

FIRM / AFFILIATE OFFICES

| | |
|--------------|------------------|
| Barcelona | Moscow |
| Beijing | Munich |
| Boston | New York |
| Brussels | Orange County |
| Century City | Paris |
| Chicago | Riyadh |
| Dubai | Rome |
| Düsseldorf | San Diego |
| Frankfurt | San Francisco |
| Hamburg | Seoul |
| Hong Kong | Shanghai |
| Houston | Silicon Valley |
| London | Singapore |
| Los Angeles | Tokyo |
| Madrid | Washington, D.C. |
| Milan | |

June 9, 2017

VIA EMAIL

Nick Stone
FS Investors
1250 Prospect Street, Suite 200
La Jolla, CA 92037

Re: Subsequent Process for Disposition of the Qualcomm Stadium Site to SDSU

Dear Nick Stone:

This letter is written at your request to provide additional information for those interested in the potential disposition of the Qualcomm Stadium Site (“Stadium Site”). In particular, this letter is intended to provide an overview of the potential timing for SDSU to secure approval to develop on some or all of the Stadium Site, and the potential risks that may be associated with delaying development of the Stadium Site.

Should the San Diego River Park and Soccer City Initiative (the “Initiative”) not be placed on the ballot or otherwise adopted, the City will have to engage in a lengthy process to lease, sell, or entitle the property for a different use. In addition, this type of disposition process outside of the Initiative opens the City to new potential legal risks. Further, SDSU has its own particular requirements for the development process that may further delay development of the Stadium Site, incurring additional costs to the City for the continued maintenance of the Stadium and Stadium Site.

I. THE SDSU CAMPUS MASTER PLAN MUST BE AMENDED BEFORE DEVELOPMENT ON THE STADIUM SITE

Each state university campus must maintain a Campus Master Plan.¹ A project is considered within the scope of the Campus Master Plan Program environmental impact report (“EIR”) analysis when it is identified by: name; type (e.g. academic, residential, support facility); function (landscaping, site improvements, replacement, etc.); size; or is otherwise and included in the project description section of the Master Plan Program EIR. *Id.* at p. 14. The potential redevelopment of the Stadium Site for SDSU is not identified in the Campus Master

¹ See e.g. The California State University CEQA Handbook at p. 4, available at: <http://facilities.fullerton.edu/documents/CEQAHandbook.pdf>.

Plan.² SDSU cannot take actions which conflicts with its Campus Master Plan, and therefore would have to have its Plan amended by the Board of Trustees of the statewide California State University system to include the potential project. Thus, SDSU would likely require two EIRs for the Stadium Site—one by the City and one by the California State University system for the Campus Master Plan amendments. Typically, Campus Master Plan amendments are a three to four year process. The City’s EIR must include all the details on SDSU’s planned near term and potential future uses for any part of the Stadium Site before the City can sell or lease the Stadium Site. The City and SDSU cannot impermissibly “piecemeal” or “project split” by only studying one part of the property or just certain uses for part of the Stadium Site. SDSU has to provide details of the entire series of transactions planned, as well as overall grading and flood control plans. *See Laurel Heights Improvement Association v. Regents of the University of California*, 47 Cal.3d 376 (1988) (California Supreme Court invalidated university EIR for failure to address all aspects of potential university use of planned new campus site).

The City also will have to estimate the total buildout of the Stadium Site and total planned traffic to calculate SDSU’s fair share of total buildout traffic impacts, and charge SDSU the costs for a fair share of the ultimate traffic improvements needed for buildout. The City may use the California Environmental Quality Act (“CEQA”) as a tool for calculating and ensuring that such fair share payments are made.

The City Council must complete an EIR for the entire Stadium Site before it can approve any new lease or sale on the site, with the exception of temporary or minor uses. The City must also ensure SDSU pays for its fair share of traffic improvement and to impose any needed caps on development. Otherwise, once SDSU buys the Stadium Site, SDSU would be exempt from City land use and mitigation controls and could double or triple their development without any approvals from the City. *See City of San Diego v. Board of Trustees of California State University System (SDSU)*, 61 Cal.4th 945 (2015) (City lawsuit to require CEQA mitigation measures that were enforceable against SDSU because the university is otherwise exempt from City jurisdiction).

In sum, it would be highly unlikely that any SDSU project on the Stadium Site would be approved for at least four to six years because the following actions must or may take place: (1) SDSU must provide build out details, likely requiring them to have finalized their own EIR in order to incorporate such plans into the Campus Master Plan; (2) the City must conduct its own CEQA review after receiving SDSU’s plans, and determine the potential land use for the Stadium Site; (3) the City must finalize and approve its own environmental document; (4) the City and/or SDSU may face litigation over the environmental review; (5) the City must lease or sell the land to SDSU following an appraisal and a potential RFP process; and (6) SDSU would need to begin final design and construction work. The City appraiser has also assumed a six-year time period for entitlements of the Stadium Site. *See May 26, 2017 Appraisal Report for the Qualcomm Stadium Property at p. 40.*

² *See e.g.* Campus Master Plan Map, available at: <http://advancement.sdsu.edu/masterplan/2007/20070830campusmap.pdf>.

II. THE STADIUM SITE MAY BECOME SUBJECT TO THE SURPLUS LANDS ACT AND EXPOSE THE CITY TO ADDITIONAL LIABILITIES

Additionally, should the Stadium Site not be included in a comprehensive reuse plan where the City retains continuing control (such as the plan in the Initiative), and the City simply entertains proposals from competing developers for sales or leases for a variety of third party uses, an argument may be made that the Stadium Site is “surplus” property under the Surplus Lands Act. Therefore, any proposal for development by SDSU could not be accepted until the City offers the Stadium Site to the agencies listed in the Surplus Lands Act.

Likewise, pursuant to Council Policy 700-10, any subsequent proposal would have to undergo the City’s RFP process, which in turn would trigger CEQA because the City would be exercising its discretion on environmental issues. *See* Pub. Res. Code § 21080 (CEQA applies to discretionary projects); CEQA Guidelines § 15357 (defining discretionary as “a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity.”). These processes would significantly delay SDSU’s, or any other third party purchaser’s, ability to develop the property.

Further, the City must consider the Kinder Morgan settlement agreement in any reuse of the Stadium Site. As the City Attorney report noted, reuse of the Stadium Site could implicate some level of risk of litigation with Kinder Morgan. These concerns would be amplified if the City simply transfers the Stadium Site because the City could lose all benefits of the Kinder Morgan agreement, which is non-transferrable. The City could then face a potential lawsuit as a potentially responsibility party for any clean-up costs because the City is in the chain of title, without the assurance that it can receive all the benefits of the Kinder Morgan agreement, due to the City’s sale of the property. In addition, the contamination on the site could potentially preclude SDSU from asserting a CEQA exemption, as well as any claim that its potential development would fall under AB 900.

In sum, the City faces significant challenges in leasing, selling, or developing the Stadium Site should the Initiative not be placed on the ballot. Additionally, the Initiative does not preclude third parties from benefiting from use of the Stadium Site. Please do not hesitate to contact me with any questions at 858.523.5400 or at christopher.garrett@lw.com.

Best regards,

Christopher W. Garrett

Christopher W. Garrett
of LATHAM & WATKINS LLP