



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: William A. Gilchrist
Director, Planning and
Building Department

SUBJECT: Tribal Agreement for Dr. Kenneth
Anderson Senior Housing Project

DATE: November 22, 2021

City Administrator Approval 

Date: Dec 8, 2021

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Negotiate And Execute A Tribal Cultural Resources Treatment and Monitoring Agreement Pursuant To Senate Bill 35 (2017) With The Confederated Villages of Lisjan Regarding The Avoidance Of Any Adverse Effects On Tribal Cultural Resources As A Result Of The Dr. Kenneth Anderson Affordable Senior Housing Project Located At 1003 E. 15th Street.

EXECUTIVE SUMMARY

Adoption of the Resolution would authorize the City Administrator to enter into a Tribal Cultural Resources Treatment and Monitoring Agreement (Agreement) with the Confederated Villages of Lisjan (Tribe) and Eden Housing (Applicant) regarding the Dr. Kenneth Anderson Affordable Senior Housing Project (Project) at 1003 E. 15th Street. The Agreement would accomplish four goals:

1. Require a tribal monitor on-site during construction;
2. Provide assurance to the Tribe that any tribal cultural resource inadvertently found on the site during construction would be minimized in disturbance, avoided if feasible, and treated with respect;
3. Allow the Tribe and City staff to conclude the Tribal Scoping Consultation process pursuant to the Senate Bill (SB) 35 ministerial approval of infill affordable housing project process; and
4. Allow the Applicant to formally submit a planning application to the Bureau of Planning of the Planning & Building Department (PBD) for construction of the Project.

BACKGROUND / LEGISLATIVE HISTORY

SB 35, adopted in 2017, requires local jurisdictions to provide a ministerial (by right and without discretion) approval process for affordable, mixed-income, and supportive housing projects that meet certain eligibility criteria (**Attachment A**). The ministerial approval process removes the requirement for California Environmental Quality Act (CEQA) review, Conditional Use Permits,

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Regular Design Review or other discretionary entitlements granted by the City. No noticing is provided for the SB 35 process because none of these permits apply and the process is ministerial. The overall purpose of SB 35 is to expedite the approval and construction of affordable housing in the state.

SB 35 applies to cities that are not meeting their Regional Housing Need Allocation (RHNA) goal for construction of above moderate-income housing and/or housing for households below 80 percent area median income (AMI). To date, Oakland has exceeded its above-moderate income RHNA goals but has made insufficient progress toward its Lower Income RHNA (Very Low and Low income) and is, therefore, subject to SB 35 for proposed housing developments with at least 50 percent of the units affordable to Lower Income households.

With the passage of Assembly Bill 168 in 2020, which amended SB 35, before the City can accept a formal SB 35 application, the applicant and the City must engage in a statutorily required tribal scoping consultation regarding the proposed development. The consultation process proceeds under a strict 30-30-30 timeline. Specifically, within 30 calendar days of receiving the SB 35 pre-application, the City must provide notice to those California Native American Tribes that are “traditionally and culturally affiliated with the geographic area” of the proposed development. Tribes receiving the notice then have 30 calendar days to contact the City to accept the invitation to engage in consultation. If a tribe accepts, the City must initiate consultation with each requesting tribe within 30 calendar days. The tribal scoping consultation only concludes if 1) the Tribe and the City agree that no potential tribal cultural resources would be affected by the proposed development or 2) the Tribe and City agree to enter into an “enforceable agreement concerning methods, measures, and conditions to avoid or address potential impacts to tribal cultural resources that are or may be present.” If the City and the Tribe are unable to agree to terms for an enforceable agreement, or cannot agree as to whether there is a tribal cultural resource that could be affected by the proposed development, then the project is not eligible for the SB 35 streamlined approval process.

The Applicant, a non-profit affordable housing developer, is proposing to construct a five-story, mixed-use development with 68 affordable residential units, ground floor commercial space and 73 parking spaces at 1003 E. 15th Street behind Williams Chapel Baptist Church and across from Franklin Recreation Center. The project is 100 percent fully affordable for low-income persons.

The Applicant submitted a pre-application request on December 18, 2020 to the Bureau of Planning to initiate the Tribal Consultation process for the Project. Staff requested a list of the tribes known to be in the area on December 21, 2020 from the Native American Heritage Commission (NAHC). The NAHC provided the list of tribes on January 11, 2021; and staff sent email and hard copy letters to all tribes on the list that same day before the 30-day statutory deadline. One Tribe, the Confederated Villages of Lisjan, requested consultation with the City on February 3, 2021.

The City formally began the consultation process on February 19, 2021. The Tribe requested further research and archeological testing. The Tribe and the City agreed upon a scope of work, and the Applicant retained a consultant to perform the analysis. On August 17, 2021, the Applicant submitted the final report to the City, which concluded that “no further geotechnical analysis is needed for the Project and the probability of encountering pre-contact buried archaeological deposits is extremely remote.” The City discussed the conclusions with the Tribe,

which concurred that no further testing or analysis needed to be completed. However, the Tribe was still concerned about the discovery of tribal cultural resources. As such, the Tribe recommended a Tribal Cultural Resources Treatment and Monitoring Agreement be entered into for the Project.

ANALYSIS AND POLICY ALTERNATIVES

City staff recommends that the City enter into an Agreement with the Tribe for the Project. The Agreement serves to ensure that the City will impose a condition of approval on the Project that will require implementation of the protocols described in the Agreement, which include, but are not limited to, provisions requiring a tribal monitor be on-site during excavation, grading and land disturbance procedures if human remains or tribal cultural resources are found, and the required preferred treatment and protocols for those remains or resources. The provisions of the Agreement and its execution by the City support and advance the Citywide Priority of **Housing, Economic and Cultural Security**.

Attached is the draft Tribal Cultural Resources Treatment and Monitoring Agreement that was drafted by the Tribe and agreed to by the Applicant (**Attachment B**).

Similar Agreements for archeological or historic resources have been executed in the past, specifically for National Environmental Protection Act projects, such as the California Hotel, Hotel Menlo, Hotel Harrison and the 34th and San Pablo Affordable Housing Project. In each case, the Bureau of Planning requested that the City Council authorize the City Administrator to negotiate and execute the agreements without returning to City Council, and the City Council concurred.

Policy Alternative

While staff recommends that the City Council authorize the City Administrator to enter into the Agreement for the Project, another alternative is discussed in **Table 1** below:

Table 1: Policy Alternative

<i>Alternative # 1: Take No Action on the Agreement for the Dr. Kenneth Anderson Affordable Senior Housing Project</i>	This alternative would result in no action by the City Council regarding the Tribal Cultural Resources Treatment and Monitoring Agreement.
<i>Pros</i>	None: Staff have not identified any positive reasons for accepting this alternative.
<i>Cons/Reasons for rejecting</i>	If the City Council chooses not to authorize entering into the Tribal Cultural Resources Treatment and Monitoring Agreement, the City would be unable to complete the Tribal Scoping Consultation and the Applicant would be ineligible for the SB 35 process. This could

	<p>potentially increase costs to the Applicant of the Project related to the planning and CEQA process.</p> <p>Staff recommends rejecting this alternative because increasing affordable housing, especially near transit, is an overall goal of the City and the City's Housing Action Plan.</p>
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FISCAL IMPACT

There is no direct cost to the City related to the Tribal Scoping Consultation process and the attached Agreement as the Bureau of Planning receives a pre-application fee for staff's time.

There is also no direct cost associated with allowing the City Administrator to negotiate and execute an Agreement for this Project. An SB 35 project is still required to implement the City's Standard Conditions of Approval including those related to archeology and human remains. In addition, staff time and cost to review the draft reports required by the Agreement are covered through implementation of Project Conditions of Approval #11. This Condition notes that:

"The project applicant may be required to cover the full costs of independent third party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with Engineering Services and/or the Bureau of Building, if directed by the Director of Public Works, Building Official, Director of City Planning, Director of Transportation, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis."

PUBLIC OUTREACH / INTEREST

Staff has only conducted public outreach to the NAHC in order to obtain the list of tribes and begin the Tribal Scoping Consultation process. Pursuant to SB 35, Tribal Consultations are confidential, and any project eligible for SB 35 is processed ministerially without public notification.

COORDINATION

This agenda report and legislation were reviewed by the Office of the City Attorney, Budget Bureau, Bureau of Planning, the Tribe and Applicant.

SUSTAINABLE OPPORTUNITIES

Economic: The implementation of the Agreement would allow the Project to remain eligible for SB 35 and continue the streamlined review process ensuring revitalization of the property for affordable housing.

Environmental: The implementation of the Agreement would ensure that the Project would not result in an adverse tribal cultural resource impact.

Race and Equity: With implementation of the Agreement, the property would remain a SB 35 project and would be developed with 68 units of affordable housing for low-income persons. Streamlined review and construction of affordable housing is a Citywide goal.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Bureau of Planning is responsible for preparing the environmental analysis pursuant to CEQA. However, SB 35 eligible projects are exempt from CEQA review and so is the execution of this Agreement.

ACTION REQUESTED OF THE CITY COUNCIL

City Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Negotiate And Execute A Tribal Cultural Resources Treatment and Monitoring Agreement Pursuant To Senate Bill 35 (2017) With The Confederated Villages of Lisjan Regarding The Avoidance Of Any Adverse Effects On Tribal Cultural Resources As A Result Of The Dr. Kenneth Anderson Affordable Senior Housing Project Located At 1003 E. 15th Street.

For questions regarding this report, please contact Heather Klein, Planner IV, at (510) 238-3659 or hklein@oaklandca.gov.

Respectfully submitted,



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Attachments (2):

- A. SB 35 Eligibility Criteria
- B. Draft Tribal Cultural Resources Treatment and Monitoring Agreement