

  
CITY ATTORNEY'S OFFICE

**OAKLAND CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_ C.M.S.**

**A RESOLUTION DENYING THE APPEAL BY GEOFFREY PETE AND UPHOLD THE PLANNING COMMISSION'S ENVIRONMENTAL DETERMINATION AND APPROVAL OF TWO MAJOR CONDITIONAL USE PERMITS AND REGULAR DESIGN REVIEW FOR THE CONSTRUCTION OF A 40-STORY RESIDENTIAL TOWER WITH 381 DWELLING UNITS AND AN ABOVE GRADE PARKING GARAGE AT 1431 FRANKLIN STREET, OAKLAND, CA (PROJECT CASE NO. PLN20125)**

**WHEREAS**, Tidewater Capital (Applicant), filed an application with the City of Oakland (City) Bureau of Planning on August 17, 2020 to construct a 40-story residential development containing 381 dwelling units and a 4-leveled above grade parking structure on the existing short-term parking lot at 1431 Franklin Street, Oakland, CA (PLN20125) (the Project); and

**WHEREAS**, the Project is located within the Downtown Oakland Area of Primary Importance (API), a National-Register Landmarked Historic District, within the Black Arts Movement and Business District, and on a site identified in the City's 2023-2031 Housing Element as a housing inventory opportunity site; and

**WHEREAS**, on December 8, 2021, the Design Review Committee (DRC) of the Planning Commission asked for the redesign of the building to relate to the context of the buildings in the vicinity to ensure that the design would meet the required findings to meet the design standards of the context of the API, and the DRC instructed the applicant to use the feedback from the upcoming Landmarks Preservation Advisory Board (LPAB) meetings on the commercial office design to make revisions to the residential design before bringing a revised residential proposal back to the DRC for further consideration and comments; and

**WHEREAS**, on September 12, 2022, the LPAB affirmed that the revised design of the building demonstrated a well-composed design compatible with the existing API in terms of massing, siting, rhythm, composition, patterns, material, and detailing and unanimously recommended that the project proceed to the Planning Commission; and

**WHEREAS**, on September 28, 2022, the DRC agreed with LPAB's decision and unanimously recommended that the Project proceed to the Planning Commission; and

**WHEREAS**, on February 1, 2023, the applicant requested the Planning Commission continue the Project to the next Planning Commission meeting in an effort to discuss the Project with Geoffrey Pete; and

**WHEREAS**, on February 15, 2023, the Planning Commission took testimony and considered the Project at its duly noticed public meeting and at the conclusion of the public hearing deliberated on the matter and voted unanimously (+6,0) to adopt California Environmental Quality Act (CEQA) Findings related to the Project and approve (1) a Conditional Use Permit (CUP) for large scale development, (2) a CUP to allow tandem parking, and (3) Regular Design Review (DR) for the Project; and

**WHEREAS**, in approving the Project, the Planning Commission affirmed the determination under CEQA that the Project qualifies for CEQA streamlining under Public Resources Code Section 21083.3 and CEQA Guidelines 15183 (projects consistent with a community plan or zoning), and Public Resources Code Section 21094.5 and CEQA Guidelines 15183.3 (streamlining for infill projects), and that the Project qualifies for tiering off Program EIRs and EIRs prepared for redevelopment projects per CEQA Guidelines Section 15168 (program EIRs) and 15180 (redevelopment plans), and that the Project qualifies for an exemption as specified in CEQA Guidelines Section 15332 (infill development projects); and

**WHEREAS**, on February 24, 2023, an appeal (PLN20125-A01) was filed by Geoffrey Pete (Appellant) challenging the findings for the CUP and DR, challenging whether the Project complied with CEQA, and raising additional issues not directly related to the findings or CEQA; and

**WHEREAS**, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the appeal came before the City Council at a duly noticed public hearing; and

**WHEREAS**, the Appellant, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

**WHEREAS**, the public hearing on the appeal was closed by the City Council; now, therefore, be it

**RESOLVED:** That the City Council hereby independently finds and determines that the requirements of CEQA Guidelines Sections: 15183 – Projects Consistent with a Community Plan, General Plan, or Zoning; 15183.3 – Streamlining for Infill Projects; 15168 and 15180 – program EIRs and redevelopment plans, and 15332 – Urban Infill Development provides a separate and independent basis for CEQA compliance; and be it

**FURTHER RESOLVED:** That the City Council having heard, weighed all the evidence in the record presented on behalf of all parties, and being fully informed of the application, the Planning Commission's decision, and the appeal, finds that the Appellant has **not** shown, by reliance on evidence already contained in the record before the City Planning Commission, that the Planning Commission's decision on February 15, 2023 was made in error, that there was an abuse of discretion by the Planning Commission, or that the Planning Commission's decision was not supported by substantial evidence in the record, based on the February 15, 2023 Staff

Report to the Planning Commission and the accompanying City Council Agenda Report hereby incorporated by reference as if fully set forth herein; and be it

**FURTHER RESOLVED:** That, accordingly, the appeal PLN20125-A01 is denied, the Planning Commission's CEQA determination and approval of two CUPs, and regular DR findings are upheld, based upon the substantial evidence provided in the record in the February 15, 2023 Staff Report to the City's Planning Commission, the accompanying City Council Agenda Report, and the CEQA Analysis prepared for the Project, each of which is hereby separately and independently adopted by the City Council in full; and be it

**FURTHER RESOLVED:** That, in support of the Planning Commission's decision to approve the Project, the City Council affirms and adopts the February 15, 2023 Staff Report to the City's Planning Commission (including without limitation the supplemental reports thereto as well as discussion, findings, conclusions and conditions of approval each of which is hereby separately and independently adopted by this Council in full), as well as the accompanying City Council Agenda Report, (including without limitation the discussion, findings, conclusions and conditions of approval each of which is hereby separately and independently adopted by this Council in full), and the Project CEQA Analysis (including without limitation all exhibits, attachments, and errata thereto) except where otherwise expressly stated in this Resolution; and be it

**FURTHER RESOLVED:** That, the City Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Exemption (NOE) and Notice of Determination (NOD) with the appropriate agencies; and be it

**FURTHER RESOLVED:** That, the record before the Council relating to this Application and appeal includes, without limitation, the following:

1. The application, including all accompanying maps and papers;
2. All plans submitted by the Applicant and their representatives;
3. The notice of appeal in all accompanying statements and materials;
4. All final staff reports, final decision letters, and other final documentation and information produced by or on behalf of the City, including without limitation and all related/supporting final materials, and all final notices relating to the application and attendant hearing transcripts and videos;
5. All oral and/or written evidence received by the City's Planning Commission and City Council during the public hearings on the appeal; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal; and
6. All matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan; (b) Oakland Municipal Code; (c) Oakland Planning Code; (d) other applicable City policies and

regulations; and, (e) all applicable state and federal laws, rules and regulations;  
and be it

**FURTHER RESOLVED:** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Department of Planning and Building, Bureau of Planning, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> floor, Suite 2114, Oakland, CA; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> floor, Oakland, CA; and be it

**FURTHER RESOLVED:** That the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND  
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California