File Code No. 120.03

CITY OF SANTA BARBARA

ORDINANCE COMMITTEE REPORT

AGENDA DATE: October 21, 2014

TO: Ordinance Committee

FROM: Ariel Pierre Calonne, City Attorney

SUBJECT: Follow Up On Sidewalk Behavior And Panhandling Ordinances

RECOMMENDATION:

That the Ordinance Committee:

A. Review draft ordinance amendments to the State Street Sitting and Lying Down Ordinance and the Abusive Panhandling Ordinance and forward recommendations to City Council; and
B. Review proposed ordinances to prohibit public urination and defecation and to authorize the Library Director to promulgate facility specific regulations and forward recommendations to City Council.

DISCUSSION:

Background

On April 22, 2014, the City Council voted unanimously (6-0, Francisco absent) to refer to the Ordinance Committee several issues raised in a memorandum from Councilmembers Hotchkiss and Rowse. The memorandum raised the possibility of taking the following specific actions:

- Expanding the 7:00 a.m. to 9:00 p.m. hours of the current Sit/Lie prohibition;
- Adding a prohibition on sitting, standing or lying down upon any planting, railing or statue placed or installed on a public sidewalk;
- Expanding the “active” panhandling prohibition near ATM’s from 25 feet to 80 feet, subject to constitutional analysis by the City Attorney;
- Expanding the “active” panhandling prohibition to other areas where there are captive audiences, such as buses and other public transportation vehicles; and
- Prohibiting urinating or defecating in public.

The Council memorandum also suggested directing the City Attorney to undertake research and report back to the Ordinance Committee on the legal feasibility of adding to the municipal code the following considerations:

- A prohibition on groups of people congregating in a manner that blocks the free movement of pedestrian traffic on our downtown sidewalks;
- A prohibition on the use of public benches and street furniture for the storage, sale or display of merchandise or personal items; and
- A prohibition on active panhandling within a prescribed distance of a queue of persons waiting to gain admission to a place of business and outdoor dining areas.

Thereafter, the Ordinance Committee met on June 10, 2014, and considered the Council's direction. The Ordinance Committee requested this office to prepare certain code amendments for review, and to complete a mapping project which would identify whether the proposed regulations would leave open sufficient public areas to pass constitutional muster, i.e., ample alternative channels of communication must be left open for panhandling and solicitation in general.

<u>The Proposed Code Amendments</u>

The Ordinance Committee requested further review of six municipal code amendments to address new and ongoing nuisance behaviors:

- A prohibition against urinating or defecating in public (Exhibit 1 attached);
- A prohibition on using public street furniture for the display of goods for sale or donation (Exhibit 2 attached);
- Adding expanded safety zones around sensitive locations where captive audiences feel threatened by active panhandling. These areas include:
    - Within 25 feet of an outdoor dining area
    - Within 80 feet of ATMs
    - Within 25 feet of admission lines, such as movie queues
    - Within 25 feet of public benches or seating areas
    - On buses or other public transportation (Exhibit 3 attached);
- Extending the existing "sit/lie" prohibition on State Street from 7:00 a.m. to 2:00 a.m. of the following day, rather than 9:00 p.m. (Exhibit 4 attached);
- Revising the prohibition on pedestrians blocking sidewalks to include congregated groups of people (Exhibit 5 attached); and
- Delegating the Library Director the authority to promulgate regulations for the use of the libraries, including the Central Library and its outdoor plaza (Exhibit 5A attached).

Each of these proposed amendments has distinct legal issues that should be considered.

Legal Issues

Prohibition against Urinating or Defecating in Public

This proposed code amendment is a straightforward exercise of the City's police power to protect the public health, safety, and welfare. There are ample public toileting facilities in Santa Barbara.

Prohibition on Using Public Street Furniture for the Display of Wares for Sale or Donation

Restricting the sale of goods in public can have First Amendment implications when goods bearing expressive messages, such as printed T-shirts or literature, are being sold. In *One World One Family Now v. City and County of Honolulu* (9th Cir. 1996) 76 F.3d 1009, Honolulu was faced with objections from visitors and local residents, as well as merchants, who complained that street T-shirt sales on one of the busiest commercial streets in Waikiki created a sidewalk obstruction and visual eyesore, and competed unfairly with "brick and mortar" stores. The city began enforcing a local ordinance that banned the sale of all "goods, wares, merchandise, foodstuffs, refreshments or other kinds of property or services ... upon the public streets, alleys, sidewalks, malls, parks, beaches and other public places in Waikiki." (*Id.* at p.1011.) After being threatened with prosecution, the plaintiffs (who sold printed T-shirts with messages like "TAKE IT EASY MEDITATE HANG LOOSE HAWAII" and "WAIKIKI HAWAII HARINAM") sued under the federal civil rights law.

The Ninth Circuit Court of Appeals began its analysis by acknowledging that "when the sale of merchandise bearing political, religious, philosophical or ideological messages is 'inextricably intertwined' with other forms of protected expression (like distributing literature and proselytizing), the First Amendment applies." (*Id.* at p.1012.) The Court found that the T-shirts in question met that standard; thus the sales activities were entitled to First Amendment protection.

The Court went on to apply the familiar "time, place and manner" rules:

> "We use the standard governing time, place and manner restrictions. Such restrictions are valid if they (1) are content-neutral; (2) are narrowly tailored to serve a significant governmental interest; and (3) leave open ample alternative channels of communication." (*Ibid.*)

As to content neutrality, the Court held that:

> "A speech restriction is content-neutral if it is "justified without reference to the content of the regulated speech." "A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." ***The test is whether the government has adopted the restriction "because of disagreement with the message it conveys.***" (*Ibid*; citations omitted, emphasis added.)

The Ordinance Committee's proposal to ban the sale of all goods from public street furniture does not reflect disagreement with any particular speech message because it is generally applicable to all goods.

The Court also recognized three significant governmental interests that the sales ban legitimately promoted, each of which applies to a tourism-focused city like Santa Barbara as well as it did to Honolulu's Waikiki: "(1) 'maintaining the aesthetic attractiveness of Waikiki,' (2) 'promoting public safety and the orderly movement of pedestrians,' and (3) 'protecting the local merchant economy.'" (*Ibid*.)

Finally, the Court concluded that:

> "Honolulu's peddling ordinance also leaves open ample alternative channels of communication. The ordinance forecloses one narrow form of expression—sidewalk sales of message-bearing merchandise—and leaves the plaintiffs free to disseminate and seek financial support for their views through "myriad and diverse" alternative channels, such as handing out literature, proselytizing or soliciting donations. In addition, plaintiffs' volunteers may hand out free T-shirts to passers-by, or mingle with Waikiki's tourist throngs wearing T-shirts (thereby acting as human billboards). Plaintiffs may also sell T-shirts through local retail outlets or by opening their own stores, so long as they comply with the regulations generally applicable to merchants." (*Id.* at p.1014.)

Based upon the *One World One Family Now* case, we believe Santa Barbara may legitimately include public street furniture among the locations where street vending is prohibited.

Expanded Safety Zones around Sensitive Locations Where Captive Audiences Feel Threatened By Active Panhandling

On June 10, 2014, the Ordinance Committee expressed serious concerns about safety around ATMs, movie queues, public benches, and outdoor dining areas because these are locations where persons who are being solicited are confined to restricted areas as captive audiences. In those situations, the persons being solicited are most likely to experience a sense of powerlessness, and to be intimidated by an unwanted effort by a panhandler to solicit donations. The Committee requested further analysis of adding or expanding safety buffer zones (within which panhandling would be prohibited) around these sensitive locations.

There is little doubt that valid time, place and manner regulations may prohibit abusive panhandling altogether, while prohibiting and allowing active or passive panhandling in specified locations only. The question for the Ordinance Committee and Council is whether the areas where active and passive panhandling would be prohibited – the expansion of the 25-foot buffer around ATMs to 80 feet, and the addition of a 25-foot buffer around movie queues, public benches, and outdoor dining areas – would leave open ample alternative channels for communication. This analysis is fundamentally data-driven.

We have approached the issues empirically by mapping the downtown core business areas and the areas affected by the proposed expanded safety zones. Over the summer, the City's GIS staff mapped the locations of ATMs, movie queues, public benches, outdoor dining areas and paseos on the State Street and Milpas Street corridors as they are currently regulated by the City. These facilities and locations were chosen because the Ordinance Committee identified them as locations where an additional safety buffer might be needed to address the recent increase in problematic panhandling. An overview map of State Street is attached as Exhibit "6" and more detailed maps of each block of State Street (400 to 1200) are provided as Exhibits "7" through "15."

The maps show that the proposed safety buffers have the effect of prohibiting panhandling in many areas of State Street. The Ordinance Committee should carefully consider these maps and determine whether ample alternative areas are provided for protected speech activities including panhandling.

Extending the Existing "Sit/Lie" Prohibition on State Street from 7:00 A.M. to 2:00 A.M. of the Following Day, Rather than 9:00 P.M.

The major legal issues presented are whether extending the hours of the existing sit/lie prohibition from 9:00 p.m. to 2:00 a.m. on State Street implicates either First Amendment or Eighth Amendment (cruel and unusual punishment) concerns.

The First Amendment concerns are familiar, and for the purposes of this analysis we assume without conceding that expressive conduct may be implicated by the act of sitting or lying down upon a sidewalk. Using the time, place and manner regulatory test, the proposed extension to 2:00 a.m. is clearly content-neutral. The significant governmental interests include the need for free pedestrian passage on crowded State Street, in this case focusing upon the late evening hour when the vibrant State Street nightlife scene causes conflict between revelers walking or milling about and those who might seek to sit or lie down upon the sidewalks. Because the regulations cover only the busiest portion of the busiest street in Santa Barbara, we believe ample alternative locations are available to sit or lie down on the public sidewalk. (See *Roulette v. City of Seattle* (9th Cir. 1996) 97 F.3d 300.)

The Eighth Amendment cruel and unusual punishment concerns are less familiar, and arise out of the potential disparate impact sit/lie regulations may have upon the homeless population. These concerns were noted in a now-vacated Ninth Circuit case called *Jones v. City of Los Angeles* (9th Cir. 2006) 444 F.3d 1118 (the opinion was withdrawn after the City settled the lawsuit). In *Jones*, homeless individuals brought a federal civil rights action seeking limited injunctive relief against enforcement of a Los Angeles ordinance that criminalized sitting, lying, or sleeping on public streets and sidewalks ***at all times and in all places*** within City. The plaintiffs argued, successfully, that the ordinance constituted cruel and unusual punishment because penalized homeless persons were on the streets due to the lack of available shelter space – effectively criminalizing their status as homeless rather than any distinct criminal conduct.

The Court began its analysis by declaring Los Angeles' ordinance "one of the most restrictive municipal laws regulating public spaces in the United States," noting that unlike Santa Barbara's ordinance, the L.A. regulation applied citywide and at all hours of the day or night. The Court went on to explain that:

> "The City could not expressly criminalize the status of homelessness by making it a crime to be homeless without violating the Eighth Amendment, ***nor can it criminalize acts that are an integral aspect of that status.*** Because there is substantial and undisputed evidence that the number of homeless persons in Los Angeles far exceeds the number of available shelter beds at all times, including on the nights of their arrest or citation, Los Angeles has encroached upon Appellants' Eighth Amendment protections by criminalizing the unavoidable act of sitting, lying, or sleeping at night while being involuntarily homeless. A closer analysis of *Robinson* and *Powell* instructs that ***the involuntariness of the act or condition the City criminalizes is the critical factor*** delineating a constitutionally cognizable status, and incidental conduct which is integral to and an unavoidable result of that

> status, from acts or conditions that can be criminalized consistent with the Eighth Amendment." (*Jones v. City of Los Angeles* (9th Cir. 2006) 444 F.3d 1118, 1132 *vacated,* (9th Cir. 2007) 505 F.3d 1006; emphasis added.)

Importantly, the Court concluded by stating that:

> "By our decision, we in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets of Los Angeles at any time and at any place within the City. All we hold is that, so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds, ***the City may not enforce section 41.18(d) at all times and places throughout the City*** against homeless individuals for involuntarily sitting, lying, and sleeping in public." (*Jones v. City of Los Angeles* (9th Cir. 2006) 444 F.3d 1118, 1138 *vacated,* (9th Cir. 2007) 505 F.3d 1006; emphasis added.)

Jones is clearly distinguishable from Santa Barbara's ordinance in that the City's ordinance applies only to a limited portion of one street during limited hours. Nonetheless, if the Court is persuaded that Santa Barbara's ordinance is aimed at homelessness, rather than late night street obstruction of State Street revelers and daytime obstruction of tourists and residents in the City's core commercial area, the City may face a legal challenge under the theory that extending the sit/lie ban until 2:00 a.m. inappropriately burdens those who have nowhere else to sleep. It is important to note that *Jones* is not the law, but only a potential insight into the Ninth Circuit's current thinking.

<u>Revising the Prohibition on Pedestrians Blocking Sidewalks to Include Congregated Groups of People</u>

Laws prohibiting congregations of people in public forums, such as sidewalks, squarely implicate First Amendment speech and assembly rights. The initial question presented is whether the City's existing circa-1966 regulation meets current constitutional scrutiny.

Santa Barbara Municipal Code section 9.98.010 provides as follows:

> 9.98.010 Unlawful.
>
> No person shall stand or sit in or upon any street, sidewalk or crosswalk in the City in any manner so as to hinder or obstruct the free passage of pedestrians thereon, or to annoy or molest such pedestrians. (Ord. 3162 §1, 1966.)

While simple enough on its face, this ordinance raises serious First Amendment considerations, particularly if it is revised to address congregations of people on sidewalks at any time or place, because it would then broadly prohibit even speech-related activities, such as peaceful protests or picketing, which might "annoy" pedestrians or "hinder" their free passage.

The United States Supreme Court has long held that:

> "Access to the 'streets, sidewalks, parks, and other similar public places . . . for the purpose of exercising (First Amendment rights) cannot constitutionally be denied broadly . . .' Free expression 'must not, in the guise of regulation, be abridged or denied.'" (*Grayned v. City of Rockford* (1972) 408 U.S. 104, 117.)

On the other hand, focused restrictions on the time, place and manner of street (or sidewalk) protests can be upheld:

> "The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection. One would not be justified in ignoring the familiar red light because this was thought to be a means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. ***Governmental authorities have the duty and responsibility to keep their streets open and available for movement.*** A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations." (*Cox v. State of La.* (1965) 379 U.S. 536, 554-55; emphasis added.)

Santa Barbara's existing Chapter 9.98 may be too broad to meet constitutional requirements because, on its face, it would prohibit a large array of constitutionally protected speech activities, such as peaceful protest and picketing.

This conclusion raises the next question, namely, can SBMC Chapter 9.98 be amended to narrow its reach to fit within constitutional dimensions. We would advise amending the existing ordinance to read as follows:

> 9.98.010 Unlawful Street or Sidewalk Obstruction.
>
> No person shall stand, or sit, or congregate in or upon any street, sidewalk or crosswalk in the City ~~in any manner so as~~ with the intent to hinder or obstruct the free passage of pedestrians thereon, or to annoy or molest such pedestrians, or to block the entrance to a building, and refuse to disperse after having been ordered to do so by the police when the police reasonably believe an immediate threat to public safety is present.
>
> ~~9.98.020 Parade Viewing Excepted.~~
>
> ~~This chapter shall not apply to persons engaged in viewing a parade duly and regularly permitted by the City.~~

The proposed amendment adds an intent requirement and a requirement that the police order dispersal only in those situations where the sidewalk or street obstruction threatens public safety. This will allow the police to stop violent protests, which are not protected by the First Amendment, while still avoiding interference with constitutionally-protected speech activities on the streets and sidewalks. We also advise repealing SBMC section 9.98.020, which creates an exemption for persons viewing a parade. This exemption is unnecessary given the proposed public safety limitation on the ordinance, and may appear to be a difficult-to-defend content-based restriction.

With these amendments, we believe Chapter 9.98 may minimize First Amendment concerns while providing a useful tool to deal with persons who intentionally obstruct the sidewalks or streets, and who refuse to disperse when ordered to do so by the police in order to mitigate immediate threats to public safety.

Delegating the Library Director the Authority to Promulgate Regulations for the Use of the Libraries, Including the Central Library and its Outdoor Plaza

The City Council has the police power to regulate the use of public facilities including the libraries. This power may be delegated to the Library Director. The proposed ordinance (Exhibit 5A) grants the Library Director the authority to promulgate criminally enforceable regulations that would govern behavior at the City's library facilities.

CONCLUSION

We believe the accompanying ordinance revisions are responsive to the Ordinance Committee's requests. In closing, it is important to remember that the Council may generally enact reasonable time, place and manner restrictions upon constitutionally protected speech, provided that the regulations are content-

neutral, narrowly drawn, necessary to further a significant government interest, and allow for ample alternative channels for communication.

Content neutrality is critical:

> "The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." (*Ward v. Rock Against Racism,* 491 U.S. 781, 791 (1989).)

And, there must be "no evidence that the city adopted the ordinance because of a disagreement with the message . . . ." (*Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037, 1044 (9th Cir. 2002).)

ATTACHMENT(S):

1. Prohibition on Urinating or Defecating in Public
2. Prohibition on Use of Street Furniture For Display Of Goods For Sale Or Donation
3. Expanded Active Panhandling Safety Zones
4. Extended Sit/Lie Prohibition
5. Sidewalk Obstruction Due To Congregated Groups Of People
6. State Street 400-1200 Blocks
7. State Street 400 Block
8. State Street 500 Block
9. State Street 600 Block
10. State Street 700 Block
11. State Street 800 Block
12. State Street 900 Block
13. State Street 1000 Block
14. State Street 1100 Block
15. State Street 1200 Block

PREPARED BY: Ariel Pierre Calonne, City Attorney

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APPROVED BY: City Administrator's Office

Chapter 9.07 Urinating or Defecating in Public.

Section 9.07.010 Urinating or Defecating in Public Prohibited.

No person shall defecate or urinate in public or upon any street, sidewalk, or other public place.

UNCODIFIED FINDINGS:

The City Council finds that these regulations are necessary to maintain the aesthetic attractiveness of Santa Barbara which depends heavily on its tourism-based economy for its financial vitality. These regulations are also necessary in order to promote public safety and the orderly movement of pedestrians, particularly in the crowded downtown core, where on-street or on-sidewalk vending will present a substantial obstruction to pedestrian and vehicular traffic. Finally, these regulations are essential to protect the local merchant economy which would be undersold and threatened economically by competition from street vendors who do not pay rent or other overhead expenses.

9.48.010 Commercial Use of City Streets.

A. GENERALLY. It shall be unlawful for any person, whether acting as principal, agent, clerk, employee, or otherwise, to use any public street, public parking lot, <u>public street furniture,</u> or public sidewalk in the City for the purpose of selling, vending, <u>offering for donations,</u> offering for sale or soliciting or receiving orders for the sale of any goods, wares or merchandise.

B. SALE OF NEWSPAPERS. Notwithstanding subsection A hereof, nothing herein shall prohibit any person from selling or offering for sale newspapers, magazines and periodicals upon any of the public sidewalks of the City in the present customary and usual manner of selling and offering for sale of newspapers, magazines, and periodicals in the City.

C. EXEMPTION FOR SIDEWALK SALES, FARMERS' MARKETS, AND SIDEWALK CAFE TABLES. Notwithstanding subsection A hereof, an individual or an organization may, upon the issuance of a permit by the Director of Public Works in accordance with the requirements of this Chapter and the administrative regulations adopted pursuant hereto, use a public street or sidewalk in the City for the following limited purposes:

1. Sidewalk Sales. A retail business licensed to do business at a location within the City may conduct a sale of merchandise on a City sidewalk under the following conditions:

a. the sale occurs only on a public sidewalk immediately adjacent to the retail business; and

b. the retail business does not conduct such sidewalk sales for more than a total of ten (10) days for each calendar year provided, however, that those businesses within a two (2) block radius of a construction project which impacts pedestrian or vehicular access to the City block within which the business is located for a period exceeding fourteen (14) consecutive days may be allowed up to twenty (20) days for sidewalk sales during the year in which the construction project is undertaken.

2. Farmers' Markets. An individual or an organization may use a public street or City parking lot for the purpose of conducting a Certified Farmers' Market [as defined and provided for in Title 3, Chapter 3 of the California Code of Regulations] under the following conditions:

a. the merchandise offered for sale at the Farmers' Market is allowed to be sold at a Certified Farmers' Market; and

b. the use of the street or public parking lot is authorized by and pursuant to a written license agreement between the City and the Market sponsor, which license agreement limits the Market to a specified day or days of the week and to certain limited hours; and,

c. the vendors of merchandise at the Farmers' Market are authorized to conduct such sales by the organization sponsoring the Market and entering into the license agreement with the City.

3. Limited Nonprofit Sidewalk Sales. In connection and concurrent with a Parade or Event (as permitted and defined in Municipal Code Section 9.12.020), which Parade or Event is sponsored by a nonprofit entity (as evidenced by tax-exempt status under state and federal tax laws), a public sidewalk may be used for the limited merchandising of items or services under the following conditions:

a. the sidewalk sales may occur for a period not to exceed five (5) days in any calendar year, and the sales must be concurrent with the associated Parade or Event; and,

b. the location of any booth or table used by a sidewalk vendor under this subsection shall be at a specific location approved in advance by the City; and,

c. the net proceeds received by the nonprofit corporation from such sales are to be devoted exclusively for the benefit of the sponsoring nonprofit organization(s); and,

d. the persons conducting such sales are authorized in writing to do so by the nonprofit organization sponsoring the event; and,

e. for the purposes of this subsection, the word "concurrent" shall be defined as occurring within the same calendar week (Sunday through Saturday).

4. Sidewalk Sales in Connection with a Reserved Park Event. A public street or sidewalk immediately adjacent to a City park facility may be used for the limited merchandising of items under the following conditions:

a. the person or organization sponsoring the merchandising is a nonprofit entity, and it has reserved the adjacent park facility for an event pursuant to the requirements of Santa Barbara Municipal Code Chapter 15.05 and 15.16; and, event; and

b. the sales occur only during the time the park is being used for the reserved event; and,

c. the persons conducting such sales are authorized in writing to do so by the nonprofit sponsoring the event and;

d. the net proceeds received by the nonprofit corporation from such sales are to be devoted exclusively for the benefit of the sponsoring nonprofit organization.

5. Sidewalk Cafe Tables Under Chapter 9.95. for the placement of sidewalk cafe tables in accordance with Santa Barbara Municipal Code Chapter 9.95.

D. SIDEWALK MERCHANDISING REGULATIONS AND PERMITS. The City Administrator, acting by and through the Director of Public Works, is hereby directed to prepare an appropriate administrative process (along with related administrative regulations) for the City's acceptance, review, and processing of applications for the issuance of sidewalk merchandising permits, as such permits are allowed by and consistent with the requirements of this Section.

9.50.010 Purpose.

In order to protect and promote the rights of the general public to be free from inappropriate conduct and from the ~~potential~~ intimidating physical confrontations sometimes associated with panhandling, the City Council finds that there is a need to adopt a City ordinance which imposes reasonable and specific time, place, and manner limitations on those forms of inappropriate and unlawful conduct which may be associated with ~~aggressive~~ abusive and active panhandling. At the same time, the Council seeks to properly and duly recognize, as well as ~~fully~~ protect to the ~~full~~ fullest extent possible, the First Amendment free speech rights of all concerned.

The Council ~~also~~ finds that balancing the need for public safety with the need to ~~duly~~ protect constitutional rights is especially critical in certain popular retail and visitor-serving areas of the City.~~,~~ ~~such as~~ Specifically, Cabrillo Boulevard, lower Milpas Street, and certain blocks of State Street (those within the City Central Business District) ~~since these areas~~ are popular public gathering spaces and are often crowded with members of the public and visitors to the Santa Barbara area.~~,~~ ~~and since~~ Moreover, these areas provide only limited public amenities, such as public seating and outdoor dining areas, and members of the public should be free to use those areas without fear of coercive panhandling with its attendant risk of fraud, intimidation and violence. The Council further finds that, because these areas of Santa Barbara often have thousands of visitors each day and because there is limited public seating and gathering areas available within these blocks of these streets, it is necessary and appropriate to provide

panhandling regulations which prevent some persons from monopolizing the use of a public bench or a public seating area, as well as nearby sidewalk areas, for active panhandling. There is therefore a necessity for the City Council to adopt ~~City~~ regulations which provide for the shared and reasonable use of these public facilities by all members of the public, especially the elderly and persons with special access needs.

The City Council further finds that panhandling near automated bank teller machines is particularly problematic because persons who use such machines may have large quantities of cash in their possession and generally feel vulnerable to attack or intimidation. Likewise, active panhandling on busses and other forms of public transportation threatens the person being solicited because they are in a confined space with no means of leaving the area in order to avoid being panhandled.

~~Finally, the~~ The City Council ~~believes~~ finds that these ~~City~~ panhandling regulations will not prevent those persons who wish to ~~properly~~ solicit alms or charitable donations from appropriately using public benches and public seating facilities within these areas of the City for temporary respite purposes, nor will these panhandling regulations impact the content of any protected forms of expressive statements made by a panhandler or otherwise improperly restrict anyone's First Amendment rights.

The City Council also finds that these panhandling regulations have been demonstrated, by careful mapping of the regulated areas which has been considered by Council, to leave open ample alternative locations within the City

for active and passive panhandling. Active panhandling on or near public benches and seating areas is prohibited only in the most crowded and intensely used areas of the City's commercial districts, and even with those areas many areas are open for active and passive panhandling.

9.50.030 Abusive Panhandling Prohibited; Specific Locations Where Active Panhandling is Restricted.

A. Abusive Panhandling Prohibited. Abusive Panhandling is unlawful and prohibited entirely within the city of Santa Barbara.

B. Active Panhandling Restricted. Active Panhandling is prohibited when the person being panhandled is in any of the following locations:

1. Waiting at a bus stop;

2. In a vehicle on a public street or alleyway;

3. In a City parking lot or parking structure without regard to whether the person is in a vehicle or not;

4. Within twenty-five feet of an outdoor dining area of a restaurant or other dining establishment serving food for immediate consumption;

5. Within ~~twenty-five~~ eighty feet of an automated bank teller machine; ~~or~~

6. Within twenty-five feet of ~~In~~ a queue of persons waiting to gain admission to a place of business or to a vehicle, or waiting to purchase an item or admission ticket~~.~~; or

7. On buses or other public transportation vehicles.

9.50.040 Use of Public Benches and Facilities on Certain Streets for Active Panhandling.

Active Panhandling is prohibited while seated on or otherwise using a public bench or seating area (including any landscape planter or other public street furniture which can be sat upon), <u>and within twenty-five feet of such benches and seating areas,</u> within the following areas of the City:

1. State Street. On either side of State Street from the 400 block to the 1200 block; or

2. Milpas Street. Either side of Milpas Street from the 00 block South to the 200 block North; or

3. Cabrillo Boulevard. Cabrillo Boulevard between Castillo Street and Milpas Street.

9.97.010 Sitting or Lying on Public Sidewalks in Certain Downtown Areas of State Street.

A. Prohibition. No person shall sit or lie down upon a public sidewalk or public paseo, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk or public paseo, during the hours between 7:00 a.m. and ~~9:00 p.m.~~ 2:00 a.m. of the following day along the first thirteen (13) blocks of State Street from Cabrillo Boulevard to and including the 1300 block of State Street.

For the purposes of this subsection (A), the terms "public sidewalk or public paseo" shall also include those public pedestrian sidewalks or public paseos which serve as access to and from State Street and the City parking facilities adjacent to State Street within the designated blocks, which shall also specifically include the area known as "Storke Placita,"~~.~~ as well as the railings, statues, sculptures, or planter areas within the designated blocks.

B. Exceptions. The prohibitions of Subsection A shall not apply to any person or persons:

1. who is sitting or lying down on a public sidewalk due to a medical emergency;

2. who, as the result of a disability, utilizes a wheelchair, walker, or similar device to move about the public sidewalk;

3. who is operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to a street use permit issued pursuant to Chapter 9.95 of this Title or who is participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event conducted

on public sidewalk pursuant to a street use or other applicable parade permit issued by the City in accordance with this Code.

Nothing in any of these exceptions shall be construed to permit any conduct which is otherwise prohibited by this Code.

C. Scope. Nothing herein shall be deemed to apply the requirements of subsection (A) to the following:

1. a person who is sitting on a chair~~, wall,~~ or bench located on the public sidewalk which is supplied by a public agency or by the abutting private property owner for such purposes or;

2. a person who is sitting on a public sidewalk within a bus stop zone while waiting for public transportation.

D. Prior Warning. No person shall be prosecuted for a violation of this Chapter unless the person engages in conduct prohibited by this Chapter after having been notified by a law enforcement officer that the conduct violates this Chapter.

9.98.010 Unlawful Street or Sidewalk Obstruction.

No person shall stand, or sit, or congregate in or upon any street, sidewalk or crosswalk in the City ~~in any manner so as~~ with the intent to hinder or obstruct the free passage of pedestrians thereon, or to annoy or molest such pedestrians, or to block the entrance to a building, and refuse to disperse after having been ordered to do so by the police when the police reasonably believe an immediate threat to public safety is present.

~~9.98.020 Parade Viewing Excepted.~~

~~This chapter shall not apply to persons engaged in viewing a parade duly and regularly permitted by the City.~~

2.28.030 Duties of Director.

The Library Director shall be responsible for the supervision and control of all personnel, materials, and equipment assigned to the Department and for the performance of the functions of the Department, subject to the supervision of the City Administrator. The Library Director shall have the authority to promulgate and post facility specific regulations. No person shall violate any such regulations. Any person found to be in violation of a facility specific regulation promulgated by the Library Director shall be subject to removal from the facility upon request of the Library Director or his or her designee. Such request, when made to law enforcement after refusal to comply, shall be a basis for forcible removal, citation or arrest.

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EXHIBIT 6

State Street
"400 Block -1200 Block"

Legend

ATM Locations	25ft buffer
	80ft buffer
Benches	25ft buffer
Movie Theaters	25ft buffer
Parking Lot Access	25ft buffer
Restaurants	25ft buffer

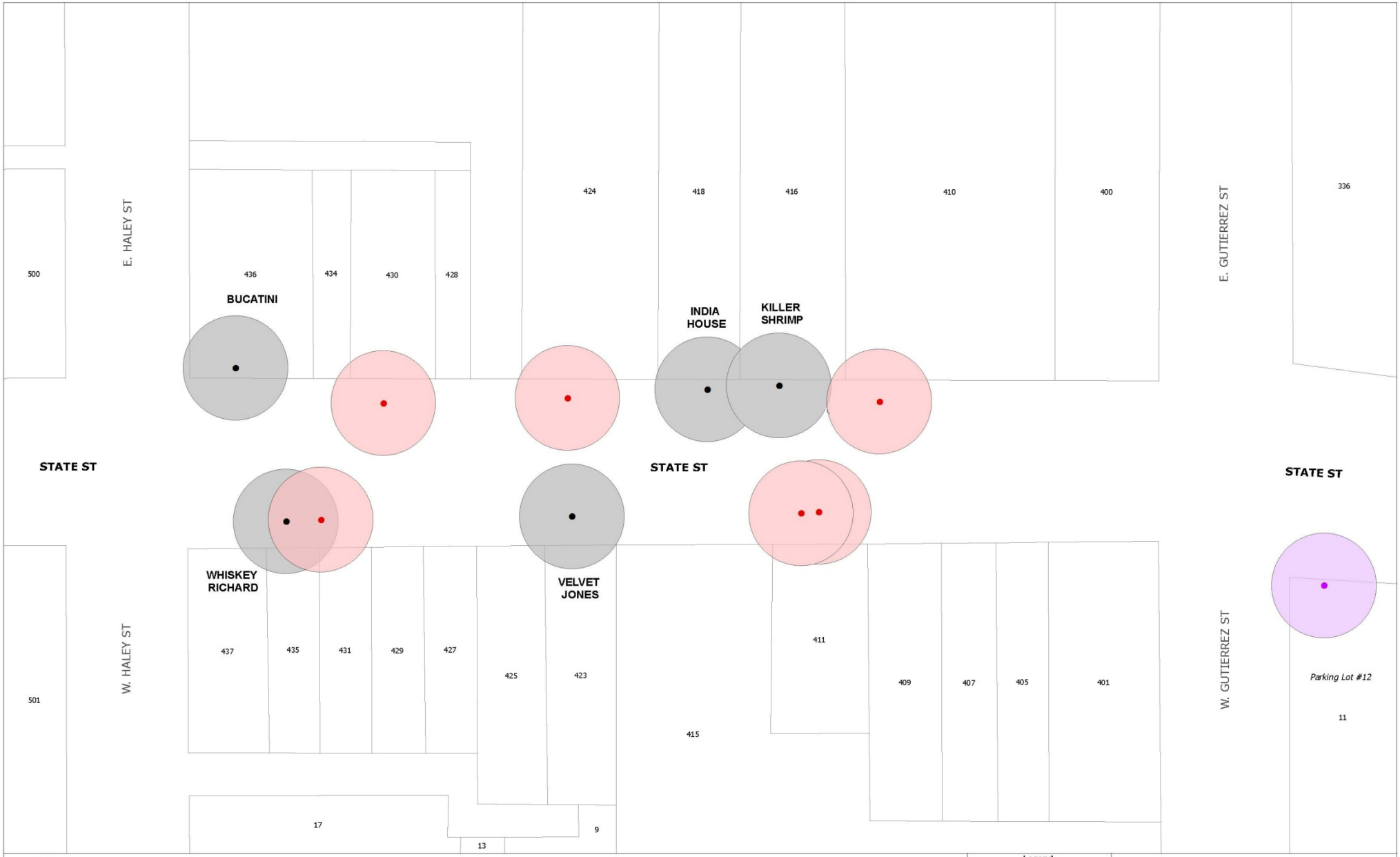

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EXHIBIT 7

STATE STREET: 400 BLOCK

September 16,2014

Legend

- Restaurants — 25ft buffer
- Benches — 25ft buffer
- Parking Lot Access — 25ft buffer

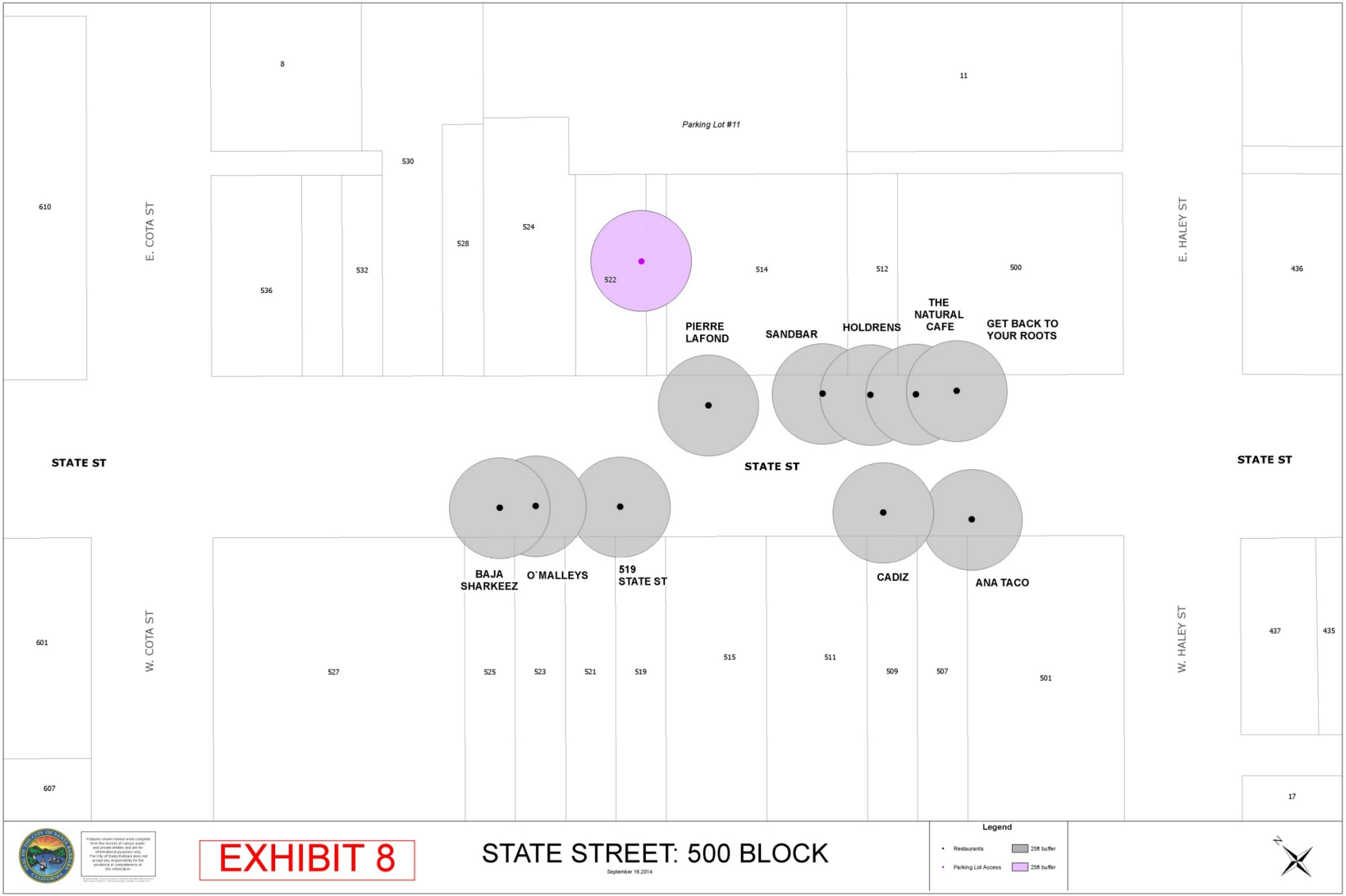

EXHIBIT 8

STATE STREET: 500 BLOCK

September 16,2014

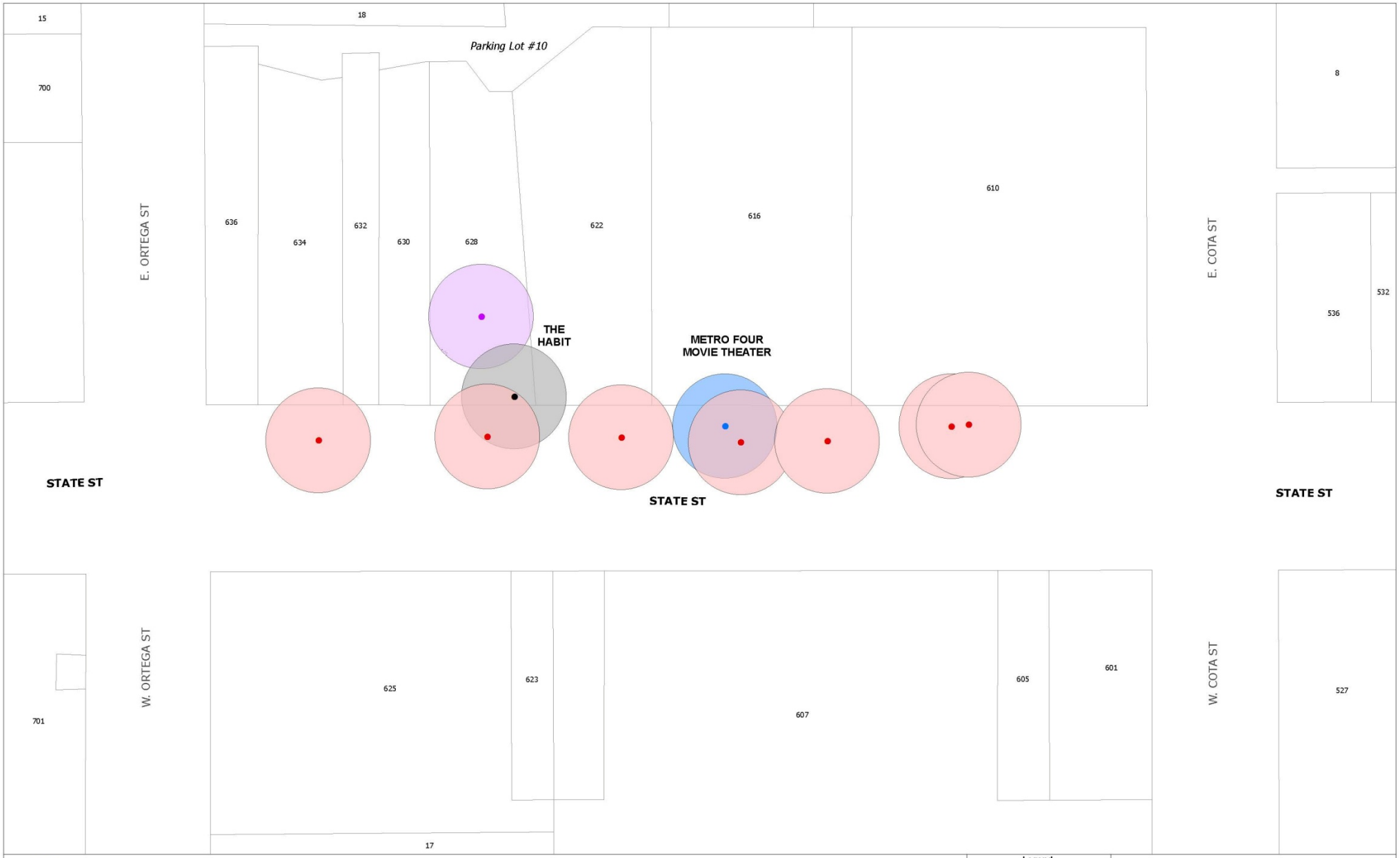

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EXHIBIT 9

STATE STREET: 600 BLOCK

September 17, 2014

Legend

Benches	25ft buffer
Movie Theater	25ft buffer
Parking Lot Access	25ft buffer
Restaurants	25ft buffer

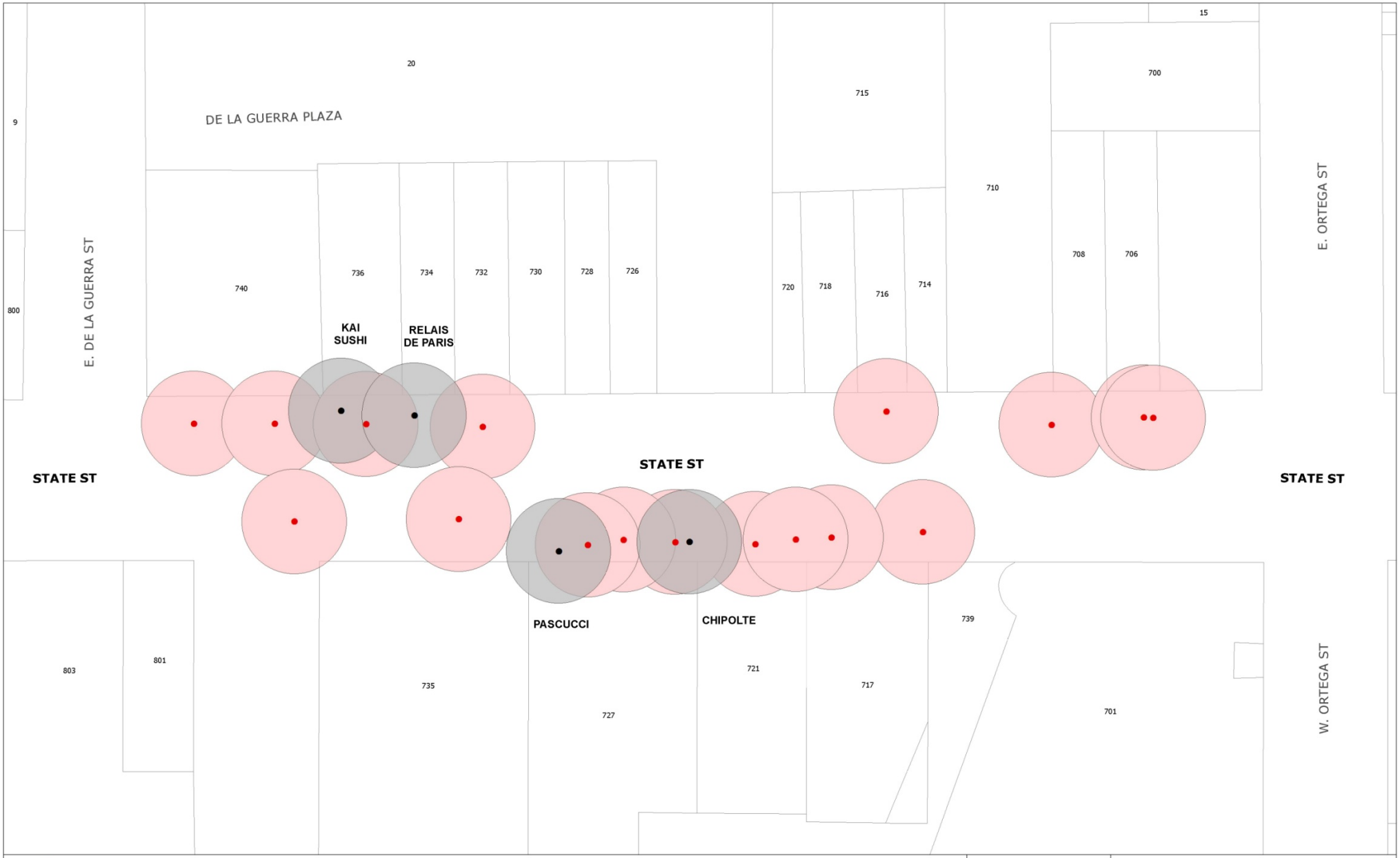

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EXHIBIT 10

STATE STREET: 700 BLOCK

September 17, 2014

Legend

- Benches
- Restaurants
- 25ft buffer
- 25ft buffer

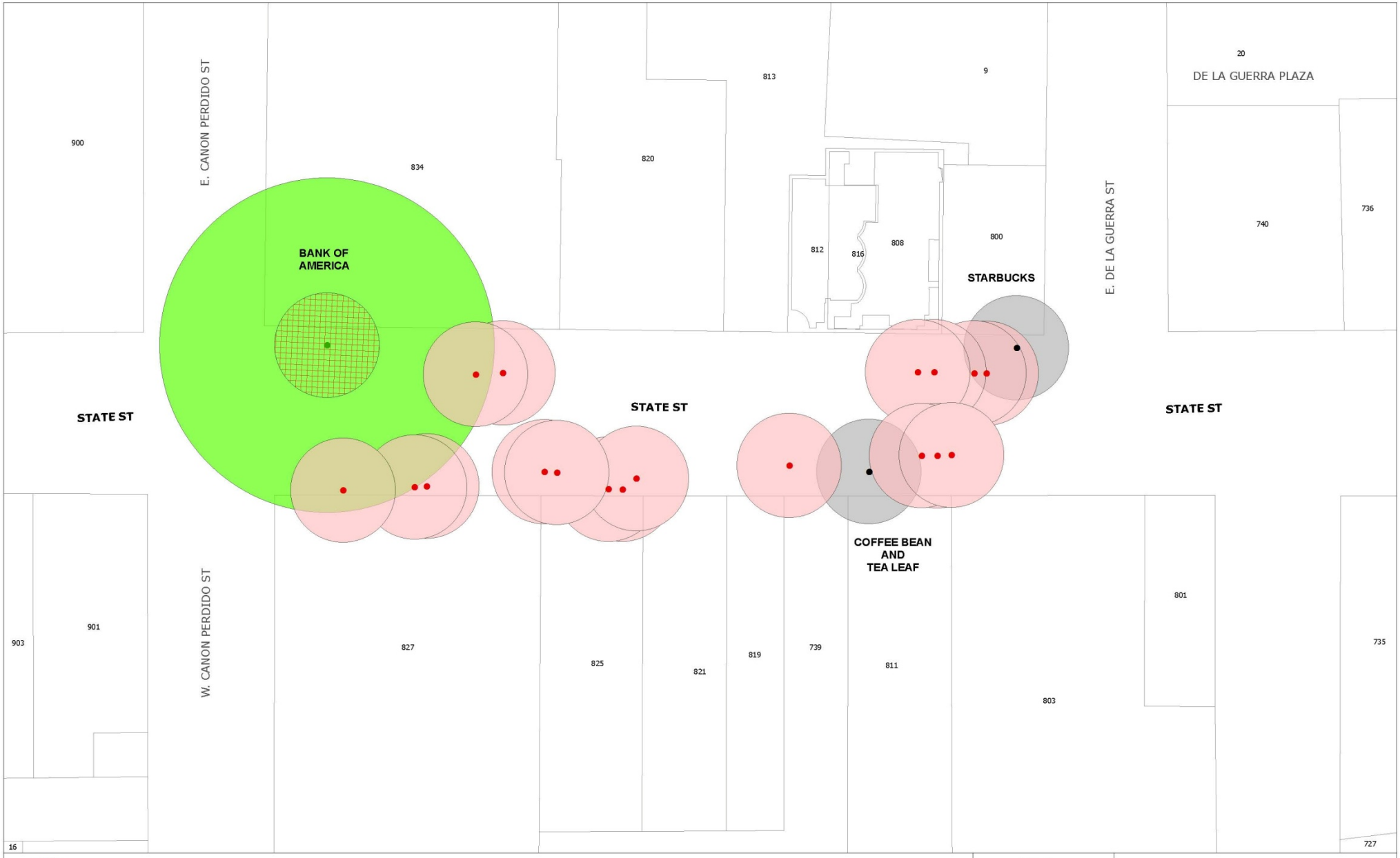

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EXHIBIT 11

STATE STREET: 800 BLOCK

September 17, 2014

Legend

- ATM Location — 25ft buffer
- 25ft buffer
- Benches — 25ft buffer
- Restaurants — 25ft buffer

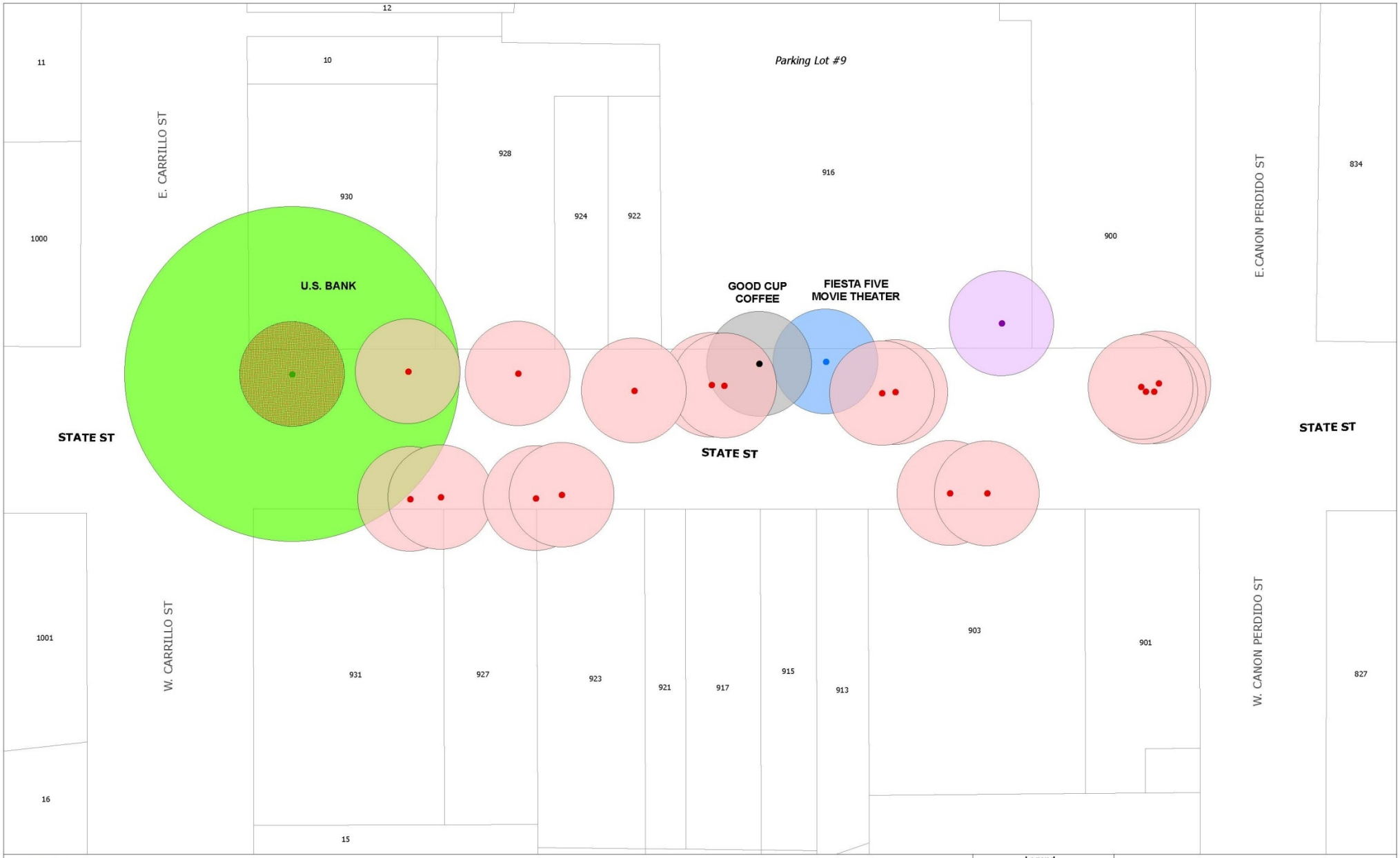

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EXHIBIT 12

STATE STREET: 900 BLOCK

September 17, 2014

Legend

- ATM Location — 25ft buffer, 80ft buffer
- Benches — 25ft buffer
- Movie Theater — 25ft buffer
- Parking Lot Access — 25ft buffer
- Restaurants — 25ft buffer

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EXHIBIT 13

STATE STREET: 1000 BLOCK

September 17, 2014

Legend

- ATM Location — 25ft buffer
- Benches — 80ft buffer
- Restaurants — 25ft buffer
- 25ft buffer

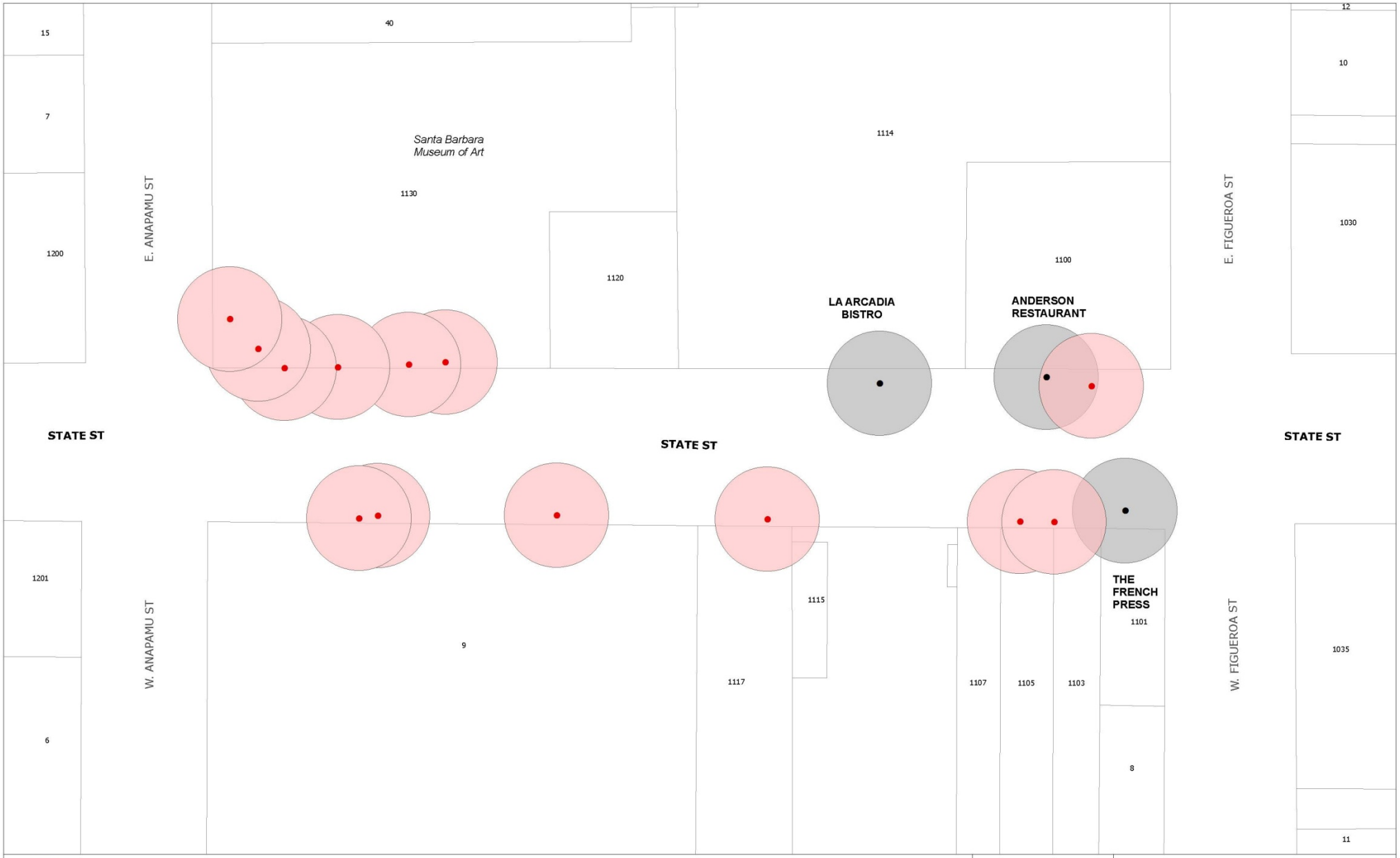

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EXHIBIT 14

STATE STREET: 1100 BLOCK

September 18, 2014

Legend

- Benches
- Restaurants
- 25ft buffer
- 25ft buffer

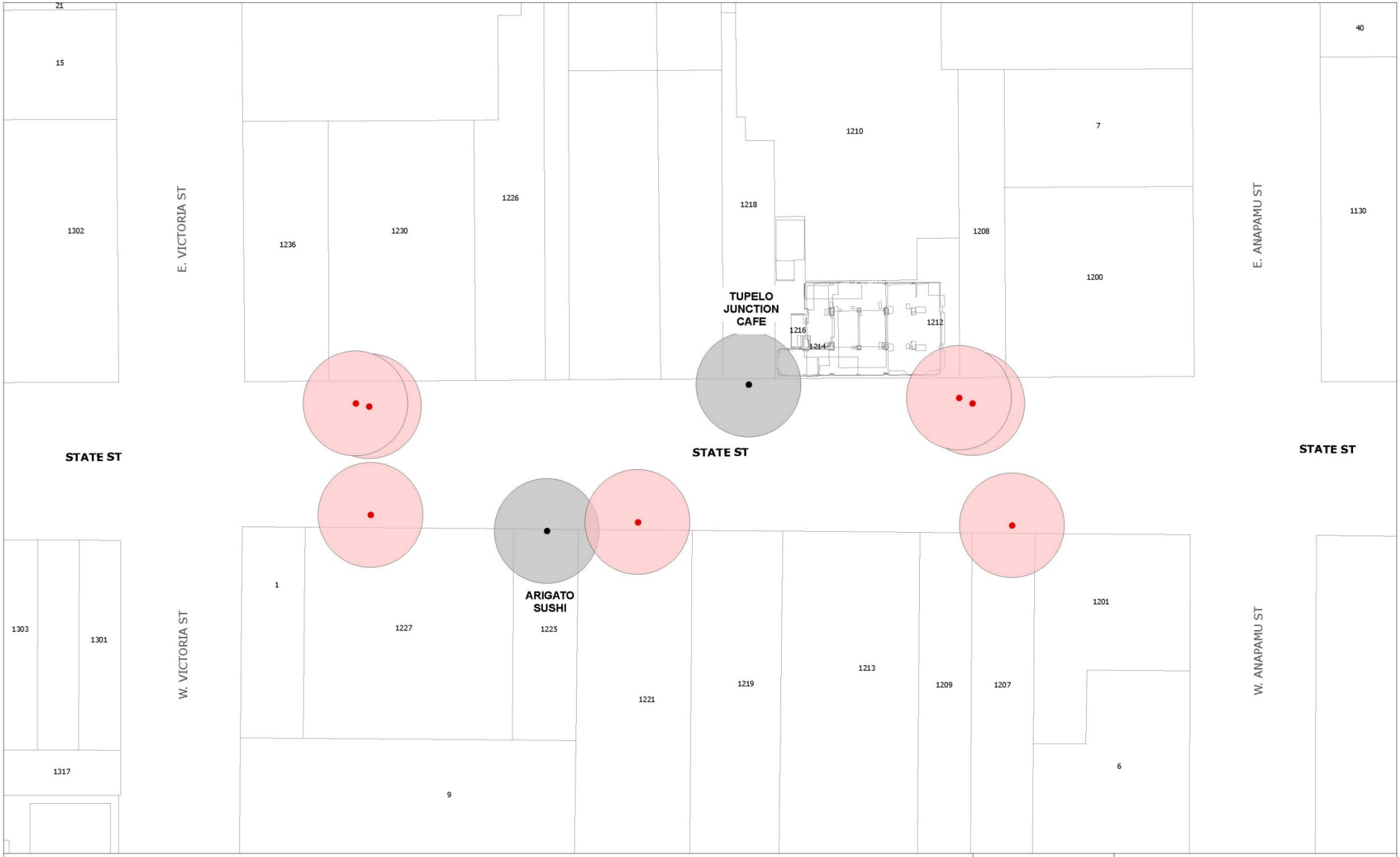

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EXHIBIT 15

STATE STREET: 1200 BLOCK

September 18, 2014

Legend

- Benches
- Restaurants
- 25ft buffer
- 25ft buffer

Sidewalk Behavior and Panhandling Ordinances

Ordinance Committee

October 28, 2014

Ariel Pierre Calonne
City Attorney
City of Santa Barbara

Overview of Proposals -- 1

- Prohibition against urinating or defecating in public (Exhibit 1)

- Prohibition on using public street furniture for the display of goods for sale or donation (Exhibit 2)

Overview of Proposals -- 2

- Adding expanded safety zones around sensitive locations where captive audiences feel threatened by active panhandling. These areas include:
  - Within 25 feet of an outdoor dining area
  - Within 80 feet of ATMs
  - Within 25 feet of admission lines, such as movie queues

Overview of Proposals -- 3

- Within 25 feet of public benches or seating areas
- On buses or other public transportation (Exhibit 3)

- Extending the existing “sit/lie” prohibition on State Street from 7:00 a.m. to 2:00 a.m. of the following day, rather than 9:00 p.m. (Exhibit 4)

Overview of Proposals -- 4

- Revising the prohibition on pedestrians blocking sidewalks to include congregated groups of people (Exhibit 5)
- Delegating the Library Director the authority to promulgate regulations for the use of the libraries, including the Central Library and its outdoor plaza (Exhibit 5A)

Legal Framework – Time, Place and Manner Restrictions

- "We use the standard governing time, place and manner restrictions. Such restrictions are valid if they (1) are content-neutral; (2) are narrowly tailored to serve a significant governmental interest; and (3) leave open ample alternative channels of communication."

Legal Framework – TPM Plus

- TPM Test Applies to:
  - Restricting the Display of Goods for Sale or Donation
  - Expanded Safety Zones
  - Extended “Sit/Lie” Hours (if “Expressive”)
    - And note potential 8th Amendment Cruel and Unusual Punishment Concerns
- Special Sidewalk Group Assembly Rules

Prohibition on Urinating or Defecating in Public

Section 9.07.010 Urinating or Defecating in Public Prohibited.

No person shall defecate or urinate in public or upon any street, sidewalk, or other public place.

While this behavior may be prosecuted under state law as a nuisance, this form of action constitutes a misdemeanor that falls to the District Attorney's Office for prosecution.

Prohibition on Using Street Furniture for Display of Goods for Sale or Donation

9.48.010 Commercial Use of City Streets.

A. GENERALLY. It shall be unlawful for any person, whether acting as principal, agent, clerk, employee, or otherwise, to use any public street, public parking lot, public street furniture, or public sidewalk in the City for the purpose of selling, vending, offering for donations, offering for sale or soliciting or receiving orders for the sale of any goods, wares or merchandise.

Expanded Panhandling Safety Zones -- 1

9.50.030 Abusive Panhandling Prohibited; Specific Locations Where Active Panhandling is Restricted.

A. Abusive Panhandling Prohibited. Abusive Panhandling is unlawful and prohibited entirely within the city of Santa Barbara.

B. Active Panhandling Restricted. Active Panhandling is prohibited when the person being panhandled is in any of the following locations:

Expanded Panhandling Safety Zones -- 2

1. Waiting at a bus stop;
2. In a vehicle on a public street or alleyway;
3. In a City parking lot or parking structure without regard to whether the person is in a vehicle or not;
4. Within <u>twenty-five feet of</u> an outdoor dining area of a restaurant or other dining establishment serving food for immediate consumption;

Expanded Panhandling Safety Zones -- 3

5. Within ~~twenty-five~~ eighty feet of an automated bank teller machine; ~~or~~

6. Within twenty-five feet of ~~In~~ a queue of persons waiting to gain admission to a place of business or to a vehicle, or waiting to purchase an item or admission ticket~~.~~; or

7. On buses or other public transportation vehicles.

Extended Sit/Lie Hours and Locations -- 1

A. Prohibition. No person shall sit or lie down upon a public sidewalk or public paseo, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk or public paseo, during the hours between 7:00 a.m. and ~~9:00 p.m.~~ 2:00 a.m. of the following day along the first thirteen (13) blocks of State Street from Cabrillo Boulevard to and including the 1300 block of State Street.

Extended Sit/Lie Hours and Locations -- 2

For the purposes of this subsection (A), the terms "public sidewalk or public paseo" shall also include those public pedestrian sidewalks or public paseos which serve as access to and from State Street and the City parking facilities adjacent to State Street within the designated blocks, which shall also specifically include the area known as "Storke Placita,". as well as the railings, statues, sculptures, or planter areas within the designated blocks.

Sidewalk Group Assembly Ordinance

9.98.010 Unlawful Street or Sidewalk Obstruction.

No person shall stand, or sit, or congregate in or upon any street, sidewalk or crosswalk in the City ~~in any manner so as~~ with the intent to hinder or obstruct the free passage of pedestrians thereon, or to annoy or molest such pedestrians, or to block the entrance to a building, and refuse to disperse after having been ordered to do so by the police when the police reasonably believe an immediate threat to public safety is present.

Library Director Regulatory Authority

2.28.030 Duties of Director.

. . . . The Library Director shall have the authority to promulgate and post facility specific regulations. No person shall violate any such regulations. Any person found to be in violation of a facility specific regulation promulgated by the Library Director shall be subject to removal from the facility upon request of the Library Director or his or her designee. Such request, when made to law enforcement after refusal to comply, shall be a basis for forcible removal, citation or arrest.

Mapping Project

- Maps Address Availability of Alternative Locations for Panhandling

- GIS staff identified and mapped ATMs, public benches, theater queues, parking lot access ways (paseos for sit/lie), and outdoor restaurant dining areas

Legend
ATM Locations
25ft buffer
60ft buffer
Benches
25ft buffer
Movie Theaters
25ft buffer
Parking Lot Access
25ft buffer
Restaurants
25ft buffer

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EXHIBIT 6

State Street
"400 Block -1200 Block"

Legend

- ATM Locations — 25ft buffer, 80ft buffer
- Benches — 25ft buffer
- Movie Theaters — 25ft buffer
- Parking Lot Access — 25ft buffer
- Restaurants — 25ft buffer

N

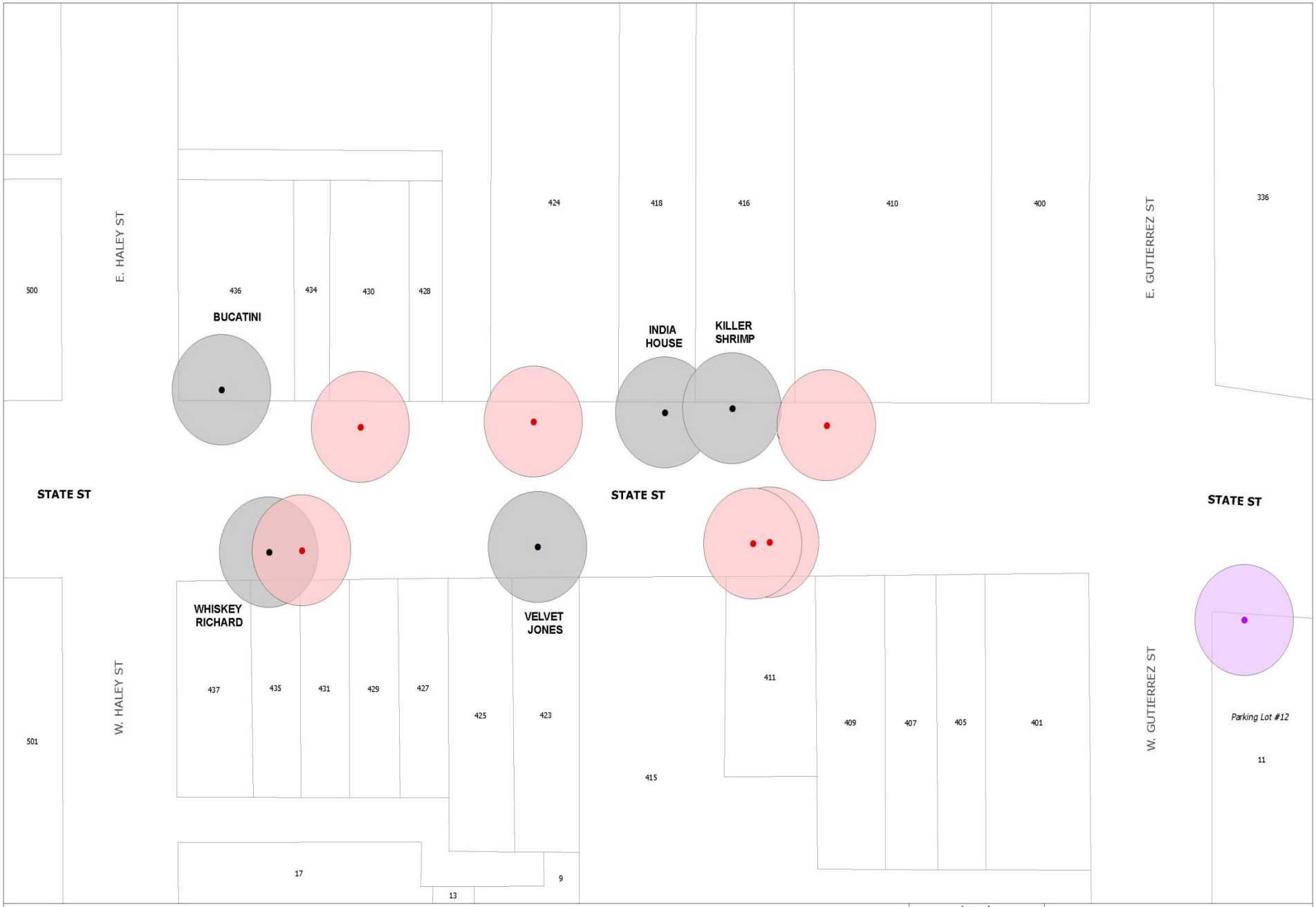

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EXHIBIT 7

STATE STREET: 400 BLOCK

September 16,2014

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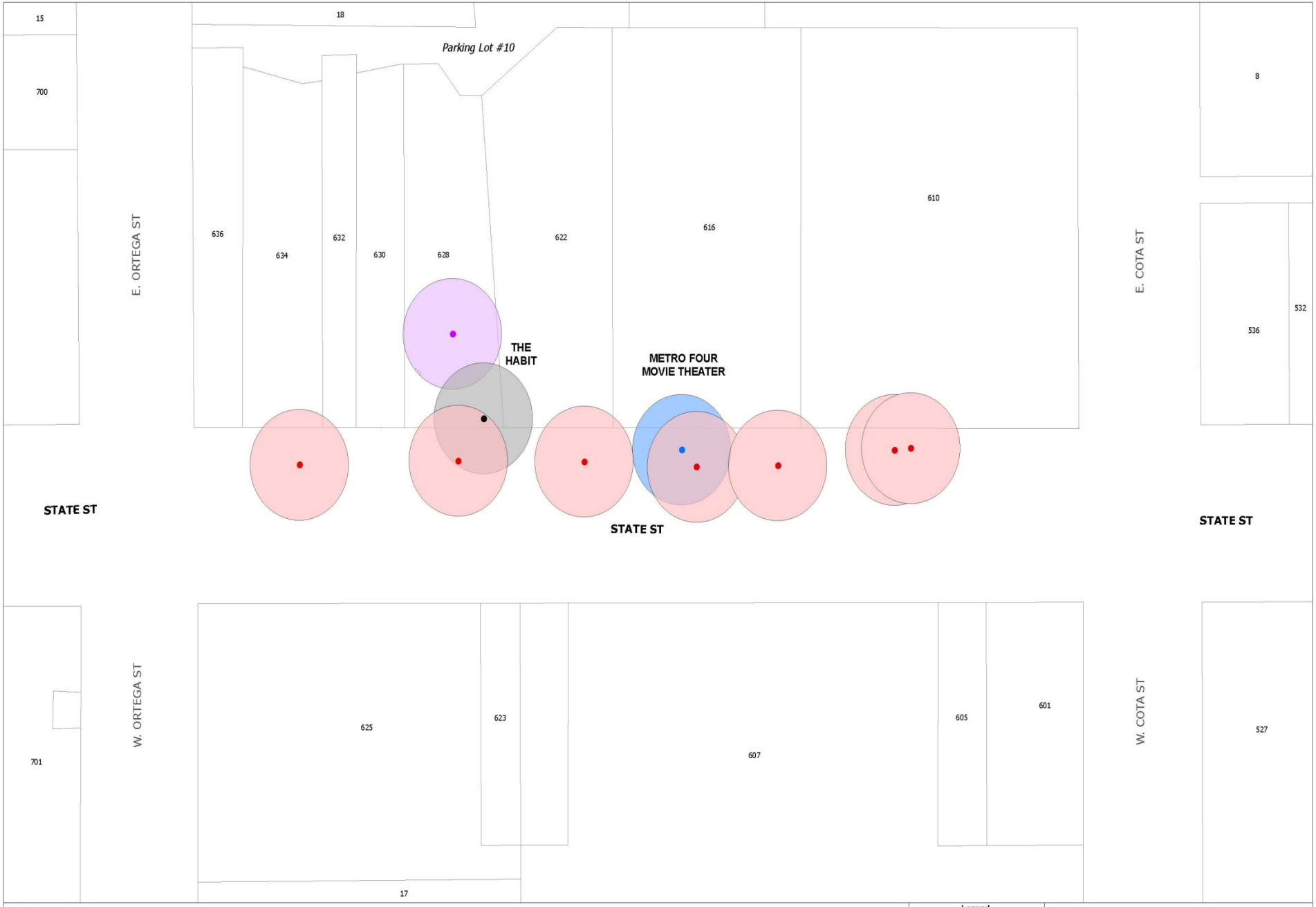
EXHIBIT 8

STATE STREET: 500 BLOCK

September 16,2014

Legend

- Restaurants
- Parking Lot Access
- 25ft buffer
- 25ft buffer



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Coordinate Reference System: NAD 83 / California zone 5 (ftUS) Datum: North American Datum of 1983 Units: US survey feet

EXHIBIT 9

STATE STREET: 600 BLOCK

September 17, 2014

Legend

Benches	25ft buffer
Movie Theater	25ft buffer
Parking Lot Access	25ft buffer
Restaurants	25ft buffer

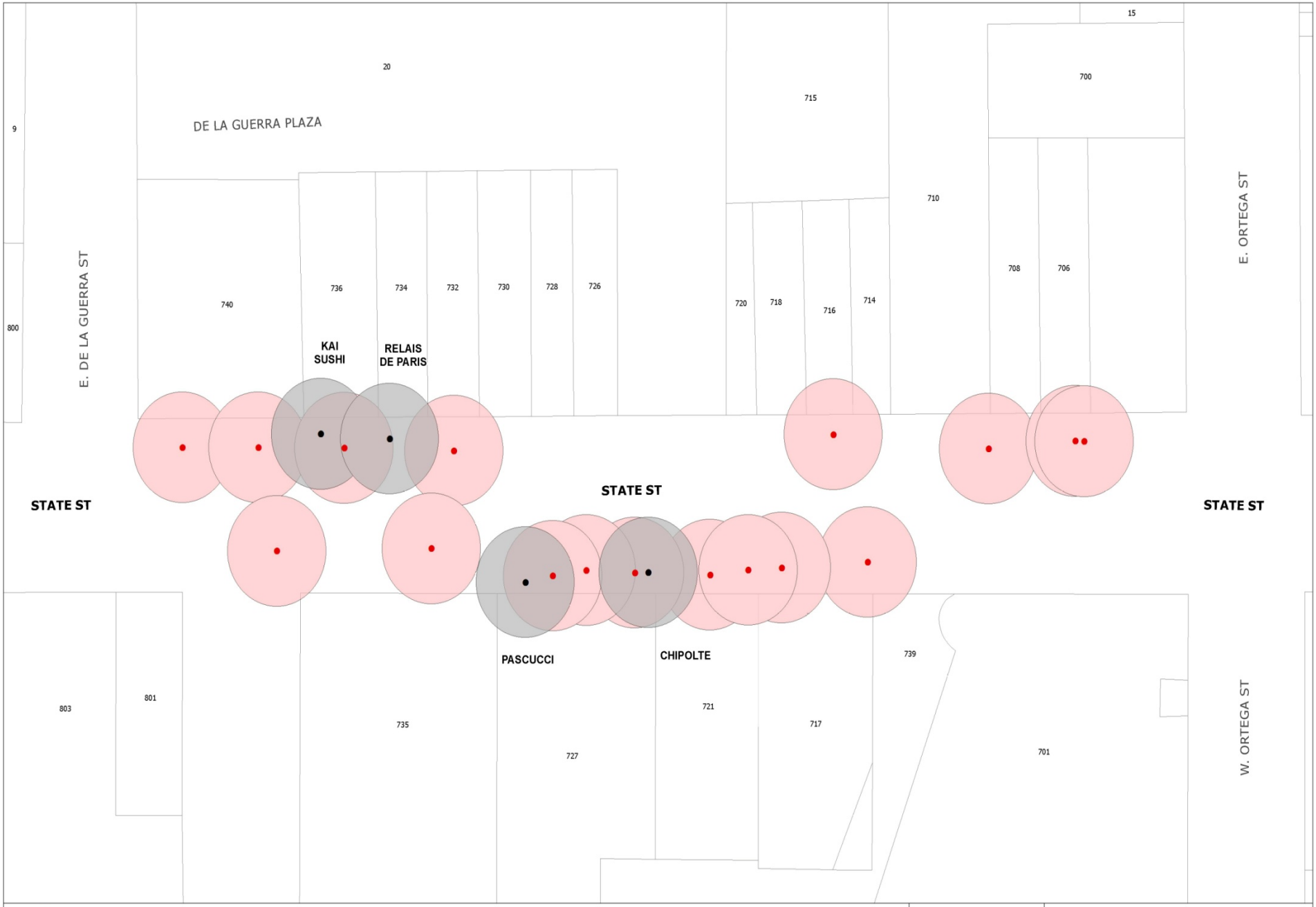

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EXHIBIT 10

STATE STREET: 700 BLOCK

September 17, 2014

Legend

- Benches
- Restaurants
- 25ft buffer
- 25ft buffer

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EXHIBIT 11

STATE STREET: 800 BLOCK

September 17, 2014

Legend

- ATM Location — 25ft buffer
- 25ft buffer
- Benches — 25ft buffer
- Restaurants — 25ft buffer

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EXHIBIT 12

STATE STREET: 900 BLOCK

September 17, 2014

Legend

ATM Location	25ft buffer	
	80ft buffer	
Benches	25ft buffer	
Movie Theater	25ft buffer	
Parking Lot Access	25ft buffer	
Restaurants	25ft buffer	

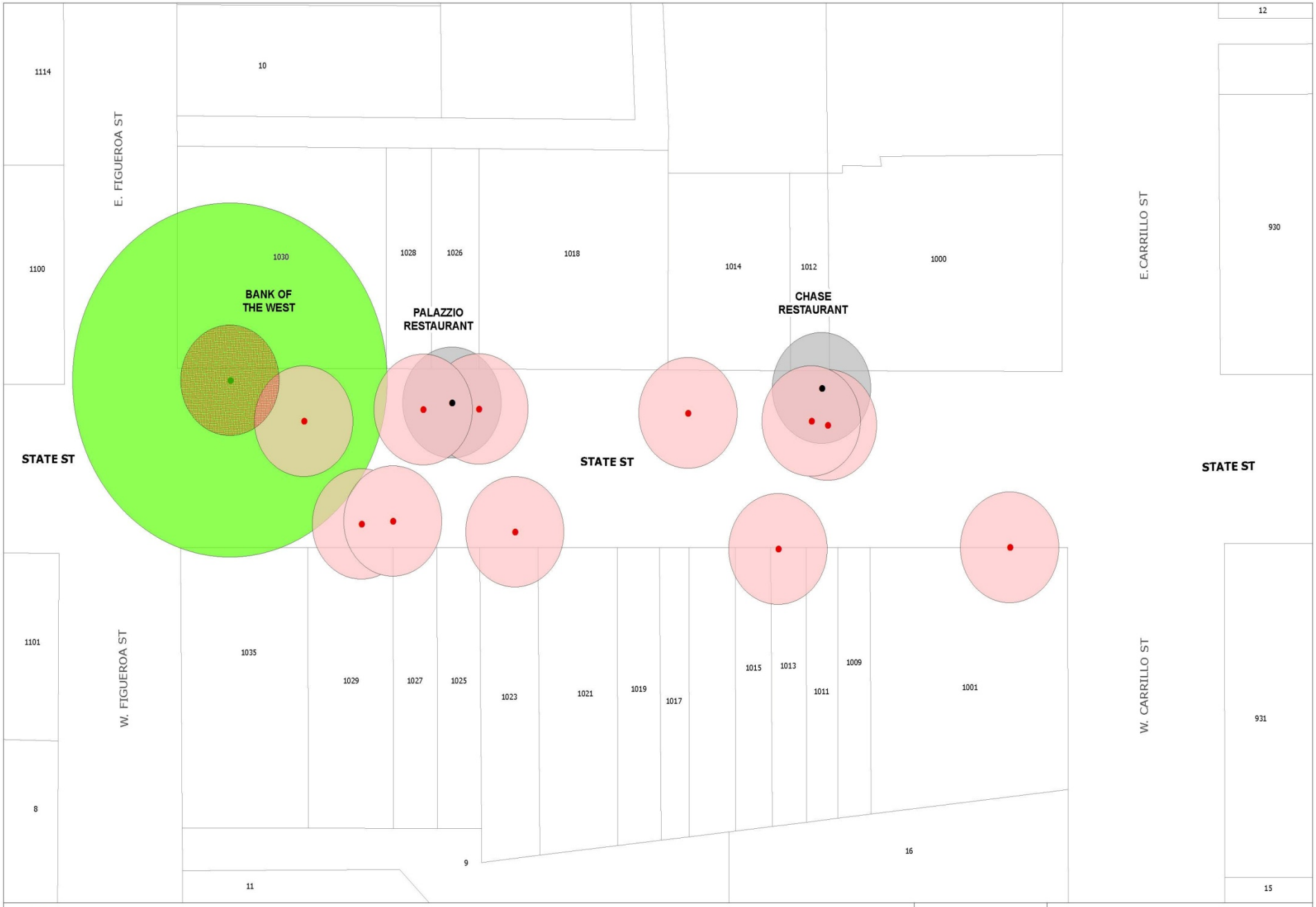

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EXHIBIT 13

STATE STREET: 1000 BLOCK

September 17, 2014

Legend

- ATM Location
- Benches
- Restaurants
- 25ft buffer
- 80ft buffer
- 25ft buffer
- 25ft buffer

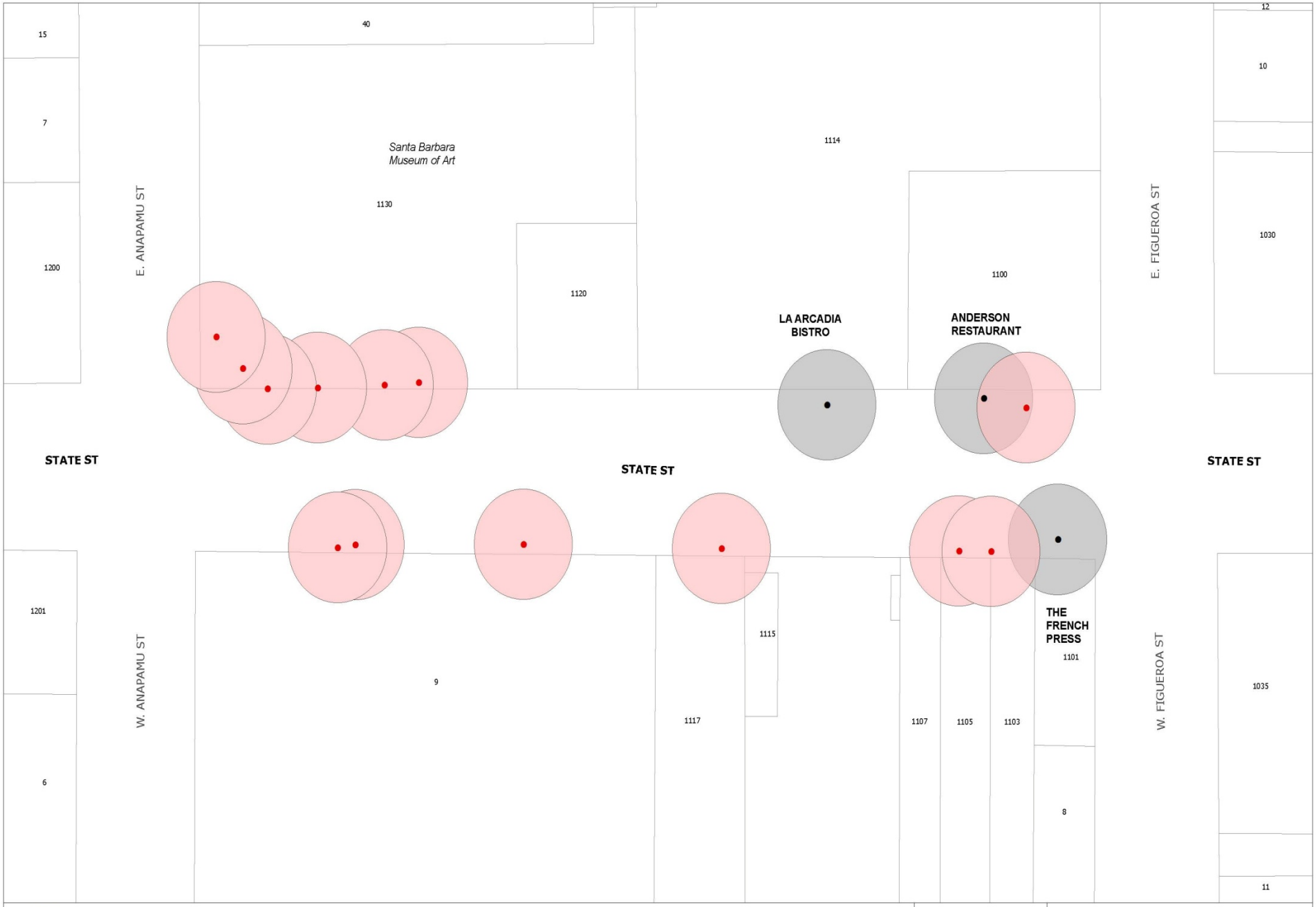

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EXHIBIT 14

STATE STREET: 1100 BLOCK

September 18, 2014

Legend

- Benches
- Restaurants
- 25ft buffer
- 25ft buffer

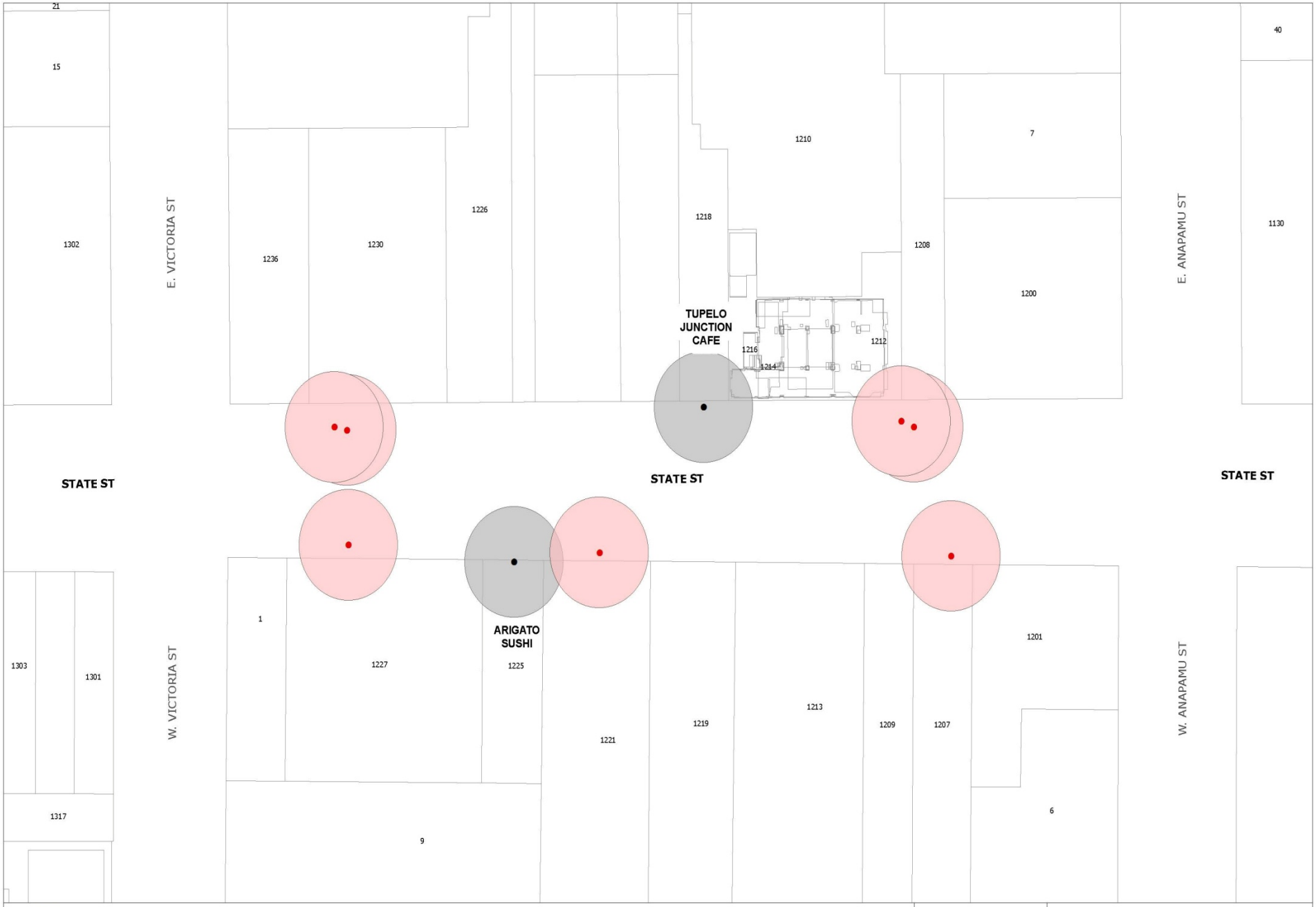

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EXHIBIT 15

STATE STREET: 1200 BLOCK

September 18, 2014

Legend

- Benches
- Restaurants
- 25ft buffer
- 25ft buffer