance with the CEQA guidelines, Development Services should develop procedures to ensure that its staff file the determination notices in a timely manner. For example, to avoid delays, Development Services should require its staff to collect and submit to the county the filing fee for each determination notice within five days of the final approval of the project.

To provide the public proper notice of San Diego's environmental determinations in accordance with the municipal code, Development Services should seek an amendment to the municipal code to clarify its belief that environmental determinations made by a hearing officer are not subject to the appeal notice requirement. In the interim, Development Services should post appeal notices for projects subject to review and approval by the hearing officer.

To ensure that its designated employees disclose their financial interests in a timely manner, Development Services should do the following:

- Make certain that its filing liaisons and payroll staff develop and implement procedures for notifying the filing liaisons when designated employees assume or leave their positions.
- Ensure that the filing liaisons promptly notify the city clerk when designated employees assume or leave their positions.

To make sure that certain employees attend ethics training as required by the city council, the commission should either follow the city council's policy or seek a change to align the policy with its current practice.

Agency Comments

San Diego's mayor believes all of our recommendations are reasonable and appropriate and states that San Diego will implement them.

Although the commission disagrees with our conclusion that it is not meeting the city council's expectations, it agrees with our conclusion that its training program does not align with the city council's policy for providing ethics training to employees biennially by March 31. The commission states that it will ask the city council to amend its policy and remove the language concerning the March 31 deadline.

Introduction

Background

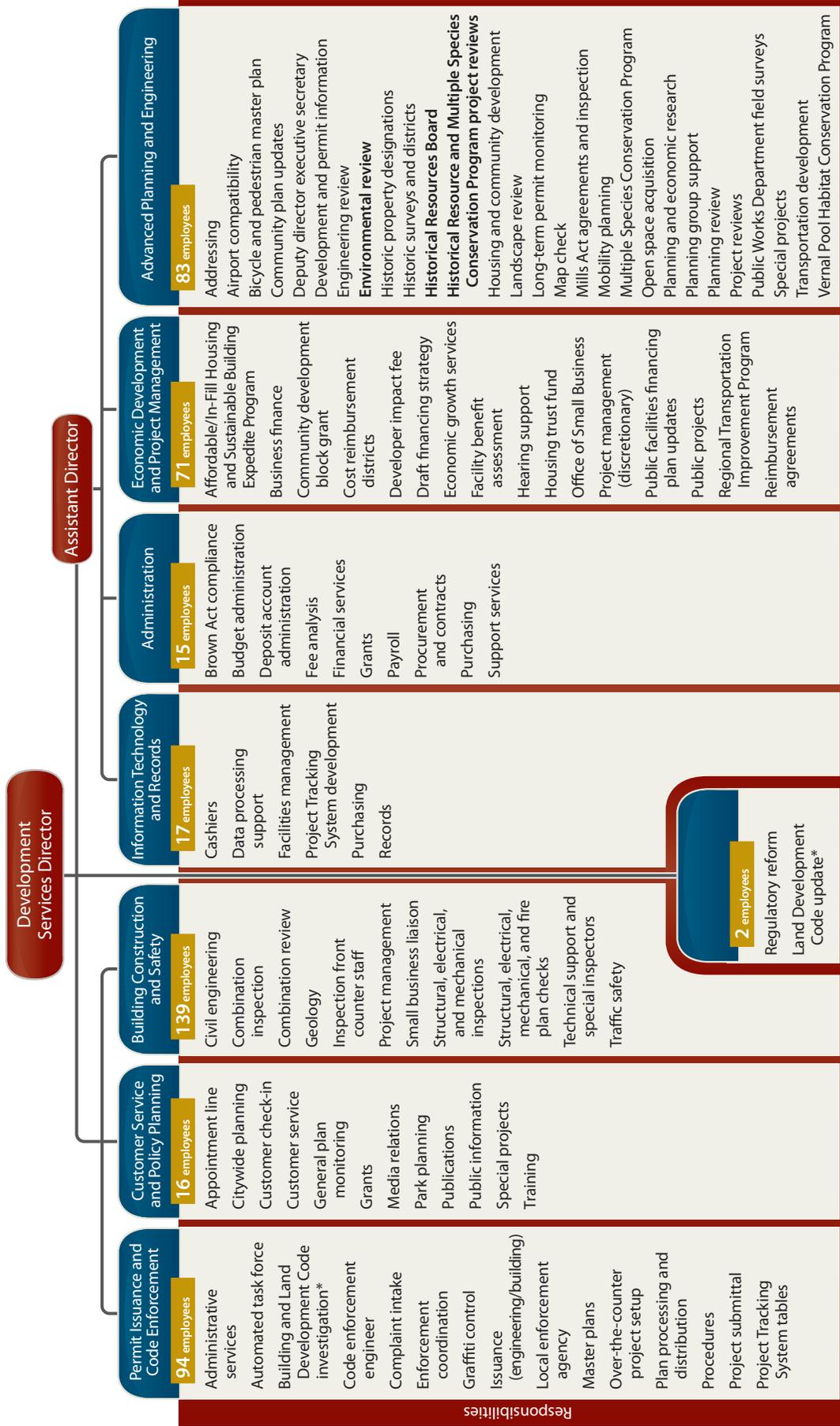
Covering roughly 340 square miles of land area, with 70 miles of coastline and a shared border with Mexico, the City of San Diego (San Diego) has a population of 1.3 million people, according to the California Department of Finance's January 2012 population estimates. San Diego operates under its own charter adopted by voters in 1931.

Like all California cities, San Diego has very broad power to regulate land use within its boundaries. State law, namely the California Planning and Zoning Law, sets out the framework San Diego must follow and requires that it adopt a general plan. The general plan provides a process through which every city and county may coordinate its local decisions for resource allocation with decisions regarding community development and local land use planning. San Diego comprehensively updated its general plan in 2008, with amendments to certain elements in 2010 and 2012. State law authorizes a general plan to contain "community plans" that cities and counties can use to plan the future of a particular area of the city or county with more detail than in the general plan. San Diego has relied on this authority to develop 55 community plans for various areas of the city.

Land Development in San Diego

The City of San Diego Municipal Code (municipal code) reflects the broad land use planning and development regulatory authority that derives from the California Constitution and state law, as well as the requirements that various environmental laws, such as the California Environmental Quality Act (CEQA), impose, and it prescribes the various processes that San Diego uses to make land use decisions, including land development decisions. The municipal code generally defines *development* as any act dividing a parcel, adding or altering existing facilities, or changing the layout or vegetation of the land, and it requires the review of development in San Diego to help ensure the protection of the public's health, safety, and welfare. As of March 2013 San Diego had more than 10,000 city employees, 437 of whom worked for its Development Services Department (Development Services), which is responsible for managing the majority of San Diego's review of development projects. Figure 1 on the following page shows Development Services' organization and the responsibilities of its divisions.

Figure 1
Organization of the City of San Diego's Development Services Department



Source: The organization chart and employee count as of March 8, 2013, for the City of San Diego's Development Services Department.

Note: The report's Introduction and Audit Results discuss in detail the process related to the responsibilities listed in boldface type in the column titled "Advanced Planning and Engineering."

* Land Development Code refers to chapters 11 through 15 of the City of San Diego Municipal Code.

Development projects require either a permit or an approval. The municipal code identifies four general categories of permits and approvals: construction permits, development permits, subdivision approvals, and policy approvals. The third category, *subdivision approvals*, regulates the division of lands and the associated design of improvements, among other areas. The fourth category, *policy approvals*, involves requests to amend existing city policies, such as changing the zoning designation of a site or amending a community plan. In this audit, we did not examine Development Services' compliance with these two approval categories. Instead, we reviewed some types of permits within the first two categories—construction permits and development permits. A *construction permit* involves a review of the project's construction plans, as opposed to a *development permit*, which includes a review of the project's architectural and site design plans. According to the municipal code, not all projects require development permits; instead, development permits apply only to those projects in which relevant regulations may need supplementing because of conditions specific to the project. If a project does require a development permit, the approval of the development permit must occur before Development Services issues a construction permit. Our audit focused on building permits, which are a type of construction permit, and on conditional use and site development permits, which are types of development permits, as Table 1 on the following page indicates.

San Diego's Permit Review Processes for Land Use

The municipal code identifies five permit review processes and generally characterizes the various decisions related to land use and land development as either *ministerial* or *discretionary*. As Figure 2 on page 11 shows, the type of permit the applicant is seeking and the nature of the project dictate the review process that Development Services must follow. The municipal code defines the term *ministerial* as "a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project." A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project is to be carried out. San Diego has established clearly defined criteria that must be satisfied before it can issue a permit, and its staff who make those decisions check to ensure that those criteria are met but do not exercise any independent decision making in the case of ministerial reviews. Construction permits follow permit review Process One, which is a ministerial process.

Table 1
Two Categories of Project Permits That Applicants in the City of San Diego Can Request

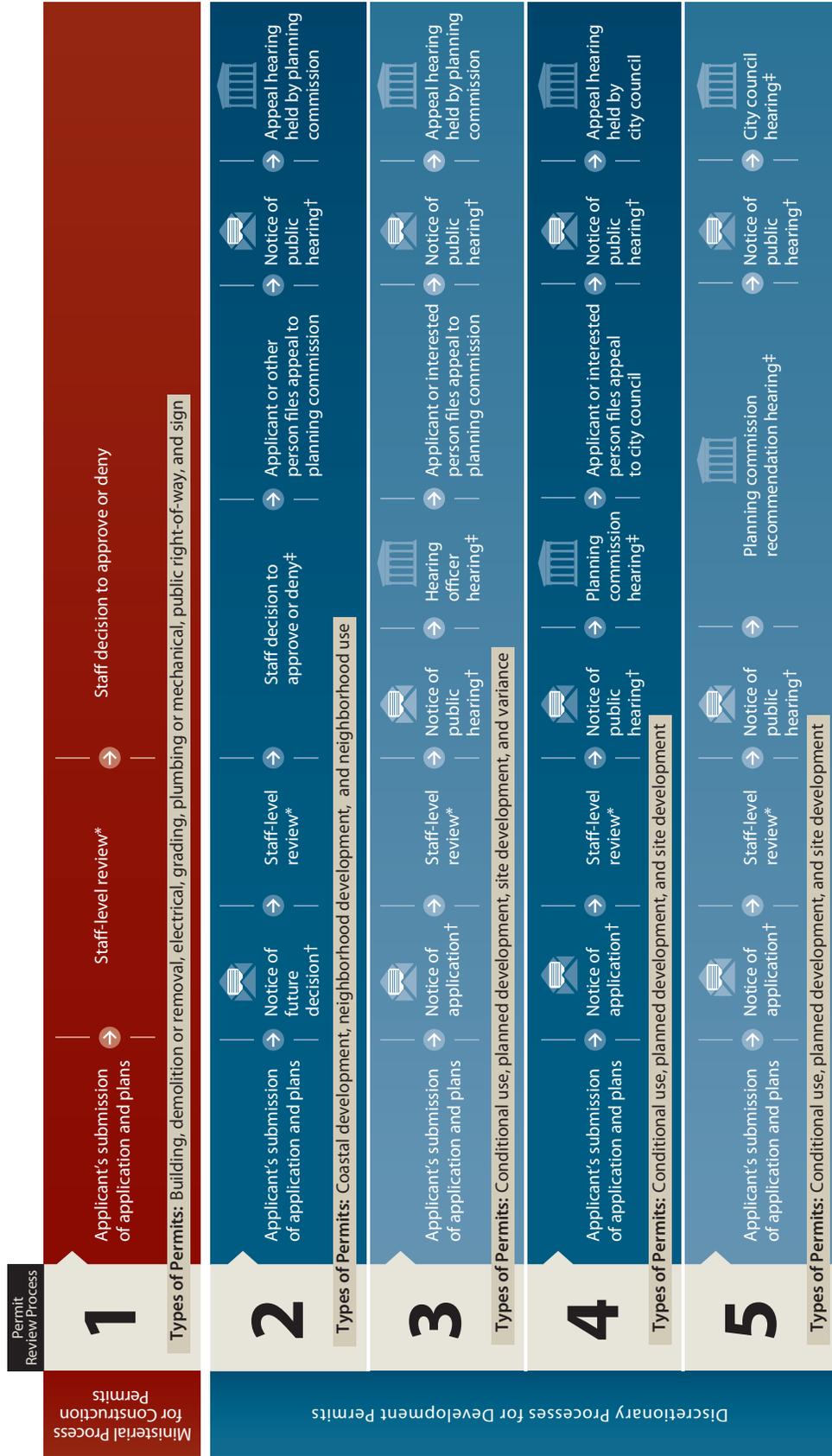
CONSTRUCTION PERMITS*		DEVELOPMENT PERMITS	
<i>Building</i>	Construction, alteration, repair, or improvement of structures; placement of factory-built housing; and other activities.	<i>Coastal development</i>	Development within the coastal overlay zone or California Coastal Commission's permit jurisdiction.*
<i>Demolition/removal</i>	Demolition or removal of any structure.	<i>Conditional use</i>	Uses that may be desirable under appropriate circumstances, but are not permitted in the applicable zone.
<i>Electrical</i>	Installation or alteration of electrical wiring, device, appliance, or equipment within a structure or premises.	<i>Neighborhood development</i>	Development that may be desirable but that may have some limited physical impacts on the surrounding properties.
<i>Grading</i>	Earthwork that involves excavating, embanking, filling, or removal or destruction of vegetation under certain circumstances.	<i>Neighborhood use</i>	New uses, changes to existing uses, or expansions of existing uses that could have limited impacts on the surrounding properties.
<i>Plumbing/mechanical</i>	Installation or alteration of plumbing, heating, ventilation, air conditioning, or refrigeration system.	<i>Planned development</i>	Development that allows an applicant to request greater flexibility in applying the regulations than would be allowed through a deviation process.
<i>Public right-of-way</i>	Private construction of public improvements, or construction activity or placement of large plants on or within a street, alley, or other public right-of-way.	<i>Site development</i>	Development that, because of its site, location, size, or some other characteristic, may have significant impacts on resources or on the surrounding area even if developed to conform with all regulations.
<i>Sign</i>	Installation or alteration of signs visible from any street, alley, or other public property.	<i>Variance</i>	Development that, because of special circumstances applicable to the property, such as size or shape, would deprive the property of privileges enjoyed by other property in the vicinity and under the same land use designation and zone.

Source: The City of San Diego Municipal Code (municipal code), Chapter 12, articles 6 and 9.

* The municipal code exempts certain types of projects from construction permit and coastal development permit requirements.

In contrast, other land use decisions that require public officials to exercise judgment and deliberation when deciding to approve or disapprove a project are considered *discretionary*. Development permits follow permit review processes Two through Five, which are discretionary processes. Development permits, such as conditional use and site development permits, can be subject to different discretionary processes. The municipal code determines the types of development projects that are subject to each discretionary permit review process. For example, the municipal code requires conditional use permits involving plant nurseries to follow Process Three, but requires botanical gardens and arboretums to follow Process Four and zoological parks to follow Process Five. In another example, the municipal code requires permit review Process Three for site development permits when environmentally sensitive lands are present, but requires permit review Process Four for development within historical districts or when designated historical resources are present.

Figure 2
City of San Diego's Five Processes for Reviewing Construction and Development Permits



Sources: The City of San Diego Municipal Code and *Land Development Manual*.

* Staff-level review includes reviews, such as structural engineering and historical resource reviews, to determine whether the project adheres to relevant requirements. Staff also review the project in accordance with the California Environmental Quality Act. Specifically, staff conduct an initial study to identify any potential environmental issues and may prepare documents describing any significant impacts or lack thereof. The environmental documents, described in Table 2 on page 13, are made available to the public for review and comment, and any person can appeal the decision maker's determination to adopt or certify the environmental document in permit review processes Two, Three, and Four. The city council considers appeals of environmental determinations.

† With certain exceptions, notices of application, future decision, and public hearing are sent to the applicant, property owners, and tenants within 300 feet of the project site, as well as to officially recognized community planning groups.

‡ In addition to approving or denying the project and related permits, the relevant decision maker adopts or certifies the environmental documents.

The decision maker varies depending on the permit review process. Development Services staff are the decision makers for Process One, and the public cannot appeal their decisions to any city decision maker. The different decision makers for the discretionary permit review processes Two through Five include Development Services staff, a hearing officer, the planning commission, and the San Diego City Council (city council). Specifically, for Process Two, Development Services staff are the decision makers. For Process Three, hearing officers designated by the mayor are the decision makers. Hearing officers can be San Diego employees. For Process Four, the planning commission, which includes seven members appointed by the mayor, is the decision maker. Finally, the city council is the decision maker for Process Five. Applicants can appeal the decisions for all development permits, excluding those made by the city council.

Development Services staff perform reviews of the application and the project plans for the five permit review processes to ensure that the project adheres to development laws and regulations. For example, Development Services' advanced planning and engineering division is responsible for reviewing certain projects to determine whether the proposed modifications to designated historical resources on project sites comply with the U.S. Secretary of the Interior's Standards for Rehabilitation (Interior's standards). The municipal code requires development affecting historical resources to comply with Interior's standards, which are intended to assist in the long-term preservation of a property's significance through the preservation of historic materials and features.

Development Services' environmental review staff within its advanced planning and engineering division are responsible for reviewing projects in accordance with CEQA. The purpose of CEQA is to inform governmental decision makers and the public about projects having potentially significant environmental impacts, to identify ways to prevent significant and avoidable damage to the environment by requiring changes in projects, and to disclose to the public the reasons why a government agency approved a project if significant environmental effects are involved. The CEQA guidelines are state regulations that implement CEQA. San Diego incorporated CEQA and its guidelines into its municipal code, and the city assigned to Development Services the responsibility for their implementation. Development Services environmental review staff review the proposed projects and determine their environmental significance according to the CEQA guidelines. When conducting their reviews, the environmental review staff first determine whether a project is exempt from CEQA. They may determine a project is statutorily or categorically exempt from CEQA. Statutory exemptions can be found in state law and are projects the Legislature has decided are not subject to CEQA, such as ministerial projects that are subject

to San Diego’s permit review Process One. Categorical exemptions can be found in the CEQA guidelines and apply to certain types of projects, such as those projects that involve negligible or no expansion of the use of an existing facility.

If a project is subject to CEQA, the environmental review staff generally conduct an initial study, which is a preliminary analysis to determine whether a project may produce significant environmental effects. The initial study provides the environmental review staff with the necessary information to determine the appropriate environmental document to prepare. The environmental document describes whether the project will have a significant impact on the environment. Table 2 describes the principal types of environmental documents for projects subject to CEQA.

Table 2
Principal Types of Environmental Documents Prepared for Projects Subject to the California Environmental Quality Act

TYPE OF DOCUMENT	CRITERIA FOR PREPARING THE DOCUMENT
<i>Initial study</i>	If the project is not exempt from the California Environmental Quality Act (CEQA), the environmental review staff conduct an initial study, which is a preliminary analysis to determine whether a project may have significant environmental effects.
<i>Negative declaration</i>	If the initial study and other information presented to the City of San Diego (San Diego) shows that there is no substantial evidence that the project will have a significant effect on the environment, the environmental review staff prepare a negative declaration, which describes the reasons that the project will not have a significant effect on the environment and why an environmental impact report (EIR), described later, is not required.
<i>Mitigated negative declaration</i>	If the initial study identifies that the project would have potentially significant effects on the environment, the applicant can modify the project to mitigate adverse impacts, and thereby qualify for a mitigated negative declaration. The mitigated negative declaration includes the reasons the project will have a significant effect on the environment and the mitigation measures to avoid those effects.
<i>Environmental impact report*</i>	If the environmental review staff find substantial evidence that the project may have a significant impact on the environment, and if the applicant does not modify the project to mitigate the impact such that a mitigated negative declaration would be appropriate, the environmental review staff requires an EIR. The environmental review staff or a consultant may prepare the EIR. The EIR is a detailed statement describing the project’s significant environmental effects and ways to mitigate or avoid the effects.
<i>Addendum</i>	The environmental review staff may prepare an addendum to a previous negative declaration or EIR only if changes in the project do not require the preparation of a subsequent environmental document. [†]

Sources: California Code of Regulations, Title 14, Section 15000 et seq., and *Information Bulletin 401*, June 2007, from San Diego’s Development Services Department.

* The CEQA guidelines state that public agencies should combine, to the extent possible, the process of preparing environmental impact reports with their existing planning, review, and project approval processes.

† Although state regulations do not specify that an agency may prepare an addendum to a previous mitigated negative declaration, state law and relevant court decisions acknowledge that an agency may do so.

Controversy Concerning Certain Permits Issued by Development Services for Property Located in Southeastern San Diego

Development Services issued multiple permits between 2009 and 2012 for property located at 2121 Imperial Avenue in southeastern San Diego, and one of these permits prompted two lawsuits filed in 2012. Specifically, on July 8, 2009, a hearing officer approved a

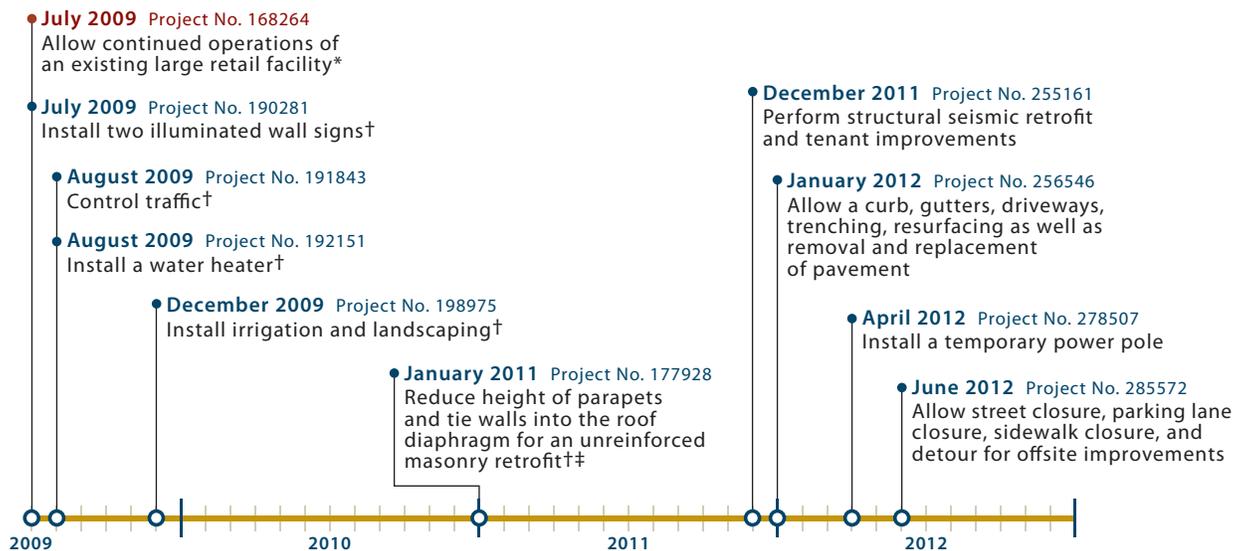
conditional use permit and site development permit to amend an existing conditional use permit for the Farmers Market project, which the planning commission approved and Development Services issued in 2000 for the development of a large retail and wholesale facility within an existing warehouse structure. The permits allowed the property owner, Imperial Market Investors LLC, to continue operating for 25 years an existing large retail facility, and to include a proposed market and grocery area of at least 15,000 square feet. When reviewing the Farmers Market project in 2009, Development Services' historical resources staff found that the building was a potential historical resource but that the property owner's proposed changes did not include any alterations to the exterior facades of the building and that the conditional use permit was consistent with Interior's standards. In addition to approving the conditional use and site development permits, the hearing officer approved an addendum to the negative declaration issued in 2000; the addendum stated that no substantial evidence indicated that the project would have a significant effect on the environment.

Although the hearing officer approved these permits on July 8, 2009, Development Services did not issue them until roughly 18 months later. Specifically, Development Services did not forward the approved permit and resolution approving the permit to the County of San Diego's assessor/recorder/county clerk (county) for recording until February 1, 2011, and the county recorded the permit on the same day. Development Services stated that the delay in recording the permit was primarily attributable to the property owner's delay in providing adequate funds to cover the project's deficit deposit account balance and its desire to resolve the project site's code violations. The municipal code requires Development Services to issue development permits to an applicant within five business days of the date that it receives the recorded permit from the county. Development Services believes that the definition of *issuance*, as it relates to the municipal code, is when it or another party provides the recorded permit to an applicant. For the Farmers Market project, Development Services stated that the land use attorney for Imperial Market Investors LLC wanted to expedite the process, so he took the permit documents to the county for recording on February 1, 2011, and sent the recorded permits to his client on the same day.³

³ Development Services' Project Tracking System (PTS) indicates it did not issue the permits until November 28, 2012. Development Services stated that, for discretionary permits, the issuance date PTS displays is not the official, legally binding issuance date. For the Farmers Market project, the project manager stated that she had noted that Development Services had not issued the permits in PTS, so she issued the permits in November 2012.

After the hearing officer's approval of the development permits in July 2009, Development Services issued nine construction permits for 2121 Imperial Avenue. Figure 3 shows the sequence in which Development Services issued these permits.

Figure 3
Time Line of Recent Construction and Development Permits for 2121 Imperial Avenue



Source: Project Tracking System for the City of San Diego (San Diego) Development Services Department (Development Services).

● Development permit decided under permit review Process Three.

● Construction permit decided under permit review Process One, and issued between July 8, 2009, and September 17, 2012.

Note: Figure 2 on page 11 displays further information about the permit review processes.

* The hearing officer approved the permit for project number 168264 in July 2009, but Development Services did not issue the permit until February 2011.

† The City of San Diego Municipal Code (municipal code) states that it is unlawful for any applicant to begin work on or to use the property until Development Services issues the development permit. Development Services stated that these four construction permits did not require the issuance of a development permit before the applicant began work on the property because the scope of the project was minor or the project needed to comply with the municipal code requirement for buildings with unreinforced masonry bearing walls. The municipal code does not require development permits for landscaping projects such as project number 198975.

‡ A *parapet* is a low wall or railing at the edge of a platform or roof. In construction, a *diaphragm* is a flat structural unit acting like a deep, thin beam, and is usually applied to roofs and floors.

The construction permit issued in December 2011 for project number 255161, known as the Sherman Heights project, became the subject of two lawsuits filed in San Diego County Superior Court by the Coalition for Safe and Healthy Economic Progress (coalition) in April 2012. The coalition alleged in one lawsuit that San Diego, the property owner, and Steve Julius Construction, Inc., violated the municipal code's development requirements because the development permits did not authorize the demolition and new construction of the building and because the defendants neither sought nor issued a site development permit under permit

review Process Four, which applies to historical resources. In the other lawsuit, the coalition alleged that these same entities and Wal-Mart Stores, Inc., violated provisions of CEQA because the demolition and new construction activities at the building had never undergone an environmental review. The two lawsuits were consolidated in June 2012. As of April 19, 2013, the lawsuit was pending.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the California State Auditor to determine whether San Diego is complying with existing laws and regulations when issuing permits using the ministerial and discretionary decision-making processes. However, our audit does not render conclusions on the technical aspects of the projects we reviewed. The audit analysis approved by the audit committee contains five separate objectives. Table 3 lists these objectives and our methods for addressing them.

Table 3
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant state laws and regulations, the City of San Diego Municipal Code (municipal code), and the policies and procedures of the Development Services Department (Development Services) of the City of San Diego (San Diego).
2 For a selection of permit applications and plans for projects of similar scope and size submitted to San Diego for approval since January 2010, determine the length of time from submission of the application to permit issuance to identify any unusual trends related to the size, type, and location (underserved versus more affluent areas) of the development project.	Please refer to Appendix B for our methodology and results.
3 For a selection of permits of similar scope and size issued or amended since January 2010 (including the permits for the Wal-Mart Stores, Inc., facility), evaluate San Diego's compliance with relevant laws and regulations by performing the following: a. Determine whether San Diego followed the appropriate approval process (ministerial or discretionary) based on the type of permit or application approval sought.	Randomly selected 26 permits and changes to building permits issued between January 1, 2010, and September 17, 2012. In accordance with the audit objective, for the Wal-Mart Stores, Inc., facility, we also selected a building, site development, and conditional use permit, as well as a change to a building permit. Please refer to Appendix A for our selection methodology and list of permits. • Reviewed Development Services' procedures for San Diego's ministerial and discretionary permit review processes. • Reviewed the project files and records for the selected permits to determine whether the permit review process was appropriate and was followed. • Interviewed Development Services staff.

AUDIT OBJECTIVE	METHOD
<p>b. Determine whether any amendments were made to any applications or plans that were approved using the ministerial decision-making process (e.g., ones that did not require compliance with the California Environmental Quality Act [CEQA]). For those amended applications or plans, determine whether San Diego followed the laws and regulations related to processing and approving any amended applications or plans.</p>	<ul style="list-style-type: none"> • Reviewed the project files and records for the selected changes to building permits to determine whether Development Services followed the municipal code. • Interviewed Development Services staff.
<p>c. Determine whether San Diego complied with relevant laws and regulations regarding any applications or plans that it determined involved a historical resource, including a property in a historical community.</p>	<ul style="list-style-type: none"> • Reviewed Development Services' procedures related to its historical resource reviews. • Interviewed Development Services staff. • Reviewed the project files and records for the selected permits to determine whether historical resource reviews were applicable. • Determined whether Development Services conducted its historical resource reviews in accordance with the municipal code and San Diego's <i>Land Development Manual</i>. • Compared Development Services' records to those of the County of San Diego's assessor/recorder/county clerk.
<p>d. Determine whether San Diego complied with the laws and regulations related to public notification when processing and approving applications and plans that required compliance with CEQA or involved a historical resource.</p>	<ul style="list-style-type: none"> • Reviewed the CEQA and the related state regulations. • Reviewed the municipal code and Development Services' procedures for providing public notification during its environmental review process. • Interviewed Development Services staff. • Reviewed the project files and records for the selected conditional use and site development permits to determine whether Development Services issued the required public notices. • Reviewed the public notices to determine whether Development Services included all required information, met relevant deadlines, and satisfied the required public review period.
<p>4. Review and evaluate San Diego's conflict-of-interest policies and procedures to determine whether they comply with relevant laws and regulations. Further, determine whether the policies and procedures are designed to detect and prevent any conflicts of interest as well as address any that are identified. Lastly, determine whether San Diego has appropriately adhered to its conflict-of-interest policies and procedures for key employees who process and approve permits using ministerial and discretionary review processes.</p>	<ul style="list-style-type: none"> • Reviewed the Political Reform Act of 1974, San Diego's ethics ordinance, Development Services' conflict-of-interest code, the code of ethics and ethics training policy of the San Diego City Council (city council), and the San Diego Ethics Commission's (commission) practices. • Reviewed the 2009 through 2011 Statements of Economic Interests, commonly known as Form 700, submitted by 15 Development Services employees. • Reviewed Development Services' accounting records to determine whether it made payments to any organizations disclosed on the 15 employees' Form 700. • Reviewed the ethics training records for seven Development Services employees from 2010 through 2012 to determine whether the commission adhered to the city council's ethics training policy.
<p>5. Review and assess any other issues that are significant to San Diego's permitting process.</p>	<p>Reviewed secretary of state and San Diego city clerk records for campaign contributions made by Wal-Mart Stores, Inc., to official supporters and opponents of measures considered by San Diego voters in 2010 and 2012.</p> <p>Wal-Mart Stores, Inc., contributed \$10,000 in 2010 in support of a measure to make permanent the strong mayor form of governance, to add a city council seat, and to increase the number of council votes required to override a mayoral veto. In 2012 Wal-Mart Stores, Inc., contributed \$55,000 in support of a measure that changed retirement benefits for San Diego employees.</p>

Sources: The California State Auditor's analysis of Joint Legislative Audit Committee audit request number 2012-109 and the analysis of information and documentation identified in the table column titled *Method*.

Assessment of Data Reliability

In performing this audit, we relied upon electronic data files extracted from the information system listed in Table 4. The U.S. Government Accountability Office, whose standards we follow, requires us to assess the sufficiency and appropriateness of computer-processed information that is used to support findings, conclusions, or recommendations. Table 4 shows the results of this analysis.

Table 4
Methods of Assessing Data Reliability

INFORMATION SYSTEM	PURPOSE	METHODS AND RESULTS	CONCLUSION
City of San Diego Development Services Department (Development Services) Project Tracking System (PTS) Data as of September 17, 2012	To determine the average length of time from the submission date of complete building, site development, or conditional use permit applications to the permit issuance dates by neighborhood income category.	<p>We performed dataset verification procedures and did not identify any issues. In addition, we performed logic testing on key data elements and identified numerous errors related to permit application submittal dates and assessor parcel numbers. Specifically, we found that PTS did not contain a permit application submittal date for 12.4 percent, or 1,101, of the 8,851 building, site development, or conditional use permits issued between January 1, 2010, and September 17, 2012. Because the application submittal date is necessary to calculate the time to permit issuance, we excluded these permits from our analysis.</p> <p>After excluding the 1,101 permits with no application submittal date, as well as 790 permit applications that were submitted before January 1, 2010, we found that PTS did not contain an assessor parcel number for 322 permits, or 4.6 percent of the remaining population. The assessor parcel number contains the map book number, which we used to determine the neighborhood income category, as explained in Appendix B. Without an assessor parcel number, we were unable to identify the neighborhood income category associated with these permits. As a result, we excluded these permits from our analysis.</p> <p>Finally, we excluded an additional 46 permits from our analysis. Specifically, 38 of the 46 permit applications had application submittal dates that were later than their permit issuance dates, and we could not identify the neighborhood income category for the remaining eight permits.</p> <p>To ensure that the remaining population of 6,592 permits was accurate, we selected a statistically valid random sample of 29 permits for testing. However, because this sample contained 28 building permits and one site development permit, we selected a supplemental random sample of two additional site development permits and three conditional use permits. We performed testing on the entire sample of 34 permit applications by tracing key data elements to supporting documentation and found numerous accuracy errors in the fields for permit type, project type, and assessor parcel number. However, these fields on a hard-copy application may be incomplete or inaccurate. Further, Development Services enters corrections for these errors into PTS but does not make corrections on the hard-copy application. Due to the potential for discrepancy between these fields in the hard-copy applications and the PTS data, we were not able to verify the accuracy of the data.</p>	Not sufficiently reliable for the purposes of this audit.

Sources: The California State Auditor's analysis of various documents, interviews, and PTS data obtained from Development Services.

Audit Results

The Development Services Department Generally Followed Proper Processes, but Did Not Ensure That All Relevant Projects Received Historical Resource Reviews

Although the Development Services Department (Development Services) for the City of San Diego (San Diego) has generally followed proper processes for reviewing construction and development permits, Development Services has not ensured that all project sites were subject to historical resource reviews. Specifically, our review of 20 permits issued by Development Services found that it generally complied with the applicable permit review process. However, Development Services did not collect sufficient information from the property owners and applicants seeking construction and development permits to determine whether the projects' structures are potential historical resources. As a result, Development Services risked failing to identify project sites with potential historical resources. Nonetheless, the historical resource reviews that Development Services did perform appear to comply with the processes outlined in the City of San Diego Municipal Code (municipal code) and its *Land Development Manual*.

Development Services Appears to Have Complied With San Diego's Permit Review Process

Development Services generally adhered to San Diego's permit review process. Our review of 20 permits included 10 building permits, five conditional use permits, and five site development permits. The 20 permits applied to 19 projects; the Farmers Market project, described in the Introduction on page 14, required two of these permits. For the permits we selected to evaluate, Appendix A includes such information as the permit types; the project numbers, titles, and scope; and the issuance dates. Development Services issued 18 of the 20 permits between January 1, 2010, and September 17, 2012. As the Introduction explains, the two permits we selected for the Farmers Market project—a conditional use permit and a site development permit—were issued after September 17, 2012.

The procedures Development Services used to manage each of the 19 projects we evaluated were generally adequate to ensure that it followed the requirements of the applicable permit review process. Under the municipal code, Development Services staff must complete reviews for projects requiring either a *ministerial* permit review process, which involves evaluations according to fixed standards and objective measurements, or a *discretionary* permit review process, which allows officials to exercise judgment or deliberation when granting approvals. Construction permits follow

Process One, a ministerial review process. In contrast, development permits follow processes Two through Five, which are discretionary review processes.

In completing permit reviews for the 19 projects that we examined, Development Services staff conducted different types of project reviews. For example, staff performed structural reviews of projects by examining building and retaining wall plans for compliance with the municipal code, the California Building Code, and other related codes and standards. In the case of the 605 C Street Unreinforced Masonry project, Development Services staff first determined that the applicant had submitted all of the required information, materials, fees, and deposits for a building permit. They then performed structural, historical resources, and neighborhood code compliance reviews for this project. Among other things, the structural engineering reviewer asked the applicant to specify the occupancy group and type of construction of the existing building, to clarify whether the walls were brick or cement, and to conduct mortar strength tests. After the applicant addressed the reviewers' issues and the reviewers signed off in its Project Tracking System (PTS), Development Services issued the permit. In another instance, Development Services staff performed engineering, environmental, fire, geology, landscape, planning, transportation development, wastewater, and water reviews for the Sea Breeze Carmel View project's site development permit. Because the project was subject to permit review Process Four, after its reviewers signed off on the project in Development Services' PTS, the project manager prepared a report to the planning commission recommending the approval of the permit. The planning commission considered this report at the public hearing held on February 25, 2010, and approved the permit.

Development Services generally complied with certain public notice requirements found in the municipal code.

Development Services also generally complied with certain public notice requirements found in the municipal code. For the development permits shown in Table 1 of the Introduction on page 10, San Diego's permit review process includes multiple public notices. For example, the municipal code requires Development Services to mail the Notice of Application (application notice) to entitled persons and groups such as all tenants located on the subject property no later than 10 business days after its determination that the applicant submitted all necessary information, materials, fees, and deposits for the permit. In addition, the municipal code requires Development Services to issue a Notice of Public Hearing (public hearing notice) before a decision is made on an application for a permit in accordance with permit review processes Three, Four, or Five. This notice must be published in a local newspaper and mailed to the same individuals and groups that receive the application notice at least 10 business days before the date of the public hearing. Finally, if there is an appeal of a permit decided under processes Two, Three, or Four, the municipal code requires Development Services to publish and mail a public hearing notice at least 10 business days before the appeal hearing date.

Development Services posted application notices one to two days after the deadline in the municipal code for four of the nine development projects related to the conditional use and site development permits we reviewed. We asked Development Services project managers why the application notices were late for these projects, but they were unable to explain the cause of the delays. However, as shown in Appendix B, Development Services takes an average of 285 days and 394 days, respectively, to issue conditional use and site development permits. Therefore, we do not believe the one- or two-day delay for these four projects significantly hindered the public's awareness of the applications for the development permits.

Development Services generally issued the public hearing notices for the nine development projects we reviewed in a timely manner. Specifically, Development Services published public hearing notices in the *San Diego Daily Transcript*, which San Diego identifies as a newspaper of general daily circulation, 10 business days before the hearing dates to decide on the applications for all nine projects. However, Development Services was one day late in mailing the public hearing notice for the Vision Celular Internacional project. Finally, we found no evidence of the public appealing the permits for these nine projects. We concluded that Development Services provided the public with adequate notice of the projects' permit applications and the related public hearings.

Development Services Has Not Used Adequate Methods to Determine Whether Projects Need Historical Resource Reviews, but the Reviews It Did Perform Were Sufficient

Development Services relies on applicants who are seeking permits to provide information it needs to determine whether it should review a project for potential historical resources. However, the applicants did not always include on their general applications the year of construction for the structures on the project sites; this information would help Development Services determine whether or not a historical resource exists. San Diego has specific regulations to protect, preserve, and restore its historical resources. The intent of these regulations is to assure that development occurs in a manner that protects the overall quality of historical resources such as historical buildings, structures, objects, districts, and landscapes. Through its Historical Resources Board (board), San Diego designates historical resources. The text box provides a description of the board's composition and a few of its duties.

The Historical Resources Board's Composition and a Few of Its Duties

- The Historical Resources Board (board) for the City of San Diego consists of 11 members whom the mayor appoints and the San Diego City Council confirms. In addition, the disciplines of architecture, history, architectural history, archaeology, and landscape architecture must each have one representative among the board's members.
- The board adopts specific guidelines for designating historical resources.
- The board identifies and designates historical resources for preservation.
- The board reviews and makes recommendations to the appropriate decision makers on applications for development permits involving designated historical resources.

Source: City of San Diego Municipal Code, Section 111.0206.

The municipal code requires the property owner or applicant to submit the required documentation and to obtain a construction, neighborhood development, or site development permit before any development activity occurs on premises that contain historical resources. If the premises do not have board-designated historical resources, for development proposed for certain parcels containing a structure that is 45 or more years old, the municipal code requires the city manager to determine the need for a site-specific survey within 10 business days of the filing of an application for a construction permit or within 30 calendar days for an application for a development permit.⁴ Based on the site-specific survey and the best information available, the city manager must determine whether a historical resource exists, whether a potential historical resource is eligible for designation by the board, and the precise location of the resource.

Development Services did not ensure that the property owners' or applicants' general applications contained accurate and complete information for it to assess whether potential historical resources exist on their respective project sites. San Diego's *Land Development Manual* requires the property owner or applicant to submit a general application for construction and development permits. The general application includes information such as the location and description of the project. The property owner or applicant must also provide the following historical resources information: a board-designated site number or historical district or the construction year for the structures on the project site. The property owner or applicant must certify that the information provided is correct and accurate to the best of his or her knowledge and that he or she understands the project will be reviewed based on this historical resources information. However, for five of the 19 projects we reviewed, the property owners or applicants did not include on their general applications the construction year for the structures on the project site.

For five of the 19 projects we reviewed, the property owners or applicants did not include on their general applications the construction year for the structures on the project site.

Because of this omission of the construction year, Development Services staff could not determine whether they should send these projects to the advanced planning and engineering division for review. Historical resources staff within Development Services' advanced planning and engineering division review permit applications with projects that affect board-designated historical resources and potential historical resources on parcels containing a structure that is 45 or more years old for consistency with the U.S. Secretary of the Interior's Standards for Rehabilitation (Interior's standards), which we describe in the Introduction on page 12. Of the five projects for which the applicant did not report

⁴ Although the municipal code refers to the city manager, a 2004 amendment to San Diego's charter transferred the city manager's powers to the mayor.

the year of construction, the project managers forwarded just two to the historical resources staff. One of the two project managers stated that an environmental review staff member in the advanced planning and engineering division brought the age of the structure on the property to his attention during her initial environmental review. The other project manager stated that an environmental review staff member identified the structure's date of construction while reviewing the project plans and requested that she send the project to the historical resources staff for review. According to Development Services' PTS, the project managers for the remaining three projects did not send them to the historical resources staff for review. As a result, Development Services cannot guarantee that its project managers appropriately identified those project sites requiring further scrutiny to determine whether historical resources existed, whether potential historical resources were eligible for designation by the board, and the precise location of the resources.

We attempted to obtain the necessary records from the assessor/recorder/county clerk for the County of San Diego (county) to establish the age of the structures on these five project sites, as well as for a project site for which Development Services could not locate the general application.⁵ However, the county did not have records for one of the six project sites. According to a property assessment specialist, the county may lack building records for several reasons, including that it did not receive notification that there is a structure on the land or did not receive information on the permit or the approved building plans from the city or county. For San Diego, according to one of its program managers, Development Services submits permit issuance information to the county to update the properties' market values. For three of the remaining five project sites, the county's records indicate that the structures were less than 45 years old. Therefore, the project managers did not need to send these projects to the advanced planning and engineering division for historical resource reviews. However, for the last two projects, the county's records indicate that the structures on the sites were more than 45 years old. Fortunately, as previously mentioned, Development Services environmental review staff were able to identify the need for its historical resources staff to perform reviews for these projects.

We also reviewed the county's records for the other 13 projects we selected for review and found that the property owners' or applicants' general applications for 10 projects contained information on the structures that conflicted with the county's

Development Services environmental review staff were able to identify the need for its historical resources staff to perform reviews for two of the projects.

⁵ One of the county's primary responsibilities is to locate, identify, and appraise for property tax purposes all vacant land; improved real estate; business property; and certain mobile homes, boats, and aircraft.

records. For example, the property owner's general application for the Restaurant Depot project indicated that the structure was built in 1970, but the county's records indicate that the structures on the project site were built as early as 1945. Despite the property owner's inaccurate general application, according to the project manager, an environmental review staff member who was performing the initial environmental review brought to her attention the need for a historical resource review for this project. The historical resources staff completed a review for the project in April 2010.

Moreover, the county did not have information for one of the remaining three projects, but the applicants' information for the other two projects agreed with the county's records. Nevertheless, the inconsistencies between the property owners' or applicants' information and the county's information for the 10 projects call into question Development Services' reliance on the general applications to determine whether the project site warrants a historical resource review. Until it either requires the property owners and applicants to provide documentation, such as the county's records when they are available, to support the statements they make in their general applications for all projects or obtains the information directly from the county, Development Services will continue to risk not identifying project sites with potential historical resources.

Although Development Services' process for identifying project sites with potential historical resources needs improvement, the historical resource reviews its staff did perform appear to comply with processes outlined in the municipal code and San Diego's Land Development Manual.

Although Development Services' process for identifying project sites with potential historical resources needs improvement, the historical resource reviews its staff did perform appear to comply with the processes outlined in the municipal code and San Diego's *Land Development Manual*. During our review of the property owners' and applicants' general applications and the county's records, we found that eight of the 19 projects affected structures that were 45 or more years old and that the board had not already designated as historical resources. Two of the eight projects did not require historical resource reviews. One of these two projects did not require a review because alterations were made only to the interior of the structure. The municipal code states that Development Services is not required to conduct a historical resource review for certain construction and development permits that do not include a change to the exterior of existing structures. The other project did not require a review because an initial study submitted in 2009 in accordance with the California Environmental Quality Act (CEQA) stated that a records search and survey conducted in October 2007 did not identify any previously recorded archaeological or historical resources within the project site. The initial study stated that an updated records search identified a recently recorded archeological site near the project site, and it indicated that the applicant—to address the potential impacts to unknown buried resources—was required to participate

in the mitigation, monitoring, and reporting program. However, no additional evaluation of the project site was necessary. San Diego's *Land Development Manual* states that a historical resource review is not required if the site has been evaluated in accordance with CEQA within the last five years and there has been no change in the conditions that contributed to the determination of historical significance.

The advanced planning and engineering division's historical resources staff performed reviews for the remaining six projects, two of which were for the Sherman Heights and Farmers Market projects that are at the center of the controversy discussed in the Introduction on pages 13 through 16. The historical resources staff found that the Farmers Market project site was potentially historic, but that the property owner's proposed changes did not include any alterations to the exterior facades of the building and that the conditional use permit was consistent with Interior's standards. For the Sherman Heights project, the historical resources staff initially found that the applicant's proposed changes did not comply with Interior's standards. However, after the applicant made the revisions that the staff requested, the historical resources staff concluded that the project was consistent with Interior's standards.

In addition, the advanced planning and engineering division determined that the sites for three of the six projects were not eligible for designation as historical resources under the board-adopted guidelines. The division based its conclusions on the board-adopted historical resources guidelines contained in the *Land Development Manual*, which state that evaluations of historical resources should include the structure's age; location; context, such as topography and excavation profile; and association with an important person or event, uniqueness, and integrity. For the last of the six projects, the advanced planning and engineering division determined that a mural on the site was a potential historical resource and directed the property owner to hire a consultant to prepare a historical resources technical report (technical report). This technical report includes a discussion and analysis of the site's characteristics in comparison to the relevant designation criteria.

The consultant concluded that the mural was a significant historical resource that was eligible for designation, and the advanced planning and engineering division agreed with that finding. The consultant also recommended that, to mitigate the impacts of the proposed project, high-quality color photographs should be taken of the entire mural before the partial demolition of the building, and the property owner should consult with the mural artist to reestablish the mural's thematic continuity after the demolition. According to a senior planner, the advanced planning and engineering division worked

The advanced planning and engineering division's historical resources staff performed reviews for the remaining six projects, two of which were for the Sherman Heights and Farmers Market projects that are at the center of the controversy discussed in the Introduction.

Based on our testing, San Diego's review process—when followed—appears adequate to protect board-designated and potential historical resources.

with the property owner to redesign the project to retain, protect, and restore the mural. The advanced planning and engineering division determined that, with the mitigating activities specified in the technical report, the project's impacts to the mural were less than significant, and according to a senior planner, the project was consistent with Interior's standards. The advanced planning and engineering division's guidance to the property owner is consistent with the *Land Development Manual's* instructions regarding mitigating impacts, which state that all prudent and feasible measures to minimize harm to the resource shall be taken.

Finally, two of the 19 projects contained sites that were already board-designated historical resources. The municipal code requires Development Services to review development affecting designated historical resources for consistency with Interior's standards. The historical resources staff found that the applicants' proposed changes were consistent with Interior's standards. Overall, based on our testing, San Diego's review process—when followed—appears adequate to protect board-designated and potential historical resources.

Development Services Inappropriately Processed Construction Changes to Building Permits

In addition to the 20 building and development permits discussed previously, our review included the 10 construction changes to building permits that we present in Appendix A. We found that Development Services did not consistently adhere to the municipal code when it approved construction changes to building permits. The municipal code states that no structure shall be erected, constructed, enlarged, altered, repaired, improved, converted, permanently relocated, or partially demolished unless a separate building permit for each structure is obtained from the building official. The municipal code defines structure as "an edifice or building of any kind or construction built up or composed of parts joined together in some definite manner including a wall, fence, pier, post, sign, or shelter." However, the municipal code states that multiple permits are not required when the dwelling and associated accessory structures are located on the same property and described in the building permit application, plot plan, and other drawings and exempts certain structures and activities from the requirement to obtain a building permit. The municipal code defines *accessory structure* as "a structure attached to or detached from a primary structure located on the same premises that is customarily incidental and subordinate to the primary structure or use." Further, Development Services' development review procedures state that a construction change is not the appropriate process under certain conditions, such as if the change includes new structures.

Development Services did not require building permits for two projects involving the addition of new structures. The construction change for one project involved adding a chain-link fence at the rear of the building. The municipal code does not require a building permit when adding fences that are 6 feet in height or less. However, according to the building plans, the proposed height of the fence was 6 feet 9 inches and therefore required a building permit. The construction change for the other project entailed adding a retaining wall—a wall designed to resist the lateral displacement of soil or other materials—at the site. The municipal code does not require a building permit when adding retaining walls that are 3 feet in height or less. Yet, according to the building plans, the proposed height of the retaining wall was 3 feet 4 inches, thus requiring a building permit.

For both projects, the assistant deputy director for Development Services' advanced planning and engineering division stated that new building permits for the changes to the scope were not required because the changes were approved through Development Services' construction change process. The assistant deputy director also referred us to Development Services' *Information Bulletin 118*, issued in June 2011, which describes the process for construction changes to approved plans. Development Services' information bulletins are free publications that provide the public with its fees, technical instruction, and its policies and procedures. However, the assistant deputy director did not specifically address our concern that the height of the structures did not conform to the municipal code requirements. Further, Development Services' information bulletins cannot supersede the requirements set forth in the municipal code. Thus, it appears that Development Services did not comply with the municipal code requirement for issuing building permits for the addition of the new structures at these two project sites.

Although the municipal code allows for the exemptions discussed previously, these exemptions do not apply to alterations, repairs, or improvements of certain historical resources. Specifically, for certain projects in which historical resources are present on the site, the municipal code requires construction permits instead of a neighborhood development permit or a site development permit. For the 10 projects we reviewed that had construction changes to building permits, seven of the property owners or applicants, including the project involving the addition of a fence, indicated on their general applications for the building permits that board-designated historical resources or structures that were 45 or more years old did not exist on the project sites. In addition, Development Services was unable to locate the general application for the building permit for the project involving the addition of a retaining wall. Therefore, for this project, Development Services was unable to demonstrate board-designated historical resources or structures that were 45 or more years old were not present on the project site.

It appears that Development Services did not comply with the municipal code requirement for issuing building permits for the addition of new structures at two project sites.

Although the municipal code requires construction permits for any historical building or structure located within a historical district, Development Services did not issue a construction permit for one of the projects we reviewed nor did it perform a historical resource review to ensure that the changes were consistent with Interior's standards.

The applicant for one of the two remaining construction changes did indicate on the general application for the building permit that the property was in a board-designated historical district. The construction change was for electrical and mechanical revisions to the interior of a restaurant and nightclub. The municipal code requires construction permits for any historical building or structure located within a historical district. Yet, Development Services did not issue a construction permit and did not perform a historical resource review to ensure that the changes were consistent with Interior's standards. The assistant deputy director for Development Services' advanced planning and engineering division stated that the construction change for this project was minor and did not require a specific review by the historical resources staff because the building review staff are authorized to allow minor changes, modifications, or alterations to approved plans consistent with Development Services' construction change process described in *Information Bulletin 118*. The municipal code defines *minor alterations* as "improvements that enhance, restore, maintain, repair, or allow adaptive reuse of a historical resource that do not adversely affect the special character or special historical, architectural, archaeological, or cultural value or designated interior elements of the property of the resource and will conform to the standards of the designation of a historical district when applicable." The municipal code also requires the minor alterations to be consistent with Interior's standards and guidelines. Thus, the assistant deputy director's statement that the project did not require a historical resource review is inconsistent with the municipal code. Further, Development Services' construction change process found in its information bulletin cannot supersede the municipal code requirements.

The other construction change was related to the Sherman Heights project discussed previously. Development Services determined that this project site was a potential historical resource eligible for designation by the board. In reviewing the building permit for the Sherman Heights project, the historical resources staff concluded that the project was consistent with Interior's standards. In addition, the historical resources staff concluded that "any and all revisions to the project scope, no matter how minor, will require review and approval by historical resources staff prior to those changes being carried out. In addition, any future projects submitted will require review by Plan-Historic staff." The construction change was for "changes to the footing underpinning sequences." *Underpinning* is the process of modifying an existing foundation by extending it to or into subsurface strata that is deeper and more stable than the near surface soil that supports the existing foundation system. Common methods of underpinning include the construction of footings. However, Development Services did not perform a historical resource review to ensure that the changes were consistent with Interior's standards. The assistant

deputy director for Development Services' advanced planning and engineering division was unable to explain why a historical resource review was not conducted for this project.

Until Development Services aligns its *Information Bulletin 118* with the municipal code requirements, it cannot ensure that it appropriately issues construction permits, such as building permits, and conducts historical resource reviews for projects with changes to the approved plans.

Development Services Did Not Consistently Comply With Certain Public Notice Requirements

For projects exempt from CEQA, Development Services generally complied with the applicable public notice requirements. However, for projects subject to CEQA, Development Services did not provide the public with proper notice. Specifically, Development Services did not file Notices of Determination (determination notices), or it filed the determination notices late. Consequently, the public's ability to challenge these environmental determinations in court may have been hindered. Further, Development Services does not post a Notice of Right to Appeal Environmental Determination (appeal notice) for certain projects subject to CEQA as the municipal code requires. Thus, the public does not receive proper notice of its right to appeal the environmental determinations for these projects.

Development Services Generally Complied With Public Notice Requirements for Projects Exempt From CEQA

Three of the nine development projects related to the conditional use and site development permits we reviewed were exempt from CEQA. Specifically, Development Services deemed the Market Street Church, Vision Celular Internacional, and La Cima Oil Convenience Store projects exempt from CEQA because they affected an existing facility and involved negligible or no expansion of use of the facility. The CEQA guidelines—the state regulations that implement CEQA—state that, when a public agency such as San Diego decides that a project is exempt from CEQA and approves the project, it may file a Notice of Exemption (exemption notice) after its approval of the project. The exemption notice must include information such as the project's description and location and the public agency's finding, or determination, that the project is exempt and the reason or reasons for deeming the project exempt.

Development Services submitted the exemption notice for the Vision Celular Internacional project to the county roughly three weeks later than its review procedures require and it did not provide the reason the project was exempt.

The CEQA guidelines also state that the exemption notice, if prepared, must be filed with the county clerk and posted in the county clerk's office for 30 days. The CEQA guidelines do not specify a time frame after project approval for the public agency to submit the exemption notice to the county clerk. Development Services' development review procedures require it to submit an exemption notice to the county within five business days after the date on which all rights have elapsed for appealing the exemption decision. As discussed later, the city council considers the appeals for environmental determinations. According to the CEQA guidelines, a public agency's filing of an exemption notice with the county clerk triggers a 35-day period in which interested parties can legally challenge in court the agency's decision that the project is exempt from CEQA. If the agency does not file an exemption notice, a 180-day statute of limitations applies, according to the CEQA guidelines.

Development Services generally complied with its exemption notice requirements for the three projects we reviewed. However, Development Services submitted the exemption notice for the Vision Celular Internacional project to the county roughly three weeks later than its review procedures require. Moreover, the exemption notice was incomplete because it did not provide the reason the project was exempt, as the CEQA guidelines require when such a notice is filed. Although the posting of the exemption notice did not occur within the time frame specified in Development Services' review procedures, this delay did not affect the public's ability to legally challenge the exemption for this project, because the period for challenging the decision starts when the county posts the exemption notice.

The municipal code goes beyond the CEQA requirements and states that Development Services must post an appeal notice when a project is deemed exempt from CEQA in accordance with one of the categorical exemptions specified in the CEQA guidelines. The appeal notice must be posted at Development Services in a location easily accessible to the public for a period of 15 business days. The appeal notice must include the project's description and location and statements regarding the type of environmental determination and the reason for the determination. Before October 2011 the public had to file an application to appeal an environmental determination with the city clerk by the earlier of 10 business days from the date the appeal notice was posted or 15 business days from the date of the environmental determination. The city council amended the municipal code in October 2011 to limit the appeal period to within 10 days from the date the appeal notice was posted. The city council considers the environmental determination appeal in a public hearing. If the council grants the appeal, Development Services must

prepare a revised environmental document that considers any direction that the city council provides. According to an assistant deputy director, Development Services does not have any official documentation demonstrating that it posted the appeal notices for these three projects in a location easily accessible to the public for a period of 15 business days. Therefore, we were unable to determine whether Development Services fulfilled this requirement. However, we were able to determine that Development Services prepared appeal notices for these projects that included the appropriate information.

Development Services Did Not Always Comply With Public Notice Requirements for Projects Subject to CEQA

For those projects that Development Services determines are subject to CEQA, the CEQA guidelines and San Diego's municipal code require it to post certain public notices. Table 5 on the following page identifies the six projects we reviewed that were subject to CEQA, as well as the public notice requirements applicable to those projects. Development Services either did not file the determination notice or did not file it in a timely manner for four of these projects. Further, Development Services incorrectly interprets the municipal code as not requiring it to post appeal notices for projects following permit review Process Three. Development Services' noncompliance with public notice requirements may limit the public's ability to challenge environmental determinations and creates the possibility that some members of the public may not be aware of their ability to challenge the decision.

Development Services Did Not Notify the Public Properly About Its Environmental Determinations

Development Services did not always file the determination notices on time and, for one of the six projects, it did not file a notice at all. The CEQA guidelines specify that, within five business days after deciding to approve a project, an agency must file a determination notice with the county clerk. In addition, the municipal code states that Development Services or the city clerk must file the determination notice within five business days of the date of final action for each project approval that includes the consideration of an environmental document and defines final action as the date all rights of appeal are exhausted for a permit. The CEQA guidelines prescribe the content of the determination notice. For example, it must include the project's description and location, as well as statements that the determination was made pursuant to CEQA and whether any mitigation measures were made a condition of the project's approval. The CEQA guidelines also state that the

Table 5
Public Notices Required for the Projects Reviewed That Were Subject to the California Environmental Quality Act

PROJECT NUMBER	PROJECT TITLE	PERMIT TYPE	PERMIT REVIEW PROCESS	CALIFORNIA ENVIRONMENTAL QUALITY ACT PUBLIC NOTICE REQUIREMENT	CITY OF SAN DIEGO MUNICIPAL CODE PUBLIC NOTICE REQUIREMENT
148350	Nativity Prep Academy	Conditional use	Five	Notice of Intent to Adopt Negative Declaration and Notice of Determination	None*
154312	Hampton Inn Mission Valley	Site development	Three	Notice of Intent to Adopt Negative Declaration and Notice of Determination	Notice of Right to Appeal Environmental Determination
157724	Shiraz Medical Center	Site development	Three	Notice of Intent to Adopt Negative Declaration and Notice of Determination	Notice of Right to Appeal Environmental Determination
168264	Farmers Market	Site development and conditional use	Three	Notice of Determination	None†
168788	Sea Breeze Carmel View	Site development	Four	None‡	None*
180219	Restaurant Depot	Site development	Four	Notice of Intent to Adopt Negative Declaration and Notice of Determination	None*

Sources: The project files and Project Tracking System information belonging to the City of San Diego's Development Services Department (Development Services) and the California State Auditor's review of this information.

* The City of San Diego Municipal Code (municipal code) does not require Development Services to post a Notice of Right to Appeal Environmental Determination for projects following permit review processes Four and Five.

† For this project, Development Services prepared an addendum to a previously adopted negative declaration. The California Environmental Quality Act (CEQA) guidelines and the municipal code do not require public notices for addendums. However, if the original environmental document was adopted or certified more than three years before the date of the application, the municipal code requires Development Services to distribute the addendum application and the previous environmental document for public review for 14 days. Development Services complied with this requirement.

‡ For this project, Development Services relied on a previously adopted mitigated negative declaration because it determined that there was no change in circumstance, additional information, or project changes to warrant an additional environmental review. The CEQA guidelines do not require public notices and a public review period if the agency determines a subsequent environmental document is not necessary.

county clerk must post the determination notice for at least 30 days. Further, Development Services' filing of the determination notice with the county, according to the CEQA guidelines, triggers a 30-day period in which interested parties can legally challenge the approval of the project under CEQA. However, if Development Services does not file the determination notice or files it late, the public has 180 days from either the decision to approve the project or the commencement of the project if the project is undertaken without a formal decision to file a court action challenging the approval of the project.

Development Services did not file a determination notice for the Farmers Market project. Its project manager stated that Development Services' failure to file this notice was an administrative error. Specifically, according to the project manager, an environmental analyst prepares the determination notice and gives it to the project manager, who in turn gives it to a word processing clerk to file with the county. The project manager stated that it was during one of these steps that the filing of the determination notice was overlooked.

Development Services filed the determination notices for three projects between 12 business days and more than 90 business days late. The county charges a \$50 documentary handling fee that agencies must include with each document they submit for filing and posting. Each of the project managers for the Hampton Inn Mission Valley, Restaurant Depot, and Shiraz Medical Center projects believes that the delays occurred because the applicants did not submit in a timely manner the filing fees for the determination notices. According to the assistant deputy director for project management, Development Services requires applicants to submit a check made payable to the county to cover the filing fees for the determination notice. The county will return notices to agencies if the agency does not provide these fees. Development Services does not believe that it can collect the fees in advance of filing the determination notice to avoid the delays. Specifically, the assistant deputy director for project management stated that the city charter and municipal code require Development Services to immediately process checks. The city charter and municipal code require every department that receives money from the public to deposit the money daily with the city treasurer. The assistant deputy director for project management further stated that the city treasurer has admonished Development Services for holding checks for more than 24 hours. However, the CEQA guidelines do not provide exemptions to the filing requirements for the determination notice. Until Development Services establishes procedures to prevent delays in receiving the applicants' filing fees and submitting the fees to the county, it will continue to fail to provide timely notice of the public's right to challenge these determinations in court. For the Shiraz Medical Center project, Development Services' delay of more than 90 days in filing the determination notice with the county absorbed more than half of the 180-day period the public had to bring a legal challenge.

Development Services Has Not Notified the Public About Citizens' Right to Appeal Certain Environmental Determinations for Particular Types of Projects

As previously mentioned, the municipal code requires Development Services to post an appeal notice when it deems a project exempt from CEQA. The municipal code also requires Development Services to post an appeal notice when an environmental determination has been made under San Diego's permit review processes Two and Three, in which city staff and a hearing officer, respectively, decide whether to approve the permits. However, Development Services does not post appeal notices for projects subject to permit review Process Three because of its interpretation of the municipal code. The assistant deputy director for project management estimated that 135 projects are approved annually using permit review Process Three.

Until Development Services establishes procedures to prevent delays in receiving the applicants' filing fees and submitting the fees to the county, it will continue to fail to provide timely notice of the public's right to challenge these determinations in court.

As shown in Table 5 on page 32, three of the six projects that were subject to CEQA were approved using permit review Process Three, in which a hearing officer is the decision maker. However, only the Hampton Inn Mission Valley and Shiraz Medical Center projects required appeal notices. Our selection of projects did not include any projects that were approved using permit review Process Two, in which city staff are the decision makers. In January 2013 Development Services submitted a memo to the city council president and the council's rules and economic development committee. In the memo, Development Services' assistant deputy director for advanced planning and engineering stated that environmental documents prepared for projects subject to permit review processes Three, Four, and Five are not environmental determinations that the city manager approves; therefore, these projects are not subject to the appeal notice requirement. Further, the assistant deputy director stated that, for permit review processes Three and Four, the public receives verbal notice from the hearing officer or planning commission at the time of the hearing of its right to appeal.

We disagree with the assistant deputy director's statement that environmental documents prepared for projects subject to permit review Process Three are not environmental determinations that the city manager approves. The hearing officers are the decision makers for permit review Process Three. The municipal code states that the city manager may designate a staff member to serve as a hearing officer. In addition, the municipal code states that the city manager will determine whom to appoint and the length of time the person will serve as a decision maker. The municipal code affords the city manager the same level of authority when designating city staff to be decision makers for permit review processes One and Two. Thus, environmental documents prepared for projects subject to permit review Process Three are environmental determinations the city manager approves, and they should be subject to the appeal notice. Moreover, our review of the hearing minutes for the Hampton Inn Mission Valley and Shiraz Medical Center projects found no evidence that the public received verbal notice of the appeal requirements from the hearing officer. According to the assistant deputy director, Development Services intends to clarify the municipal code requirement for the appeal notice within the first half of 2013. Specifically, she stated that Development Services intends to seek an amendment to the municipal code that will state specifically that environmental determinations made by the hearing officer are not subject to the appeal notice requirement. Nevertheless, until an amendment is approved, Development Services is not complying with the municipal code as currently written, and as a result, the public is not receiving proper notice of its ability to appeal environmental determinations under permit review Process Three.

Our review of the hearing minutes for the Hampton Inn Mission Valley and Shiraz Medical Center projects found no evidence that the public received verbal notice of the appeal requirements from the hearing officer.

Development Services Has Not Ensured That Its Designated Employees Assuming or Leaving Office Disclose Their Economic Interests in a Timely Manner

Certain Development Services employees must disclose their financial interests in accordance with the Political Reform Act of 1974 (Political Reform Act), but Development Services did not ensure that these employees do so in a timely manner. The Political Reform Act requires local government agencies, such as San Diego, to adopt a conflict-of-interest code that applies to staff members or officers known as *designated employees*. The text box presents the Political Reform Act's key requirements for a conflict-of-interest code.

Development Services' conflict-of-interest code identifies its designated positions and includes positions such as engineers, hearing officers, building inspectors, senior planners, and project managers. Designated employees must submit their Statement of Economic Interests, commonly known as Form 700, to San Diego's filing officer. State regulations specify that the filing officer is the person or agency responsible for receiving and retaining the original Form 700s. The municipal code designates the city clerk as San Diego's filing officer. According to the training materials of the Office of the City Clerk (city clerk), the city clerk relies on filing liaisons in each city department to maintain an accurate list of designated employees and to notify the city clerk when designated employees assume or leave their offices. An analyst at the city clerk stated that when the filing liaison notifies the city clerk that a designated employee has assumed or left office, staff check to see whether the designated employee has filed the appropriate statement. If the designated employee has not done so, staff send the employee a letter notifying him or her of the filing requirement. In addition, each year in advance of the April 1 filing deadline for the annual Form 700s, the procedures used by the city clerk require it to send the filing liaisons a current list of their designated employees and ask them to update their respective lists.

However, Development Services' filing liaisons did not always notify the city clerk of changes to its list of designated employees. Consequently, Development Services employees did not always submit their Form 700s in a timely manner. Specifically, the Form 700s submitted for 2009, 2010, and 2011 by four of the 15 designated employees we selected for review were between one month and more than 12 months late.

The Political Reform Act of 1974 Key Requirements for Conflict-of-Interest Codes

A conflict-of-interest code must identify the following:

- Designated positions within the agency that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest and for each position the specific types of investments, business positions, interests in real property, and sources of income that are reportable.
- Requirements that each designated employee file annual statements disclosing reportable investments, business positions, interests in real property, and income at the time specified in the conflict-of-interest code and within 30 days of assuming and leaving office.
- Circumstances under which designated employees or categories of designated employees must disqualify themselves from making, participating in the making, or using their official positions to influence the making of any decisions.

Source: California Government Code, Title 9, Chapter 7, Article 3.

Two designated employees were roughly 18 months late in filing their Form 700 after assuming their offices; thus, they did not disclose their financial interests held during 2008.

Moreover, two designated employees failed to submit a Form 700 within 30 days of assuming office in October 2008. Instead, both employees filed the form in 2010. Under the *Type of Statement* category on the forms, they checked “assuming office” and stated that the date they assumed office was October 28, 2008. These employees also checked “annual” and stated that the period covered was October 29, 2008, through December 31, 2009. State regulations allow individuals who assume office between October 1 and December 31 and who file their Form 700 within 30 days of assuming office to not file their next Form 700 until one year later. For example, if these two employees had filed their Form 700 by November 27, 2008, their annual Form 700 for 2009 would be due by April 1, 2010. However, these employees were roughly 18 months late in filing their Form 700 after assuming their offices; thus, they did not disclose their financial interests held during 2008.

One of Development Services’ associate management analysts stated that the filing liaison from that period of time is no longer an employee of Development Services. In addition, one of the current filing liaisons stated that she could find no record of why these two employees filed their Form 700s late. Development Services’ filing liaisons also did not notify the city clerk when one of these two employees left her office on August 7, 2010. According to an analyst, the city clerk did not become aware of the employee’s departure until February 2011, after it requested Development Services to update its list of designated employees. The employee has since filed her Form 700 with the city clerk, doing so on June 14, 2011.

In addition, a designated employee failed to submit a Form 700 within 30 days of assuming office on October 1, 2011. According to e-mail correspondence between the city clerk and Development Services, the filing liaison was not aware of the employee’s promotion into a designated position until a year later, in October 2012. This employee filed her Form 700 on October 17, 2012. Finally, a designated employee failed to submit a Form 700 within 30 days of leaving office on October 2, 2009. The filing liaison stated that she was unable to recall whether she was notified about the employee’s departure, because in 2009 Development Services administration personnel were encountering a heavy workload resulting from a reduction in workforce and a large number of employee transfers, demotions, promotions, and terminations. Nevertheless, the city clerk was not made aware of the employee’s departure until she ultimately filed her Form 700 on November 27, 2009.

In these cases, Development Services' filing liaisons consistently failed to notify the city clerk of designated employees leaving or assuming office. One of the filing liaisons stated that they rely on Development Services payroll staff to provide notification of when designated employees assume or leave office and that the filing liaisons and the payroll staff are currently developing procedures to effectively communicate this information. Until such procedures are in place, the city clerk cannot ensure that it collects Form 700s from designated employees when they assume and leave office in a timely manner.

Development Services' filing liaisons consistently failed to notify the city clerk of designated employees leaving or assuming office.

San Diego's Ethics Commission Did Not Comply With the City Council's Policy on Administering Ethics Training for Certain Employees

The City of San Diego Ethics Commission (commission) has not ensured that employees who must attend ethics training do so by the city council's deadlines. In June 2001 the city council created the commission, which has jurisdiction over San Diego's elected and appointed officials and its unclassified employees who are required to file a Form 700. San Diego's city charter identifies its unclassified positions as including positions such as department heads, the city clerk, the planning director, and managers who have significant responsibilities for formulating or administering departmental policies and programs.

Among other responsibilities, San Diego's municipal code states that the commission is responsible for providing training and education on governmental ethics laws, such as local laws that govern conflicts of interest and financial disclosure. The city council adopted in 1967 a code of ethics and ethics training policy, which it last amended in 2002. This policy requires city officials and unclassified employees to attend ethics training within 60 days of assuming office and biennially thereafter.⁶ The policy also specifically requires unclassified employees who file a Form 700 upon assuming office in even-numbered years to complete ethics training no later than March 31 of each even-numbered year thereafter. Similarly, those unclassified employees who file a Form 700 upon assuming office in odd-numbered years must complete their ethics training no later than March 31 in odd-numbered years.

The commission does not administer the ethics training for San Diego's unclassified employees in accordance with the city council's policy. Our review of 2010 through 2012 ethics training

⁶ The city council's policy is consistent with legislation enacted in 2005 that requires each local agency official to receive at least two hours of training in general ethics principles and ethics laws relevant to his or her public service. This training should occur no later than one year from the official's first day of service with the local agency and at least once every two years thereafter.

The commission does not administer the ethics training for San Diego's unclassified employees in accordance with the city council's policy. In fact, one employee should have completed his training by March 31, 2011, but did not do so until January 27, 2012, almost 10 months after the deadline.

records for seven of Development Services' 12 unclassified employees found that six of these employees attended training between four and 18 months after their March 31 deadlines. For example, one employee should have completed his training by March 31, 2011, but did not do so until January 27, 2012, almost 10 months after the deadline. In addition, as of December 31, 2012, two of the employees who should have completed training by March 31, 2012, had not done so.

The commission's program manager stated that the policy's ethics training requirements were written before anyone received the training, and they contain several practical difficulties. For example, the program manager told us that the policy calls for training hundreds of unclassified employees before a March 31 deadline, when the commission's resources are better suited for training them on a quarterly basis. The program manager also stated that over time the commission has developed a practical, reasonable approach by providing training to all unclassified employees shortly after they become subject to the policy and every two years thereafter, which it believes maintains the spirit of the policy. Finally, the program manager stated that the commission has not sought to change the policy to reflect its current practice because it has extremely limited resources and it believes amending the policy is a low priority, especially when its procedures are accomplishing the goals and spirit of the policy. Nevertheless, until the commission seeks and obtains changes to the city council's policy to align the policy with its current practice, the commission is violating the policy and is not meeting the city council's expectations for enforcement of its ethics training requirement.

Recommendations

To ensure that it properly identifies potential historical resources for the structures on project sites and conducts reviews in accordance with the municipal code, Development Services should require applicants to submit documentation, such as the county's property records when available, with their applications or it should obtain the information directly from the county so that it can determine whether the project requires a historical resource review.

To comply with the municipal code requirements for construction permits such as building permits, Development Services should align *Information Bulletin 118*, issued in June 2011, which describes its process for construction changes to approved plans, with the municipal code requirements for issuing permits and conducting historical resource reviews.

To provide the public proper notice of San Diego's decision that a project is exempt from CEQA, Development Services should do the following:

- Ensure that the exemption notice includes the information outlined in the CEQA guidelines.
- Submit exemption notices to the county within five business days after the date all rights to appeal its decision have elapsed, in accordance with its procedures.
- Retain documentation demonstrating that it posts the appeal notices in accordance with the municipal code.

To provide the public proper notice of San Diego's environmental determinations within five days of the final approval of a project in accordance with the CEQA guidelines, Development Services should develop procedures to ensure that its staff file the determination notices in a timely manner. For example, to avoid delays, Development Services should require its staff to collect and submit to the county the filing fee for each determination notice within five business days of the final approval of a project.

To provide the public proper notice of San Diego's environmental determinations in accordance with its municipal code, Development Services should seek an amendment to the municipal code to clarify its belief that environmental determinations made by a hearing officer are not subject to the appeal notice requirement. In the interim, Development Services should post appeal notices for projects subject to permit review Process Three.

To ensure that its designated employees disclose their financial interests in a timely manner, Development Services should do the following:

- Ensure that its filing liaisons and payroll staff develop and implement procedures for notifying the filing liaisons when designated employees assume or leave their positions.
- Ensure that the filing liaisons promptly notify the city clerk when designated employees assume or leave their positions.

To ensure that San Diego's unclassified employees attend ethics training as required by the city council, the commission should either follow the city council's policy or seek a change to align the policy with its current practice.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: April 25, 2013

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

Appendix A

THE CALIFORNIA STATE AUDITOR'S SELECTION OF CONSTRUCTION AND DEVELOPMENT PERMITS ISSUED BY THE CITY OF SAN DIEGO

The Joint Legislative Audit Committee (audit committee) directed the California State Auditor (state auditor) to select permits of similar scope and size issued or amended since January 2010, including the permits for the Wal-Mart Stores, Inc., facility that we discuss in the Introduction, to evaluate the City of San Diego's (San Diego) compliance with relevant laws and regulations related to its permit review process. Using the Project Tracking System (PTS) for San Diego's Development Services Department (Development Services), we selected permits for commercial projects that were issued between January 1, 2010, and September 17, 2012.⁷ Because the audit committee specifically directed the state auditor to determine whether San Diego complied with relevant laws and regulations regarding applications and plans that involve historical resources and amendments, we ensured that our selection of permits included projects for which Development Services performed historical resource reviews in connection with the permits and projects with construction changes to plans that already had approved building permits.

We present the different permit review processes in Figure 2 on page 11 of the Introduction. Permit review Process One represents the ministerial permit review process. Construction permits such as building permits are subject to the ministerial permit review process. Table A.1 on the following page shows the 10 building permits and Table A.2 on the following page shows the 10 construction changes to building permits we selected for review. Permit review processes Two through Five represent discretionary permit review processes. Development permits such as conditional use and site development permits are subject to the discretionary permit review process. Tables A.3 on page 43 and A.4 on page 44 present the five conditional use and five site development permits that we selected for review. Figure A on page 45 shows the location of the projects for the permits we selected. Although we selected 20 permits and 10 construction changes, the building permit and the change to a building permit for the Sherman Heights project and the conditional use and site development permits for the Farmers Market project relate to the same project site. Therefore, Figure A presents 27 separate project sites.

⁷ Development Services' PTS indicates it did not issue the permits for the Farmers Market project until November 28, 2012. Nevertheless, we selected these permits because they related to the Wal-Mart Stores, Inc., facility.

Table A.1**California State Auditor's Selection of Building Permits That the City of San Diego Issued Between January 1, 2010, and September 17, 2012**

PROJECT NUMBER	PROJECT TITLE	PROJECT SCOPE	HISTORICAL RESOURCE REVIEW	DATE PERMIT ISSUED
203737	Cafe Kabob	Tenant improvements to remodel existing restaurant space; this work includes new walls, plumbing, electrical, and mechanical.	No	April 1, 2010
215743	Amedisys Home Health Service Tenant Improvements	Tenant improvements to an existing office; this work includes the demolition and relocation of demising wall used to separate the tenants, demolition of partition walls, and addition of nonbearing walls.	No	July 19, 2010
231573	Timkin Building Code Violation	Remove unpermitted awning, sign holder, and unpermitted electrical work.	Yes	April 7, 2011
239576	Happy Head Foot Reflexology	Tenant improvements to convert its existing retail space to a reflexology and massage parlor; this work includes new partitions, new suspended ceiling grid, electrical, mechanical, and plumbing.	No	June 2, 2011
241388	Illumina Building Number 2 Tenant Improvements	Tenant improvements to an existing office; this work includes partitions, ceiling, electrical, mechanical, plumbing, and a new storage shed.	No	August 29, 2011
242735	Jones Day Tenant Improvements	Tenant improvements to suite within an office building; this work includes partitions, ceiling, plumbing, electrical, and mechanical.	No	August 9, 2011
244870	605 C Street Unreinforced Masonry	Partial seismic retrofit to an existing unreinforced masonry building.	Yes	August 30, 2012
255161	Sherman Heights	Structural seismic retrofit and tenant improvements.*	Yes	December 22, 2011
255536	Kaiser Phlebotomy Lab Tenant Improvements	Tenant improvements to existing lab facility; this work includes partitions, ceiling, electrical, mechanical, and plumbing.	No	September 13, 2011
284802	Costco Generator	Install a concrete pad for proposed backup generator.	No	August 21, 2012

Source: Project Tracking System for the City of San Diego's Development Services Department.

* The Joint Legislative Audit Committee specifically directed the California State Auditor to review permits related to the Wal-Mart Stores, Inc., facility. This permit was issued for the same site as project number 168264 in tables A.3 and A.4.

Table A.2**California State Auditor's Selection of Changes to Building Permits That the City of San Diego Issued Between January 1, 2010, and September 17, 2012**

PROJECT NUMBER	PROJECT TITLE	PROJECT SCOPE	DATE PERMIT ISSUED
216205	Construction Change to Approval for Project Number 205054—6455 Nancy Ridge Drive Tenant Improvements	Tenant improvements; this work includes partition walls, electrical, mechanical, and structural.	August 11, 2010
217662	Construction Change to Approval for Project Number 206154—Holiday Inn Express, Porte Cochere	Remove wood columns and reuse existing steel columns, resize beams to an upper size around the perimeter of the upper structure, and insert two beams to create a step ceiling.	August 30, 2010
221635	Construction Change to Approval for Project Number 205120—Costco Tenant Improvements	Tenant improvement to provide fence with gates at rear of building.	June 2, 2011
229963	Construction Change to Approval for Project Number 213260—Café Sevilla Tenant Improvements	Electrical and mechanical revisions.	January 26, 2011

PROJECT NUMBER	PROJECT TITLE	PROJECT SCOPE	DATE PERMIT ISSUED
237231	Construction Change to Approval for Project Number 222477—Flying Fox Exhibit	Among other changes, revise curtain wall height and orientation, move skylights, revise support and details for harp wire screen, add and revise retaining wall, and expand animal holding area.	April 28, 2011
269284	Construction Change to Approval for Project Number 259692—Portola Amenities	Revise structural, electrical, and mechanical to include a 1-hour fire-rated wall into the construction to serve as future control zone separation wall for future lab tenants in suites.	January 17, 2012
280861	Construction Change to Approval for Project Number 276422—Covario Sixth Floor Tenant Improvements	Changes to light fixtures, circuits, and schedule.	May 14, 2012
283273	Construction Change to Approval for Project Number 255161—Sherman Heights	Changes to footing underpinning sequences.*	May 24, 2012
289829	Construction Change to Approval for Project Number 270767—Illumina Building Number Five	Change the type of construction and eliminate the need to apply fire-proofing at third level.	August 6, 2012
291519	Construction Change to Approval for Project Number 284787—Eastgate Tech Fitness Center and Conference Room	Modifications to finishes, removal of sliding door and supports, removal of light fixture, addition of lighting, and modifications to ceiling.	August 15, 2012

Source: Project Tracking System for the City of San Diego's Development Services Department.

* The Joint Legislative Audit Committee specifically directed the California State Auditor to review permits related to the Wal-Mart Stores, Inc., facility.

Table A.3
California State Auditor's Selection of Conditional Use Permits That the City of San Diego Issued Between January 1, 2010, and September 17, 2012

PROJECT NUMBER	PROJECT TITLE	PROJECT SCOPE	PERMIT REVIEW PROCESS	HISTORICAL RESOURCE REVIEW	DATE PERMIT ISSUED
109031	Market Street Church	Convert two existing buildings into a religious facility.	Three	Yes	April 18, 2012
148350	Nativity Prep Academy	Demolish existing structures and construct a new school with associated parking, hardscape, and landscape throughout the site.	Five	Yes	December 13, 2010
157800	Vision Celular Internacional	Establish a religious facility within an existing light industrial building.	Three	No	January 22, 2010
168264*	Farmers Market	Amend existing permit to continue operation of a large retail facility.†	Three	Yes	November 28, 2012
176464	La Cima Oil Convenience Store	Amend existing conditional use permit to allow beer and wine sales within an existing service station convenience store.	Three	No	July 7, 2010

Sources: Project Tracking System for the City of San Diego's Development Services Department (Development Services) and the resolutions approving the projects.

* A single project can include the approval of multiple permits. As Table A.4 on the following page indicates, we also reviewed the site development permit issued for this project. In addition, page 14 of the report's Introduction provides Development Services' explanation for issuing the permit for this project after September 17, 2012.

† The Joint Legislative Audit Committee specifically directed the California State Auditor to review permits related to the Wal-Mart Stores, Inc., facility.

Table A.4
California State Auditor's Selection of Site Development Permits That the City of San Diego Issued Between January 1, 2010, and September 17, 2012

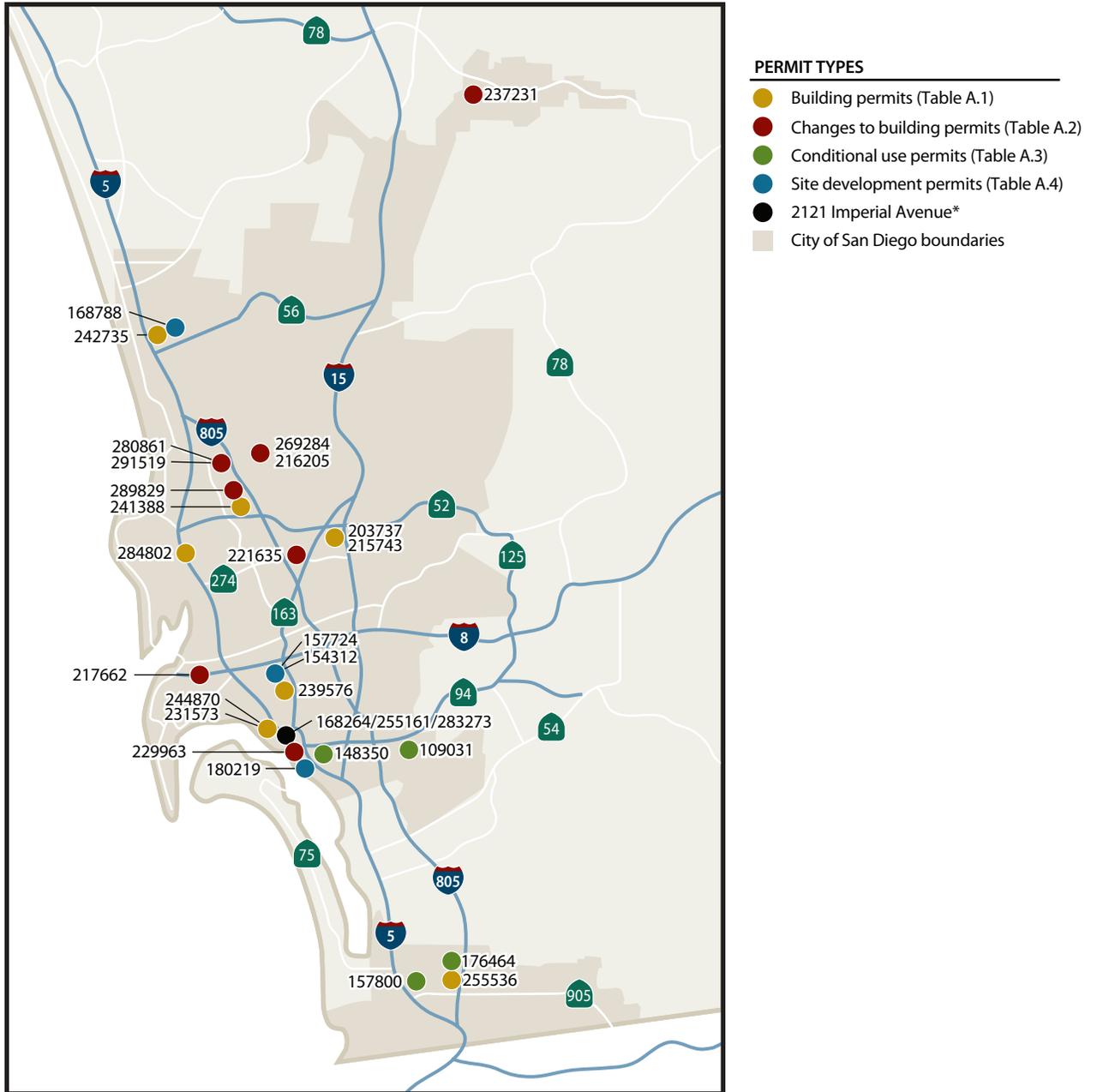
PROJECT NUMBER	PROJECT TITLE	PROJECT SCOPE	PERMIT REVIEW PROCESS	HISTORICAL RESOURCE REVIEW	DATE PERMIT ISSUED
154312	Hampton Inn Mission Valley	Construct a five-story hotel with an attached structured parking garage.	Three	No	August 30, 2012
157724	Shiraz Medical Center	Demolish existing buildings and construct a four-story medical office building with five levels of a subterranean parking garage.	Three	Yes	May 19, 2010
168264*	Farmers Market	Amend existing permit to continue operation of a large retail facility. [†]	Three	Yes	November 28, 2012
168788	Sea Breeze Carmel View	Construct two office buildings and a four-level subterranean parking structure.	Four	No	October 22, 2010
180219	Restaurant Depot	Demolish existing buildings and construct large warehouse building.	Four	Yes	September 9, 2010

Sources: Project Tracking System for the City of San Diego's Development Services Department (Development Services) and the resolutions approving the projects.

* A single project can include the approval of multiple permits. As Table A.3 on page 43 indicates, we also reviewed the conditional use permit issued for this project. In addition, page 14 of the report's Introduction provides Development Services' explanation for issuing the permit for this project after September 17, 2012.

[†] The Joint Legislative Audit Committee specifically directed the California State Auditor to review permits related to the Wal-Mart Stores, Inc., facility.

Figure A
 Project Locations for Construction and Development Permits Selected by the California State Auditor



Sources: Compilation by the California State Auditor (state auditor) of data provided from the Web site of San Diego Geographic Information Source (SANGIS), a joint powers authority of the City and County of San Diego responsible for maintaining a regional geographic information system land base and data warehouse. The state auditor did not assess the reliability of SANGIS' data.

* The permits for 2121 Imperial Avenue are shown at Table A.1 (project number 255161), Table A.2 (project number 283273), and tables A.3 and A.4 (project number 168264). The Joint Legislative Audit Committee specifically directed the state auditor to review permits related to the Wal-Mart Stores, Inc., facility.

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Appendix B

THE CITY OF SAN DIEGO'S AVERAGE LENGTHS OF TIME FOR ISSUING BUILDING, SITE DEVELOPMENT, AND CONDITIONAL USE PERMITS BETWEEN JANUARY 1, 2010, AND SEPTEMBER 17, 2012

The Joint Legislative Audit Committee (audit committee) directed the California State Auditor (state auditor) to select permit applications and plans for development projects of similar scope and size that were submitted to the City of San Diego (San Diego) for approval since January 2010.⁸ The audit committee also directed the state auditor to determine the length of time from submission of the application to permit issuance for these permit applications and plans and to identify any unusual trends related to the size, type, and location (specifically, underserved versus more affluent areas) of the development projects.

To accomplish these tasks, we used data from the Project Tracking System (PTS) from San Diego's Development Services Department (Development Services) to perform an analysis of the building, conditional use, and site development permit applications and plans submitted to Development Services and the permits it issued between January 1, 2010, and September 17, 2012.⁹ For this period, 8,851 permits met these criteria. As discussed in Table 4 on page 18 in the Introduction, before performing our analysis of the data, we removed 790 permits that were submitted prior to our audit period. We also removed 1,469 permits that were missing key data elements or contained illogical values, causing us to conclude that the PTS data are not sufficiently reliable for the purpose of our analysis. Nevertheless, we used the PTS data because no other source of information was available.

We tried to use the PTS data to identify the permits associated with individual development projects in order to compare permit issuance times for development projects. However, we found that PTS does not track this information in a manner that would allow us to systematically identify all permits associated with an individual development project. Specifically, PTS can identify all permits associated with a location, but a specific location may have multiple development projects associated with it. To determine which permits were associated with a given development project would require manual review of each permit or location.

⁸ For the purposes of this appendix, we use the term *development project* to refer both to the development and to the construction of a particular business or residence at a specific location and to all related permits.

⁹ Please refer to page 10 of the Introduction for a description of these permits.

We also attempted to segregate the permits into more discrete groupings, but we were unable to do so because of data limitations. Specifically, we attempted to group the permits as either commercial or residential. However, we found that Development Services' PTS does not contain a data field that consistently identifies this information, and PTS users are not required to capture it. Further, we tried to group the permits based on square footage. However, such groupings were not possible because most of the measurements for development projects in PTS are dependent on the specific nature of the work detailed in the permit application. For example, the PTS data contained different measurement units such as stories of a building, square feet, or valuation of the construction in the permit application. Further, the units of measurement recorded in PTS can vary from one permit type to the next and can also vary from permit to permit within a single permit type. Without a comparable unit of measurement for all permits, we were unable to compare permits based on size.

We ultimately were able to identify the specific permit types of building, site development, and conditional use, as well as the dates Development Services determined that the permit applications were complete and the dates it issued the permits. We were also able to categorize San Diego's neighborhoods by income categories. Specifically, we identified the U.S. Census tracts within the areas covered in the County of San Diego's assessor/recorder/county clerk's map books, which identify the parcels in a certain area. We then calculated the weighted average household income for each map book area, using the household income and population data from the U.S. Census Bureau's American Community Survey for each tract within the map book area. We categorized each map book area by income, using the categories shown in Table B.1.

Table B.1
Income Ranges Used to Categorize Neighborhoods in the City of San Diego

INCOME CATEGORY	MINIMUM	MAXIMUM
Extremely low income	\$0	\$24,100
Very low income	24,101	40,150
Low income	40,151	64,250
Moderate income	64,251	91,100
High income*	91,101 and over	

Source: California Department of Housing and Community Development's 2012 state income limits for a four-person household.

* The California State Auditor added this income category.

The California Department of Housing and Community Development uses these categories to determine households' eligibility for certain assistance programs, and the categories are ultimately based on the American Community Survey's household income data. By associating each permit's book number—a component of the parcel number—with the applicable income category, we were able to calculate the number of permits and average issuance time for the three permit types by neighborhood income. Table B.2 presents the results of our analysis.

Table B.2

Amount of Time Taken Between January 1, 2010, and September 17, 2012, by the City of San Diego to Issue Permits Categorized by Neighborhood Income

	TYPE	NUMBER OF PERMITS	AVERAGE TIME TO ISSUE PERMIT (DAYS)*	NEIGHBORHOOD INCOME	NUMBER OF PERMITS	AVERAGE TIME TO ISSUE PERMIT (DAYS)*
Ministerial	Building permits [†]	5,158	83	Extremely low income	17	139
				Very low income	464	82
				Low income	2,431	79
				Moderate income	1,114	124
				High income	1,132	52
Discretionary	Conditional use permits	52	285	Very low income	4	237
				Low income	26	250
				Moderate income	15	322
				High income	7	362
	Site development permits	49	394	Very low income	7	336
				Low income	12	339
				Moderate income	9	338
				High income	21	468

Source: Analysis by the California State Auditor (state auditor) of data obtained from the Project Tracking System (PTS) from the City of San Diego's Development Services Department (Development Services). Please refer to Table 4 on page 18 of the Introduction for the state auditor's assessment of the reliability of these data.

Note: The Permit Streamlining Act generally requires any public agency that is the "lead" agency for a development project to approve or disapprove the project within 180 or 90 days, as specified, from the date the lead agency certifies the environmental impact report, if such a report is required by the California Environmental Quality Act. It is important to note that the dates in this table reflect a different period, namely, the time between when an application is received and when a permit is issued.

* To calculate the number of days to issue a permit using PTS data, we subtracted the date on which Development Services determined each permit application was complete from the date on which it issued the permit. Development Services stated that, for discretionary permits, the issuance date recorded in PTS is not the official, legally binding issuance date.

† The table excludes 1,333 *over-the-counter permits*, which are building permits issued on the same day that applicants submit them because Development Services reviews the plans and issues the permits while the customer waits.

We did not detect any consistent trends across permit types with respect to permit issuance times and the location of the development project. Table B.2 shows that higher-income neighborhoods had longer issuance times on average than did other types of neighborhoods for the 49 site development permits and

the 52 conditional use permits issued by Development Services. On the other hand, Table B.2 shows that for the 5,158 building permits issued by Development Services, moderate- and extremely low-income neighborhoods had longer issuance times on average than did other types of neighborhoods.

Although the causes for the permit issuance times for all three types of permits are generally unique to each project, we found a few factors that can contribute to shorter or longer permit issuance times. For each permit type shown in Table B.2, we reviewed Development Services' project files and records for the two permits with the shortest and longest issuance times for each permit type; Table B.3 shows these permits. For example, the Euclid Family Health Center project may have had a short issuance time because it was part of Development Services' Affordable/In-Fill Housing and Sustainable Buildings Expedite Program, which expedites permit processing for eligible affordable housing and sustainable building projects.

Table B.3
San Diego Permits With the Shortest and Longest Issuance Times Between January 1, 2010, and September 17, 2012

	PERMIT TYPE	SHORT PERMIT ISSUANCE TIME		LONG PERMIT ISSUANCE TIME	
		PROJECT TITLE	DAYS TO ISSUE PERMIT*	PROJECT TITLE	DAYS TO ISSUE PERMIT*
Ministerial	Building permits [†]	Nokia Summit Rancho Bernardo [‡]	1	Casoleil Apartments Slope Repair	702
		Uptown Terraces Deck [‡]	1	Marina Cortez Tenant Improvements	718
Discretionary	Conditional use permits	Camp Run-A-Mutt Sports Arena	100	University of Phoenix	711
		Presidio Market	108	AT&T Monongahela Street	741
	Site development permits	Sea Ridge Residence	61	Paradise Point	748
		Euclid Family Health Center	107	Old El Camino Real Trail	889

Source: Analysis by the California State Auditor (state auditor) of data obtained from the Project Tracking System (PTS) from the City of San Diego's Development Services Department (Development Services). Please refer to Table 4 on page 18 of the Introduction section for the state auditor's assessment of the reliability of these data.

* To calculate the number of days to issue a permit using PTS data, we subtracted the date on which Development Services determined each permit application was complete from the date on which it issued the permit. Development Services stated that, for discretionary permits, the issuance date recorded in PTS is not the official, legally binding issuance date.

[†] The table excludes building permits issued by Development Services on the same day it received the application, known as over-the-counter permits, because it reviews the plans while the customer waits.

[‡] Of the 5,158 building permits submitted to and issued by Development Services between January 1, 2010, and September 17, 2012, 155 permits were issued within one day of its determination that the applications were complete. We judgmentally selected these two projects from a neighborhood with higher household incomes (Nokia Summit Rancho Bernardo) and a neighborhood with very low household incomes (Uptown Terraces Deck).

We also identified two factors that contributed to long permit issuance times: administrative errors and Development Services' policy for deficit deposit accounts. Administrative errors caused delays in issuing the permits for the Casoleil Apartments Slope Repair and Old El Camino Real Trail projects. For example, the building permit for the Casoleil Apartments Slope Repair project was part of a series of permits to build multiple garages and a retaining wall. Although the other permits for the project were issued in June 2011, the permit for one of the garages was not issued until August 2012. According to one of Development Services' supervising plan specialists, this permit was overlooked and probably not discovered until the developer called for final inspections. Further, Development Services has a policy that prohibits its employees from working on projects when the applicants have deficits in their deposit accounts, which Development Services uses to pay the fees for the applicants' permit review processes. For the University of Phoenix and Paradise Point projects, the project managers stated that the high permit issuance times were due to this policy.

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Bob Filner
Mayor
City Administration Building
202 C Street
San Diego, CA 92101

April 2, 2013

Elaine M. Howle, CPA
State Auditor
California State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Elaine:

Thank you very much for providing me with a draft of your report, “City of San Diego, Although It Generally Followed Requirements for Reviewing Permits, It Could Do More to Protect Historical Resources and to Notify the Public Properly About Its Actions”.

I appreciate the thoroughness with which your office reviewed the practices of the City dealing with historical designation, construction change review, public notice of environmental determinations, and employee disclosure of financial interests.

The recommendations provided in the audit offer several measures to ensure more rigorous compliance with adopted law and regulations. All of the recommendations are reasonable and appropriate and will be implemented by the City upon receipt of the State’s final audit.

Thank you for providing the City with an opportunity to respond to the draft audit.

Sincerely,

(Signed by: Bob Filner)

BOB FILNER
Mayor

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The City of San Diego
Ethics Commission
1010 Second Avenue, Suite 1530
San Diego, CA 92101

April 3, 2013

Elaine Howle, State Auditor*
Bureau of State Auditors
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: State Audit No. 2012-109

Dear Ms. Howle:

The City of San Diego Ethics Commission submits the following response to the relevant recommendation included within the report for above-referenced audit:

The Ethics Commission respectfully disagrees with the State Auditor's contention that the Ethics Commission is "not meeting the City Council's expectations for enforcement of its ethics training requirement." In adopting Council Policy 000-04, the City Council reasonably expected the Ethics Commission to provide biennial ethics training to the City's unclassified employees, which in fact the Ethics Commission has been doing since the adoption of the Council Policy. ①

The Ethics Commission agrees, however, with the State Auditor's conclusion that its training program is not aligned with the Council Policy requirement that biennial training revolve around a March 31 deadline. In order to achieve technical compliance with Council Policy 000-04, the Ethics Commission will ask the City Council to amend the Council Policy in order to remove the language concerning the March 31 deadline. The Commission staff will calendar this legislative proposal after it has completed its current efforts to amend the City's campaign laws, which is anticipated to take place sometime between July and September of 2013.

If you have any questions concerning this response, please contact me at your convenience.

Sincerely,

(Signed by: Stacey Fulhorst)

Stacey Fulhorst
Executive Director

* California State Auditor's comment appears on page 57.

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Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE CITY OF SAN DIEGO'S ETHICS COMMISSION

To provide clarity and perspective, we are commenting on the response to our audit report from the City of San Diego Ethics Commission (commission). The number below corresponds to the number we placed in the margin of the commission's response.

The commission's characterization of the code of ethics and ethics training policy adopted by the San Diego City Council (city council) is incorrect. As we state on page 37, the city council's policy specifically requires unclassified employees who file a Statement of Economic Interests (Form 700) upon assuming office in even-numbered years to complete ethics training no later than March 31 of each even-numbered year thereafter. Similarly, the policy requires those unclassified employees who file a Form 700 upon assuming office in odd-numbered years to complete their ethics training no later than March 31 in odd-numbered years. In its policy, the city council clearly expresses its expectation for when the commission should provide ethics training to the city's unclassified employees. As we discuss on page 37 and as the commission acknowledges in the second paragraph of its response, the commission does not administer the ethics training for unclassified employees in accordance with the city council's policy.

①

cc: Members of the Legislature
Office of the Lieutenant Governor
Little Hoover Commission
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press