



AGENDA REPORT


TO: Jestin D. Johnson
City Administrator

FROM: William A. Gilchrist
Director, Department of
Planning & Building

SUBJECT: Appeal of PLN20125 Residential
Project at 1431 Franklin Street

DATE: October 9, 2023

City Administrator Approval


Jestin Johnson (Nov 16, 2023 06:23 PST)

Date: Nov 16, 2023

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing, And Upon Conclusion, Adopt One Of The Following Three Options:

1) 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); Or

Provided The City Council Can Make The Appropriate Findings, Either

2) A Motion To Direct Staff To Prepare A Resolution For Future City Council Consideration To Deny The Appeal With Additional Conditions; Or

3) A Motion To Direct The City Administrator Or Designee To Prepare A Resolution For Future City Council Consideration To Uphold The Appeal.

EXECUTIVE SUMMARY

On February 15, 2023, the Oakland Planning Commission approved (by a 6-0 vote) case number PLN20125, a proposal to construct a 40-story residential development containing 381 dwelling units, including 38 units that would be restricted to households with very low income, and a 5-leveled above grade parking structure on the existing short-term parking lot at 1431 Franklin Street (Project). The entitlements include Conditional Use Permits (CUPs) for the large-scale development and tandem parking and regular Design Review (DR). The proposal is located on a housing element inventory site identified in both the 2015-2023 and the 2023-2031 Oakland Housing Element, with the recently adopted Housing Element identifying the site as adequate to accommodate 26 units restricted to households with very low income and 315 units

City Council
December 5, 2023

total. The [February 15, 2023 Planning Commission staff report](#), which includes a link to the California Environmental Quality Act (CEQA) Analysis document for the Project, is included as **Attachment A**.

Following the Planning Commission's action on February 24, 2023, an appeal (PLN20125-A01) was filed by Geoffrey Pete (Appellant) challenging the findings for the CUPs DR, challenging whether the Project complied with CEQA, and additionally raising issues not related to the findings or CEQA. The Appellant is identified as the owner of the building at 410 14th Street (Appellant Property), which is southwesterly adjacent to the Project site and also the location of Geoffrey's Inner Circle which is operated by the Appellant. City of Oakland (City) documents often identify the Appellant Property under the address 1411 Franklin Street.

Staff recommends that the City Council deny the appeal, finding the CEQA analysis prepared was legally adequate, and that the Project complies with the CUP and DR findings, and uphold the Planning Commission's decision to approve the Project.

BACKGROUND / LEGISLATIVE HISTORY

History and Context

The Project site is currently a surface parking lot located in Downtown Oakland. The Project site is located within both the City-designated Downtown Historic District "Area of Primary Importance" (API) and the federally recognized Downtown Oakland National Register District. The City designation of an API is used to indicate historically or visually cohesive areas or property groups which appear eligible for the National Register of Historic Places. This API designation has been in place since at least 1984. The Downtown Oakland historic resource was placed on the National Register on July 1, 1998. These City and federally recognized districts are largely but not entirely coterminous and for purposes of this report are referred to jointly as the Downtown Historic District. Buildings of various heights can be found throughout the district and include office, retail, civic and institutional uses. Other common features include generous openings facing the street for commercial ground floors and spacious office lobbies. The Downtown Historic District is a historic resource for purposes of evaluation of impacts under CEQA.

The applicant TC II 1431 Franklin, LLC, a subsidiary of Tidewater Capital, (Applicant) has two proposals for the 1431 Franklin Street site: one entitlement application for a residential project; and a separate entitlement application for a commercial project. Both applications were submitted on August 17, 2020. The Planning Commission approved the residential entitlement proposal on February 15, 2023, and after a continuance approved the commercial entitlement proposal on May 17, 2023. This report focuses on the appeal for the residential entitlement. A separate appeal of the commercial project is discussed in the Agenda Report for that project (PLN20124).

Public Review to Date

Below is a brief timeline and summary of the public hearings for the Project:

- On December 8, 2021, the Design Review Committee (DRC) of the Planning Commission provided first review of the proposal. The DRC asked for the redesign of the

building to relate to the context of the buildings in the vicinity and were concerned that the design would not meet the required findings to meet the design standards of the context of the Downtown Historic District's API designation. 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.

- The Project went before the LPAB on September 12, 2022. At the meeting, LPAB affirmed that the revised design of the building demonstrated a well-composed design compatible with the Downtown Historic District's API designation in terms of massing, siting, rhythm, composition, patterns, material, and detailing and unanimously recommended that the Project proceed to the Planning Commission.
- On September 28, 2022, the DRC agreed with LPAB's decision and found the revision to the design better emphasized the brick veneer articulation of the building facades, the change to high transparency glass allowed better visibility into the activities within the building, and details of the punched windows and dimensions provided an improved connection with the surrounding buildings. The DRC unanimously recommended that the Project proceed to the Planning Commission.
- 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 the Appellant and allow Planning Staff additional time to revise the title of the Project to more clearly indicate that the Project's location is within the Black Arts Movement and Business District.
- On February 15, 2023, the Planning Commission unanimously approved the Project.

ANALYSIS AND POLICY ALTERNATIVES

The Appellant raises several issues identified and discussed below. These issues are grouped into the following categories:

1. Compliance with the required CUP and DR findings;
2. Compliance with CEQA and whether the analysis prepared was legally adequate; and
3. Other Issues.

The Appellant's full submitted arguments are included as **Attachment B** to this report. The headings below reference the page number on which the relevant argument can be found.

1. Conditional Use Permit (and Design Review (Findings

In order for the Project to be approved, the Planning Commission has to agree that the CUP and DR findings could be made. The Appellant challenges certain findings as well as procedural issues, which are discussed below.

A. Appellant claims that applying for dual permits was improper. (Page 6)

Appellant Argument: The Appellant argues that the Applicant's decision to apply for dual permits in residential and commercial categories is unprecedented and not the typical way the permitting process is administered.

Staff Response: It is not unprecedented for an applicant to apply for two development permits on one site and the Oakland Zoning Code does not limit the number of entitlements an applicant could apply for on a property. The Applicant submitted and paid for each application and separate hearings were held for both. Examples of projects which involve dual development entitlements within the last five years include:

- PLN17384: 2 Kaiser Plaza at 325-22nd Street
Approved on January 18, 2018 by the Planning Commission for an office building of two different heights.
- PLN440 (PUDF-01 & PUDF-02): Eastline Project at 2100 Telegraph Avenue
Approved on July 18, 2018 by the Planning Commission for a mixed use development and an all office space development.

When an applicant submits their Building Permit application, the plans and supporting documents must comply with the correlating development approval from the Planning Commission. The other development approval would remain dormant and would expire according to the terms of its Conditions of Approval.

B. *Appellant alleges the Project is not in conformance with the Conditional Use Permit criteria. (Pages 6-7)*

Appellant Argument: The Appellant argues the City cannot make the required CUP findings in Planning Code Sections 17.134.050 A, C, D, and E due to the impacts the development will have on the existing neighboring small businesses and within the Black Arts Movement and Business District (at times referred to as the BAMBD). DR findings are discussed further in Argument C. The appellant included the following specific arguments related to the CUP findings:

1. CUP Finding in Section 17.134.050(A): The Appellant states, "the impact of the development will continue to exacerbate conditions detrimental to the livelihood of existing small businesses by removing parking, increasing traffic, and impacts from extended construction periods."
2. CUP Finding in Section 17.134.050(C): The Appellant states, "the proposal is located within the Black Arts Movement and Business District (BAMBD). All development applications are required to be processed in accordance with zoning regulations that include notification of the Project within BAMBD and how the proposed Project will conform to the goals of the BAMBD. This proposal has not followed the prescribed procedures and has not demonstrated compliance with the BAMBD goals until February 1, 2023. The Project was first proposed in December 2021."
3. CUP Finding in Section 17.134.050(D): See Argument C.
4. CUP Finding in Section 17.134.050(E): The Appellant states, "the proposal fails wholeheartedly to demonstrate consideration of the goals of City Council Resolution 85958,

Oakland General Plan, and the Downtown Oakland Specific Plan. These planning documents prescribe in part that proposals in the BAMBBD, and quote; “preserve, protect, enhance, perpetuate, and prevent the unnecessary destruction or impairment of properties or physical features of special character or special historic, cultural, educational, architectural, or aesthetic interest or value.”

Staff Response: The Planning Commission granted two CUPs, one for large-scale development as specified in Section 17.58.030, and the other for tandem parking. The required CUP findings and conditions of approval are included in the February 15, 2023 Planning Commission staff report included as **Attachment A** to this report.

Standard Condition of Approval #13 requires the Applicant to provide a Construction Management Plan (CMP) to several departments for review and approval prior to the issuance of the first construction-related permit. The CMP will contain measures to minimize potential construction impacts - including construction phasing plan, truck routes, traffic control plan, and construction worker parking plan. Also, the CMP requires review and approval from multiple City departments, including the Bureau of Planning, Bureau of Building, and other relevant City departments such as the Fire Department, Department of Transportation, and the Public Works Department.

On January 7, 2016, the Oakland City Council adopted Resolution No, 85958 C.M.S., which designates the 14th Street corridor from Oak Street in Downtown Oakland to Frontage Road in West Oakland as the Black Arts Movement and Business District. The Black Arts Movement and Business District also includes the area on or within four blocks of 14th Street. The goal of this cultural district designation is to “highlight, celebrate, preserve and support the contributions of Oakland’s Black artists and business owners and the corridor as a place central historically and currently to Oakland’s black artists and black owned businesses.” The designation was intended to help support a critical mass of arts and entertainment establishments in the area, and to help promote and celebrate the significant current and historical Black leaders, arts, political movements, enterprises and culture in the area. More specifically, the designation was intended to help bring resources to the area through grants and philanthropic funding, and for the City Administrator to consider other tools and incentives to support the implementation of the cultural district, including streamlined permitting, funding, staffing, and new placemaking elements in the cultural district. At the time of the Resolution’s adoption, there was no prescriptive directive on land-use means or methods to achieve these outcomes, particularly as the Black Arts Movement and Business District would be Oakland’s first officially designated cultural district. Therefore, the Resolution also calls for the City’s to-be-adopted Downtown Specific Plan to include the Black Arts Movement and Business District, and to consider policies that animate the public space, rejuvenate the streetscape, improve local business viability, improve public safety, and bring diverse people together in celebration of Black arts and businesses in this cultural district. This work is currently underway within the Downtown Specific Plan.

On January 8, 2021, the Bureau of Planning issued a Zoning Code Bulletin listing which type of development applications within the Black Arts Movement and Business District should consider the goals of the cultural district and describing ways to achieve the goals; this bulletin was provided to the Applicant for reference. Because Resolution 85958 does not authorize changes to the Zoning Code, the Zoning Code Bulletin does not and cannot impose mandatory

obligations on an applicant and instead serves as a guidance document to encourage applicants to consider the goals of the Black Arts Movement and Business District. On February 6, 2023, the Applicant provided a consistency analysis to the goals of the Black Arts Movement and Business District; this analysis was shared with the Planning Commission at their February 15, 2023 meeting (see **Attachment D**).

C. Appellant alleges the Project is not in conformance with the Design Review criteria. (Pages 7-9)

Appellant Argument: The Appellant argues the City cannot make the required DR findings in Sections 17.136.050 A1, A2, A5, B1, and B2. The Appellant included the following specific arguments related to the DR findings:

1. DR Finding in Section 17.136.050(A)(1): The Appellant does not state how this finding cannot be made.
2. DR Finding in Section 17.136.050(A)(2): The Appellant states, “the proposed design creates negative shadows, eliminates parking, and will not preserve the existing neighborhood character of black-owned, small business and the cultural district.
3. DR Finding in Section 17.136.050(A)(5): The Appellant states, “the proposal fails to completely to demonstrate consideration of the goals of City Council Resolution 85958, Oakland General Plan, and the Downtown Oakland Specific Plan” but does not state how this finding cannot be made.”
4. DR Finding in Section 17.136.050(B)(1): The Appellant states, “despite LPAB and DRC recommendations, a reasonable conclusion can be reached that the proposal introduces a building of such a large scale that it does not result in a well-composed design due to its bulk and height.”
5. DR Finding in Section 17.136.050(B)(2): The Appellant states, “the proposal presented does not even mention the BAMBD until 2/1/23, over a year after its initial submission.”

Staff Response: The required DR findings are included in the February 15, 2023 Planning Commission staff report included as **Attachment A** to this report.

The discussion and review of the building’s design has been through one LPAB meeting, two DRC meetings, and one Planning Commission meeting. LPAB and DRC are only recommending bodies. Only Planning Commission is a decision-making body that can be challenged.

Members of these hearing bodies have a responsibility to determine whether a project requires additional changes/improvements to meet findings, the City’s goals and policies, etc., and be of benefit to the community. At each of these meetings, members of each hearing body deliberated and helped improve the design of the building, ensuring that it is compatible with the Downtown Historic District’s API designation.

The existing use of the site is an underutilized auto fee parking lot. Within the Downtown Historic District, buildings of various heights can be found throughout the district. In the immediate vicinity of the Project site are buildings of similar size and scale including the Atlas Apartments with 40 stories. The Project may eliminate approximately 77 parking spaces but there are other underutilized parking lots and street parking available within the vicinity. In addition, the Project will provide 167 parking spaces for its tenants to help reduce parking impacts to the surrounding area.

With the development of the Project providing residential tenants, it will help the economy of Downtown Oakland and meets several goals and policies of the General Plan. The Project site allows 212 base units and 45 efficiency units with up to a total of 381 units with the State Density Bonus when 15 percent (38 units) of the base units are designated affordable units to allow for a range of income levels and ownership opportunities for a variety of household types, needs, and sizes.

2. CEQA Claims

The Appellant has also included several arguments in his appeal related to the Project's compliance with CEQA. These arguments are discussed in this section.

The CEQA Checklist prepared for the Project concludes that the Project qualifies for exemptions from additional environmental review based on the Project being consistent with the development intensity and land use characteristics established by the City's General Plan. The CEQA Checklist found that any potential environmental impacts associated with the Project's development were adequately analyzed and covered by the analysis in applicable Program EIRs, including the 1998 Land Use and Transportation Element EIR and the 2011 Central District Urban Renewal Plan Amendments EIR.

The analysis included in the CEQA Checklist supports the determination that each of the applicable CEQA streamlining and/or tiering code sections listed below, separately and independently, provide a basis for CEQA compliance as follows: (1) the proposed Project qualifies for an exemption per Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning); (2) the proposed Project qualifies for streamlining provisions of CEQA under Public Resources Code Section 21094.5 and CEQA Guidelines Section 15183.3 (Streamlining for Infill Projects); (3) the proposed Project qualifies to tier off Program EIRs and EIRs prepared for redevelopment projects per CEQA Guidelines Section 15168 (Program EIRs) and Section 15180 (Redevelopment Projects) as none of the conditions requiring a supplemental or subsequent EIR, as specified in CEQA Guidelines Sections 15162 (Subsequent EIRs) and 15163 (Supplement to an EIR), are present; and (4) the proposed Project qualifies for streamlining provisions of CEQA as specified in CEQA Guidelines Section 15332 (Infill Development Projects).

The Project would be required to comply with the applicable mitigation measures identified in the Program EIRs as modified, and in some cases wholly replaced, to reflect the City's current Standard Conditions of Approvals (SCAs), as well as any other applicable City's SCAs. With implementation of the applicable SCAs, the Project would not result in a substantial increase in the severity of significant impacts that were previously identified in the Program EIRs or any

new significant impacts that were not previously identified in the Program EIRs. As a result, no further environmental documentation or analysis is required.

The Project's CEQA Checklist is available at <https://www.oaklandca.gov/resources/current-environmental-review-ceqa-eir-documents-2011-present>.

A. *Historic Resources*

With respect to historic resources, the CEQA Checklist provides a detailed discussion of existing historic resources at and near the site. The CEQA Checklist concludes that the Project would not cause a substantial adverse change in the significance of an historical resource, as defined under CEQA. A "substantial adverse change" is defined to include physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of the historical resource would be "materially impaired." The significance of a historical resource is materially impaired when a project demolishes or materially alters, in an adverse manner, those physical characteristics of the resource that convey its historical significance and that justify its inclusion on an historic resource list.

The Project itself, proposed on a surface parking lot, would not involve the demolition or physical alteration of any building that is a listed historic resource. The Project site, however, is located in and is part of the Downtown Historic District, both a National Register district and City API, which is a historic resource as defined under CEQA (CEQA Checklist, p. 83). For this reason, the CEQA Checklist analysis focuses on whether the construction of the proposed Project would physically alter the Downtown Historic District through the addition of a new building by changing the setting of adjacent and nearby contributors (CEQA Checklist, p. 102).

The CEQA Checklist clearly identifies both the Project site and the Appellant Property as located within the Downtown Historic District (CEQA Checklist, p. 89). The Downtown Historic District was first listed on the National Register in 1998 (CEQA Checklist, pp. 86-87. See National Register of Historic Preservation Form included with the Appeal Documents at pp. 43-165 ("NRHP Form")). The registration form lists the Project site as "the largest gap in the district," and neither a contributor nor a non-contributor to the Downtown Historic District's API or National Register designations (CEQA Checklist, p. 87; NRHP Form, p. 7). The Appellant Property (noted as the "Athenian Club") is identified in the NRHP Form as one of several buildings predating the large-scale development of Downtown, representing the setting in which the skyscrapers developed (See NRHP Form, p. 6). The NRHP Form and the CEQA Checklist identify the Appellant Property as a district contributor (CEQA Checklist, pp. 92-93. NRHP Form, p. 32). The CEQA Checklist notes that the Appellant Property is also on the Local Register based on its Oakland Cultural Heritage Survey rating of B+a1+ (CEQA Checklist, pp. 92).

The Downtown Historic District is centered at 14th Street and Broadway and includes several prominent downtown resources such as City Hall, Frank Ogawa Plaza, the Tribune Tower, the Cathedral Building, the Rotunda Building, and several buildings along Broadway (NRHP Form, p. 5). The NRHP Form identifies the Downtown Historic District as containing 43 contributing buildings and 13 noncontributing buildings. The Downtown Historic District meets two criteria for National Register listing: Criterion A (association with events that have made a significant contribution to the broad patterns of our history) and Criterion C (embodies the distinctive characteristics of a type, period, or method of construction) (NRHP Form, p. 3). Character-

defining features of the district include buildings with little to no front setbacks typically between three and fifteen stories, representative of the development of Downtown Oakland during the district's period of significance between 1900 and 1948 (CEQA Checklist, p. 91. NRHP Form, pp. 3, 5). The entirety of the block bounded by 14th Street, Broadway, 15th Street, and Franklin Street is located within the district.

Today, the Project site is underutilized as a surface parking lot. However, the site has not always served this purpose. Review of Sanborn Map Company fire insurance maps shows that the Ye Liberty Theatre (later called the Central Theatre) opened at the site in 1904 (CEQA Checklist, pp. 84-86). This theater occupied most of the parcel with a deep setback along Franklin Street. By 1950, the theater was expanded to occupy the entire parcel, with storefronts located along Franklin Street filling in the area of the site that was left open due to the theater's original setback. The theater was unfortunately demolished around 1960 (CEQA Checklist, pp. 86).

The CEQA Checklist identifies the Appellant Property as one of two buildings that are located immediately adjacent to the Project site and are contributors to the Downtown Historic District (CEQA Checklist, p. 92). There are two addresses associated with the Appellant Property: 410 14th Street and 1411 Franklin Street. The Appellant Property is indicated as a Local Register building based on its Oakland Cultural Heritage Survey rating of B+a1+. All properties with an A or B rating are considered to be on the Local Register. The CEQA Checklist identifies the Appellant Property as a CEQA Historical Resource, meaning that it would be considered a significant impact under CEQA if the development of the Project were to demolish or materially alter, in an adverse manner, those physical characteristics of the Appellant Property that convey its historic significance and justify its inclusion as an historic resource. However, the Project would not have such a material impact. The Appellant Property's character-defining east and south façades would not be impacted by the proposed development. The north façade would be obstructed by the new development, but the north façade consists of painted concrete with setback portions at the upper stories and various sizes and spacings of what appear to be original and non-original window openings. This northern façade was obscured by the prior development up until that theater and associated buildings were demolished in or about 1960 (See CEQA Checklist, pp. 93).

Based on this analysis, the CEQA Checklist concludes that the proposed Project would include new construction within a National Register and California Register designated historic district, a local API, and directly adjacent to individually significant or contributing historic resources (CEQA Checklist, p. 103). However, because the Project does not propose to physically alter individual historic resources or district contributors in a manner that would compromise their historic character-defining features the analysis focused on Secretary of Interior Rehabilitation Standards Nos. 9 and 10:

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

The CEQA Analysis notes that these standards are focused on the integrity of setting within the Downtown Historic District. (CEQA Checklist, pp. 106-107). With regards to architectural and façade characteristics, see CEQA Checklist p. 107. With regards to height and massing, see CEQA Checklist pp. 108-109. The analysis notes that the Project would most notably alter the character of the Downtown Historic District along Franklin Street: “The proposed fenestration, materiality, and podium massing would be compatible with the generally rectangular forms, masonry exterior materials, and fenestration patterns and types found at most properties of historic age in the vicinity.” While the Project would be much taller than the adjacent buildings, its height would not be out of character with the varied pattern of lower buildings interspersed with early skyscrapers and more modern towers that populate the district. (See CEQA Checklist, p. 111).

After publication of the CEQA Checklist for the Project, the City issued a brief [erratum document](#) correcting minor errors in the written analysis. Of particular relevance to this appeal, the erratum corrects Table V.K-6, Distance to Nearest Vibration-Sensitive Receptors. This table identified the Appellant Property as a Vibration-Sensitive Receptor, but previously mislabeled the Appellant Property as not being a historic building. This is inconsistent with the previous identification within the CEQA Analysis of the Appellant Property as a Local Register property.

The erratum additionally corrects discussion in the Noise Chapter of the CEQA Checklist, which similarly identified the Appellant Property as one with sensitivity to vibration damage, but incorrectly mislabeled the property as not historic.

These errors were likely generated due to incomplete information included in Attachment H to the CEQA Checklist, which listed a summary of cultural resources within a quarter mile radius of the Project site. The errata replaced Attachment H with a revised summary of cultural resources within a 0.25-mile radius.

The Appeal includes several claims of improper treatment of the Appellant Property’s historic status and/or incomplete analysis of impacts from construction. These claims are discussed below.

1. *Appellant states the City did not acknowledge building at 410 14th Street as a registered National Resource. (Page 4)*

Appellant Claim: “Although it was not acknowledged in form during the process, the proposed building if approved would be built directly next door to a registered National Resource, 410 14th Street.”

Staff Response: As discussed above, the CEQA Checklist acknowledges the Appellant Property at 410 14th Street to be a contributor to the Downtown Historic District, a National-Register-listed Area of Primary Importance. (CEQA Checklist, p. 92).

2. *Appellant states that the integrity of the Downtown Historic District is threatened by LPAB's recommendation for approval of the Project. (Page 9)*

Appellant Claim: The Appellant states, “[LPAB’s] recommendation for approval also threatens the integrity of the Downtown Oakland Historic District.”

Staff Response: As noted above, the CEQA Checklist concludes that approval of the Project would not threaten the integrity of the Downtown Historic District. Buildings contributing to the district would remain individually unaltered. Overall, the CEQA analysis concludes on pages 111-112:

The Downtown Oakland Historic District and API would retain strong associations to the patterns of civic activity and commerce during the early to mid-twentieth century, conveyed by the design quality and stylistic features of its contributors. The new visual element introduced by the proposed building would not interfere with district contributors’ ability to convey their significance to the extent that their eligibility for continued listing in the National Register as part of the Downtown Historic District or as contributors to the Downtown Oakland API would be diminished. Future removal of the proposed project would leave the eligibility for national, state, and local listing of the Downtown Historic District and ASI unimpaired.

Appellant Claim: The Appellant states, “[T]he LPAB failed to uphold the [Historic Preservation Element] objectives and policies including policy 3.1 (current General Plan) which is intended to avoid or minimize adverse effects on character-defining elements of historic properties.”

Staff Response: Appellant’s claim references Policy 3.1 of the City’s Historic Preservation Element, which reads:

Policy 3.1: Avoid or Minimize Adverse Historic Preservation Impacts Related to Discretionary City Actions.

The City will make all reasonable efforts to avoid or minimize adverse effects on the Character-Defining Elements of existing or Potential Designated Historic Properties which could result from private or public projects requiring discretionary action.

LPAB reviewed the Project at the September 12, 2022 LPAB meeting, and unanimously recommended that the Project proceed with review by the Planning Commission. The LPAB is a recommending body to the Planning Commission and does not take final action on development projects. Nonetheless, the LPAB affirmed that the design of the proposed building satisfactorily revised the commercial building design as follows:

- a. The Applicant has provided adequately detailed information on the design to demonstrate a well-composed design with consideration to bulk and massing.
- b. The proposed design is compatible with the existing API in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and intensity of detailing.
- c. The street-facing frontage includes forms that reflect the widths and rhythm of the existing façades fronting Franklin Street.

d. The proposal would result in a building with exterior visual quality, craftsmanship, detailing, and high quality and durable materials that is at least equal to that of the API contributors.

The CEQA Checklist likewise concluded that the Project would not have a materially adverse effect on character-defining element of either the Downtown Historic District or to any building adjacent to the Project site. The CEQA Checklist provides detailed analysis of how the Project's architectural and façade characteristics were designed to reference and be compatible with nearby Downtown Historic District contributors while also providing a visually distinctive style so as to not contribute to a false sense of historicism.

"The proposed brick cladding would be simple in design and would not emulate decorative bonds or color variations present on some district contributors. Decorative terracotta and metal moldings, such as those at the neighboring district contributor at 1441 Franklin, or classical details, such as at the neighboring district contributor at 1411 Franklin, are not proposed. The proposed tower would share linear vertical design features and a regular rectangular grid of punched openings with the adjacent tower at the Central Bank Building, 436 14th Street. It would not include arcaded stories, ornamented arched openings, or ornate cornices like the Central Bank Building. This relative simplicity would, when viewed at both the pedestrian level on Franklin Street and from greater distances, allow the more elaborate stylistic features of historic district contributors to remain visually prominent, despite the larger size of the new building at 1431 Franklin Street. The proposed building would not distract from or compete with the existing character of the Downtown Historic District and API in its materials or level of detail." (CEQA Checklist, p. 107).

The CEQA Checklist also acknowledged that the new Project would obscure facades of Downtown Historic District contributors, including the northern façade of the Appellant Property, but that these facades did not contain character-designing elements or in any way detract from their contributing status:

Construction of the proposed building would fill a gap in the block that was historically occupied by the "Ye Liberty Theatre," demolished in 1960, and would thus obscure the side and rear facades of six contributors to the Downtown Historic District and API which currently overlook the project site. The side and rear façades of five of these contributors (1411 Franklin Street, 420 14th Street, 1440 Broadway, 421 15th Street, and 1441 Franklin Street), which date between 1901 and 1929, do not contain any features which are important to the character of the Downtown Historic District and API. Further, for the majority of the Downtown Historic District's 1900-1948 period of significance, the project site was occupied by the Ye Liberty Theater, a 3- to 4-story building which opened in 1904 and was demolished in 1960. By 1950, a row of one-story commercial buildings filled the setback between the rear of the theater building and the east property line. This theater building and later commercial buildings would have partially or fully obscured the side and rear façades of these five neighboring buildings from viewpoints on Franklin Street. (CEQA Checklist, p. 108).

3. *Appellant states the Downtown Historic District is listed on the National Register of Historic Places. (Page 12)*

Appellant Argument: The Appellant claims that information about the Downtown Historic District being declared a National Resource by the California Office of Historic Preservation in 1998 was not adequately disclosed because it was not posted on the LPAB website that lists City historic districts.

Staff Response: As discussed above, staff agrees that the Downtown Historic District is listed on the National Register of Historic Places and the City's Downtown Historic Area of Primary Importance (API). The CEQA Analysis acknowledges this status on several occasions. (See CEQA Checklist starting at p. 84).

The LPAB webpage on the City's website includes a topic link to Historic Preservation, which includes information on the City's designated landmarks, heritage properties, and S-7 and S-20 Preservation zones. (<https://www.oaklandca.gov/boards-commissions/landmarks-preservation-advisory-board>.) This webpage does not include a comprehensive list of all National Register properties located in Oakland nor does it include the City's list of API. Additional information can be found on the City's Interactive Planning and Zoning Map (<https://www.oaklandca.gov/resources/zoning-map>), under the Historical Resources layer. The definitive source of National Register listings is not held by the City, but instead by the National Park Service through the National Register database. (<https://www.nps.gov/subjects/nationalregister/database-research.htm#table>)

4. *Appellant claims the Downtown Oakland District has the same protections as Old Oakland. (Page 12)*

Appellant Argument: The Appellant stated, "we have the exact same protections as Old Oakland (notably found on LPAB's website) which prevents large developments in that district."

Staff Response: Old Oakland is an S-7 preservation district within a CBD-P zoning designation, Height Area 1, which limits buildings to 55 feet. Old Oakland is not a National Register district, but instead is a district nominated at the local level similar to the process used locally to nominate an individual building as a landmark. The Downtown Historic District, on the other hand, is a National Register district. While both Old Oakland and the Downtown Historic District are subject to historic preservation requirements, the applicable provisions differ substantially between the districts. These height limits of each district are not a function of their respective historic designation. The Property is located within Height Area 7, which has no height limit.

5. *Appellant states the City did not recognize the Black Arts Movement and Business District. (Pages 12-14)*

Appellant Argument: The Appellant states, "The Planning Commission and the project applicants have consistently ignored the Black Arts Movement and Business District, through every project narrative of any description. The Planning Commission has approved multiple permits for high-rise buildings to be developed within this district. Not one of their notices indicated that this is a cultural district. The established guidelines have been consistently ignored. The BAMBD conditions and even the existence of this district was not listed in any

document provided by the Planning Commission prior to their decision on February 15, 2023. The BAMBD was never mentioned any single occasion or listed on any notice or sign.”

Staff Response: See discussion of the Black Arts Movement and Business District above under CUP and DR Findings, Argument B. Resolution No. 85958 C.M.S. designating the Black Arts Movement and Business District did not create an S-7 preservation district or otherwise create a historic designation out of the four-block area centering on 14th Street. Resolution No. 85985 C.M.S. acknowledges that both historic and contemporary Black-owned businesses exist within the corridor and recognizes that historic buildings in the corridor exemplify the historical legacy of the Black community in Oakland. Although the Black Arts Movement and Business District as a whole, extending from Oak Street through Frontage Road is not a historic resource for purposes of CEQA, it includes many historic resources, including the Downtown Historic District and the contributing buildings within that district.

6. *Appellant claims the City did not recognize 410 14th Street as a National Resource (Page 13)*

Appellant Claim: The Appellant stated, “In 1980, 410 14th Street was listed as National Resource by California State Parks – Office of Historic Preservation. This status was not acknowledged even once throughout this entire process.”

Staff Response: The City documented through the CEQA Analysis that the Appellant’s Property is a historic resource for purposes of CEQA based on its local rating and its contributor status to the National Register Downtown Historic District. However, the documentation submitted with the appeal, as well as information listed on the California Office of Historic Preservation Built Environment Resource Directory (BERD), does not support Appellant’s claim of an individual National Resource designation in 1980. The Appellant Property (410 14th Street) is identified on the City’s Local Register. All buildings with an Oakland Cultural Heritage Rating of A (highest importance) or B (major importance) or in an API are placed on the Local Register. The Appellant Property is a local register building - both based on its B rating and its location within an API. The earliest National Register listing for the Appellant Property, as shown on the BERD, is the building’s contributor status to the 1998 district designation. Therefore, the building is unequivocally a contributing resource to a National Register Historic District and the proposed Project was evaluated on the basis of its adjacency to this resource along with other CEQA historic resources in the Downtown Historic District.

7. *Appellant claims that the mural at 1441 Franklin Street is of significant cultural importance. (Pages 28-29)*

Appellant Claim: The Appellant states the mural is “determined as a special historic, cultural and aesthetic interest and/or value that must be preserved, protected, and prevented from unnecessary destruction or impairment” under City Resolution 85958 regarding Black Arts Movement and Business District.

Staff Response: As noted by the Appellant, the south-facing wall of the building located at 1441 Franklin Street includes a large-format mural depicting Derrick Hayes. The mural was painted in 2017 by artist Troy Lovegates. The mural is not covered by any historic preservation protections as it was not created during the National Register district’s period of significance and is not

associated with any City public art requirement for a development project. The Applicant is interacting with the owner of the building in which the mural sits to properly commemorate it once the Project is completed.

8. *Appellant has concerns of the drilling next to unreinforced masonry building.*
(Page 16)

Appellant Argument: The Appellant has additionally raised concerns regarding the Project's vibrational impact on the Appellant Property, noting that the Appellant Property is an unreinforced masonry building. Appellant was specifically concerned with the impacts of the Project drilling into bedrock adjacent to the Appellant Property.

Staff Response: The CEQA Checklist assesses the Project's potential to cause vibrational impacts. A development project would result in a significant impact if it were to expose persons to or generate ground-borne vibration that exceeds the criteria established by the Federal Transit Administration.

Regarding construction-related impacts, the Project does not propose to physically alter existing buildings adjacent to the Project site. However, due to the potential for the Project to inadvertently physically impact neighboring buildings, including contributors to the Downtown Historic District, through vibration, mass excavation, or accidental mechanical damage, Standard Conditions of Approval and permit conditions would be applied including measures for historic resource protection and damage reporting and repair for neighboring resources. This would include, at a minimum:

- Pre-construction survey of adjacent Downtown Historic District contributors to establish baseline documentation of existing conditions;
- Development and implementation of a vibration monitoring program for adjacent Downtown Historic District contributors;
- Historic resource protection training for site construction staff;
- Development and implementation of construction protection specifications for prevention of mechanical damage to adjacent Downtown Historic District contributors; and
- Construction monitoring and regular reporting.

Chapter 17.120.060 of the Oakland Municipal Code prohibits activities from generating vibration that is perceptible without instruments by the average person at or beyond the lot line of the lot containing such activities. (CEQA Checklist, p. 142.)

The CEQA Checklist also identifies the Appellant Property as a vibration-sensitive receptor although, as noted previously, an errata was issued to correct errors in Table V.K-6 which erroneously described the Appellant Property as a non-historic residential use (note: residential uses require a higher compliance standard than commercial uses). This error had no impact on its correct designation as a vibration-sensitive receptor for this purpose and in fact provided a more conservative assessment.

Table V.K-8 of the CEQA Checklist summarize the vibration criteria to prevent damage to structures. The CEQA Checklist acknowledges that in certain situations, extreme vibration can cause minor cosmetic or substantial building damage (particularly if older historic structures are

located nearby). Historic buildings tend to be more susceptible to vibration (due to age and use of older construction techniques), depending on the condition of the buildings. Recognizing this, the CEQA Checklist applies the Federal Transit Administration recommendation for maximum acceptable Peak Particle Velocity (PPV) and Root Mean Squared average vibration amplitude for “buildings extremely susceptible to vibration damage” as a conservative estimate for the necessary protective measures. (CEQA Checklist, p. 154.)

According to the buffer distances calculated in Table V.K-9, a vibratory roller would have the potential to generate vibration levels in excess of the 0.12-in/sec PPV threshold for historic resources located within 36 feet and 0.3-in/sec PPV threshold for other buildings located within 20 feet. Based on the distances in Table V.K-6, potential damage could occur at the following buildings: 436 14th Street; 1440 Broadway; 449 15th Street; 425 15th Street; 421 15th Street; 1441 Franklin Street; 405 15th Street; 401 15th Street; 1411 Franklin Street (Appellant Property), and 420 14th Street. However, to address this potential for damage, construction of the Project would be subject to City Standard Condition of Approval SCA #69, Vibration Impacts on Adjacent Structures or Vibration-Sensitive Activities. SCA #69 requires design means and methods of construction to be included in a Vibration Analysis that shall be utilized in order to reduce the potential to exceed the thresholds. Potential means and methods could involve the following restrictions to reduce potential vibration impacts to adjacent buildings at which vibration damage could occur:

- No vibratory rollers would be allowed to operate within 36 feet from the adjacent historic buildings or within 20 feet from the other buildings.
- Within 20 feet from adjacent historic buildings or 11 feet from the other adjacent buildings, the size of all bulldozers used during any construction phase activities could be limited to D5 dozers or smaller (i.e., those with horsepower (hp) less than 105 hp and operating weight less than 24,000 pounds).
- No loaded trucks would be allowed to operate within 18 feet of the adjacent historic buildings or 10 feet of the other adjacent buildings.
- No bulldozers of any size would be allowed to operate within 2 feet from the adjacent buildings.
- Should site conditions require the use of any of the equipment described above within the buffer distances identified in Table V.K-9, the project applicant should notify the City, identify appropriate measures to reduce vibration impacts and comply with any additional City recommendations.

With implementation of SCA #69, Vibration Impacts on Adjacent Structures or Vibration-Sensitive Activities, impacts related to vibration damage to adjacent buildings would be reduced to a less-than-significant level.

Finally, the long-term operation of the Project would not involve the use of any equipment or process that would generate perceptible levels of ground-borne vibration or perceptible levels of ground borne noise. Therefore, operation of the Project would have a less-than-significant impact related to ground-borne vibration or ground-borne noise.

9. *Appellant has concerns regarding the loss of sunlight through windows from shadows cast from development. (Pages 11, 16, and 17)*

Appellant Claim: Appellant alleges that the CEQA Analysis incorrectly concluded that there would be no adverse effect on the Appellant Property at 410 14th Street with respect to casting shadows that would materially impair the historic resource's significance and impact the 3rd floor ballroom through loss of natural light.

Appellant further stated that alteration of light and air, while not protected by the Building Code, should be considered due to the historic and architectural prominence of the windows in the 3rd floor ballroom and the impact on the economic viability of the room and a registered National Resource. (p. 16) With an emphasis that the room is used for both day and evening events, it is greatly enhanced by the natural light (sunlight and moon light), and the view of the city skyline rendered by the large windows. This will be completely lost with the development proposal in question (residential or commercial) (p. 17).

Staff Response: California Building Code Section 705 places limitations on the placement of exterior walls for new construction. Table 705.8 regulates the maximum area of exterior wall openings based on fire separation distance and degree of opening protection. The proposed design of the development complies with these requirements and would be reviewed again prior to issuance of building permit to ensure compliance.

With respect to CEQA, the City's thresholds of significance state that a would have a significant impact with respect to aesthetics if it were to cast a shadow on a historic resources such that the shadow would materially impair the resource's significance by materially altering those physical characteristics of the resource that convey its historic significance and that justify its inclusion on or eligibility for listing in the National Register of Historic Places, California Register of Historic Resources, Local Register, or historical resources survey form.

The Aesthetics chapter of the CEQA Checklist included the Appellant Property (listed as 1411 Franklin Street) as a nearby property that had cultural significance. (See CEQA Checklist, p. 56.) But the analysis did not find that the shadows cast from the Project would interfere with the physical characteristics of the resource that convey its historic significance. Staff agrees that any alteration of light into the third-floor ballroom of the Appellant Property would be a natural consequence of continued Downtown development and would neither materially alter any physical characteristics of the Appellant Property that are character-defining features of the property for purposes of its historic designation.

B. Additional CEQA Arguments Not Pertaining to Historic Resources

1. *Appellant argues the loss of egress and exiting through the proposed development is dangerous in case of an emergency. (Pages 17-18)*

Appellant Argument: The Appellant shared that an existing emergency exit "access facility" serves two buildings: 410 and 420 14th Street, both of which are live music venues with a combined capacity of nearly 3,000 people will be removed. The removal of the staircase would also constitute the need for a new building opening of 410 14th Street. The Appellant raised concerns of future egress through the Project building once its completed when an emergency occurs.

Staff Response: The exterior emergency staircase located on the northeastern side of the Appellant's building is the "access facility" the Appellant is referring to. There is an easement between the Project site, the Appellant Property, and 420 14th Street, which was executed in 1961. It grants 410 14th and 420 14th Street the right to emergency egress via a fire escape which overhangs into the Project site. This easement contains rights and obligations for all three parties and grants the owner of 1431 Franklin Street (Project site) broad rights to remove the fire escape at their discretion with any costs associated with the removal of the staircase at the burden of the owners of 410 14th and 420 14th Street. The easement grants limited use of the designated land/air on the 1431 Franklin property for purposes of egress and does not convey that property to the other parties of the easement.

The Project plans show the removal of the emergency staircase. The floor plans illustrate an exterior doorway on the fifth level of the Project building will be installed leading to a stairwell. This new stairwell provides emergency access for the buildings at 410 14th and 420 14th Street and is not accessible to the occupants of the Project building which has separate pathways in case of emergencies. Also, the Applicant will not be creating a new wall opening within the Appellant's building but rather utilizing the existing emergency access opening. During construction of the Project, there will be a clear pathway for egress.

Staff has concluded that the proposed emergency access is an adequate means of ensuring the properties subject to the 1961 easement have an alternate means of egress. The City's Bureau of Building and Oakland Fire Department has approved an alternate method request (AMR#2000082) for the revised egress easements.

2. *Appellant has expressed concern that ventilation from the above-ground parking garage will flow into the building at 410 14th Street. (Pages 20-21)*

Appellant Argument: The Appellant is concerned that the fumes generated from cars in the parking garage will spill into his building at 410 14th Street.

Staff Response: Under the California Building Code, toxins created from a property are not permitted to be directly or indirectly discharged into the neighboring property without knowledge. The parking garage is designed with fire-rated walls and no openings. Fumes from vehicles are mechanically vented and discharged above.

3. *Appellant argues the Project will consist of 3 to 5 years of construction debris, dust, and create zero street parking. (Pages 29-30)*

Appellant Argument: The Appellant stated the following, "...proposal will limit access for patrons and business owners which has the large potential to offset revenues. The constant and ever-present changes to the quality of life due to noise, dust, and debris contamination can prove to be insufferable." The Appellant also argues that during the construction period, businesses on the block will experience loss of income from the effects of construction.

Staff Response: The CEQA Checklist analyzes the impacts of construction under several checklist categories, including Air Quality and Noise. Table V.B-4 provides the Project's estimated emissions for criteria pollutants and finds that the emissions are below the City's applicable thresholds of significance. (CEQA Checklist, p. 64.) Further, the Project would be

subject to the City's Standard Condition of Approval SCA #21, Criteria Air Pollutant Controls – Construction Related. The City additionally imposes SCA #20, Dust Controls – Construction Related, to reduce the generation of fugitive dust from soil disturbance and demolition activities. With implementation of these conditions, construction of the Project would not substantially increase the severity of significant impacts identified in the previous EIRs prepared for the Land Use & Transportation Element and the Central District Redevelopment Plan Amendments.

With respect to the generation of Toxic Air Contaminants, or TAC, emissions during construction, the CEQA Checklist prepared estimates of annual average concentrations of diesel particulate matter and exhaust PM_{2.5} concentrations within 1,000 feet of the Project using the U.S. Environmental Protection Agency's Industrial Source Complex Short Term air dispersion model. (See CEQA Checklist, pp. 67-70). A health risk assessment was additionally prepared and included as Attachment G to the CEQA Checklist. The Project would be subject to City Standard Condition of Approval SCA #22, Diesel Particulate Matter Controls – Construction Related, under which the Project will implement identified health risk reduction measures: All construction equipment of 100 horsepower or more will be equipped with engines certified to meet the CARB's Tier 4 Final emissions standards; and all construction equipment with 25 to 100 horsepower will be equipped with engines certified to meet the CARB's Tier 2 emissions standards or higher and Level 3 diesel particulate filter (DPF). Currently, Tier 4 engines or installation of Level 3 verified diesel emission control strategies represent the best available control technology for control of DPM and are expected to reduce emissions by 85 percent. These requirements would reduce excess cancer risks to the maximally exposed individual resident, which was conservatively assumed to be a resident located on the second floor of a building adjacent to the Project site to the south. City staff understand that no residents currently live at the Appellant Property; nonetheless, the analysis applies this conservative assumption to be more protective. With these engine requirements, and the preparation of a Construction Emissions Minimization Plan (Emissions Plan) to ensure enforcement, construction of the Project would not substantially increase the severity of significant impacts related to the generation of TAC emissions during construction.

With respect to construction noise impacts, the CEQA Checklist includes analysis of temporary construction noise impacts, including both noise from construction equipment and noise from increased traffic flow from the transport of workers, equipment, and materials to the Project site. (CEQA Checklist, pp. 144-148). The analysis finds that given the ambient noise levels of the Project site ranging from approximately 60 to 65 dBA L_{dn}, the addition of project-related truck trips would not generate a perceivable increase in noise levels. The City has several standard conditions pertaining to construction noise that would apply to the Project, including SCA #61 limiting the days and hours of construction, SCA #62 requiring the implementation of identified basic noise reduction measures, SCA #63 requiring the preparation of a Construction Noise Management Plan that contains site-specific noise attenuation measures to reduce construction impacts associated with extreme noise generating activities (i.e., activities generating noise levels greater than 90 dBA), and SCA #65 providing additional measures to respond to and track construction noise complaints during construction.

With respect to parking, California Public Resources Code Section 21099(d)(1) states that parking impacts in the context of infill development near transit are not a significant impact on the environment. Nonetheless, City Standard Condition of Approval SCA #13 requires the preparation of a Construction Management Plan (CMP) prior to the issuance of the first

construction-related permit. The CMP must contain measures to minimize potential construction impacts including measures to comply with all construction-related Conditions of Approval such as dust control, construction emissions, hazardous materials, construction days/hours, construction traffic control, waste reduction and recycling, stormwater pollution prevention, noise control, complaint management, and cultural resource management. If construction requires obstruction of any roadways or sidewalks, the Project Applicant will be required to submit a Traffic Control Plan for review and approval prior to obtaining any obstruction permit as issued by Oakland Department of Transportation.

The Applicant has a Construction Logistics Agreement with several neighboring property owners detailing their construction protocols including where construction vehicles and worker vehicles will be parked during construction.

4. *Appellant argues loss of parking lot violates the mission of the Black Arts Movement and Business District and DOSP. (Page 22)*

Appellant Argument: The appellant claims the Project will remove one of the last parking lots within Black Arts Movement and Business District which would be deleterious to revenues and the viability of the cultural district. In addition, the appellant argues that the new legislation for bike lanes on 14th Street will remove the vast majority of street parking available, making it difficult for customers to park and patronize the businesses within the cultural district.

Staff Response: Resolution No. 85958 C.M.S. designating the Black Arts Movement and Business District does not address parking. Over the last several years, the City has worked with the community to develop the DOSP, which contains the community's goals and strategies to reach the desired future for the downtown area and will establish the policies that ensure development for that area. The DOSP will be brought to the City Council for adoption later this year.

The Project site is zoned Central Business District Pedestrian Retail Commercial (CBD-P). Within this zone, there are no parking requirements for multi-family developments (see OPC 17.116.060). However, there is a limitation on the maximum number of parking stalls based on the number of dwelling units; the Project could have up to 476 parking spaces. The Project incorporates five levels of parking, resulting in 167 parking stalls; this meets the parking standard under the CBD-P zone.

An underutilized public parking lot located across the street of the Project site and on-street parking are also available to accommodate additional parking needs.

In addition, the Project site is within one-half mile of an existing major transit stop and therefore considered to be a "transit priority area." Under Public Resources Code 21099(d)(1), "aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment." This section clearly states that adequate parking is not a CEQA issue.

On September 22, 2022, Governor Gavin Newsom signed into law Assembly Bill 2097 which became effective on January 1, 2023. This bill prohibits public agencies or cities from imposing

a minimum automobile parking requirement on most developments, including residential, commercial, and industrial projects, located within a half-mile radius of a major transit stop.

3. Other Claims

In addition to the Appellant's claims that the CUP and DR findings and CEQA related issues were not found or addressed, the Appellant raised concerns involving the City's economics, Applicant's decisions, the proposed Oakland Downtown Specific Plan, existing noise, and public art funding disbursement.

A. *Appellant states the City is declared an opportunity zone, creating hyper development. (Pages 4-6)*

Appellant Argument: The appellant argues that the Black Arts Movement and Business District is in an Opportunity Zone, which created "the removal of longstanding African American populace by rendering attractive tax breaks to developers, presents the very foundation for aggressive gentrification" and "Black Arts District and its African American business and property owners were not consulted before the district was greenlit."

Staff Response: Opportunity Zones were added to the tax code by the Tax Cuts and Jobs Act on December 22, 2017. The designation of these zones was designed to spur economic development and job creation in distressed communities and are only eligible for nomination by a state, the District of Columbia, or a U.S. territory with certification by the Secretary of the U.S. Treasury. In Oakland, 30 census tracts were designated by Governor Jerry Brown as qualified opportunity zones for the next 10 years, through 2026. The City does not have the authority to remove the Opportunity Zone designations within the city. The City does not implement or authorize Opportunity Zones through any program within the Planning Code and it has no direct bearing on the Planning Bureau's processing of development applications.

On page 5 of the Appellant's appeal document is a map illustrating Oakland's opportunity zones. This map shows the Project site is adjacent to, and not within, an opportunity zone.

B. *Appellant states Tidewater Capital (Applicant) offered \$5,000 to Lamumba Inc. dba Geoffrey's Inner Circle's consultants for consulting fees. (Page 14)*

Appellant Claim: The appellant argues that Tidewater Capital's (Applicant) consulting fee offer is a modest amount of money and would not be able to cover the hours needed for review development of the Project.

Staff Response: The amount the Applicant offers to their neighbor, Geoffrey's Inner Circle, to potentially offset costs the Appellant may incur from hiring experts to review legal documents and plans relating the Project is up to their discretion and is a private matter. The Planning Bureau is not a party to these discussions and does not intervene in civil disputes. Discussions between neighboring property owners do not have a direct bearing on the Planning Bureau's processing of development applications.

C. *Appellant argues the Project is violating the Downtown Oakland Specific Plan (DOSP). (Page 15)*

Appellant Argument: The appellant argues that the Project does not align with the DOSP vision, equity goal, economic opportunity, and culture.

Staff Response: Over the last several years, the City has worked with the community to develop the DOSP, which contains the community's goals and strategies to reach the desired future for the downtown area and will establish the policies that ensure development for that area. The DOSP is anticipated to be brought to the City Council for adoption later this year.

D. *Appellant is concerned prospective tenants will complain about noise from 410 14th Street. (Page 21)*

Appellant Claim: 410 14th Street houses eleven minority-owned businesses including being a live music and comedy club venue for over thirty years. The businesses housed here pay a lower rental fee to sustain black owned small businesses. Geoffrey's Inner Circle is a community anchor business that is the crux of live performance arts. Having residential housing or commercial tenants next to where live entertainment is performed will cause ceaseless and relentless complaints to the city from the new tenants.

Staff Response: All activities are required to operate within the allowable receiving noise level standards listed in OMC 17.120.050. Any activities which generate noise outside the maximum allowed noise levels set for certain time periods are required to reduce the noise output.

The proposed Project is located in the heart of Downtown Oakland and is in close proximity to many restaurants, bars, music venues, and other commercial activities that play a critical role in making Downtown Oakland what it is today. The activities at 410 14th Street occur and are contained within the building; there are no outdoor spaces available at the location for the activities to occur outside. The Applicant has informed Planning Staff that it is well aware of the existing uses within 410 14th Street and have included in their Construction Logistics Agreement, offered to the Appellant, an obligation to perform environmental noise testing of the entertainment uses during their business hours and to design and upgrade the Project's building façade's acoustic performance to mitigate the noise as necessary. The Applicant has also stated that it will disclose the existing entertainment uses in all leases to ensure they are known and understood by all future tenants.

The residential units of the Project are well above the building height of the Appellant's building, lessening noise impacts to occupants of the Project building.

While Planning serves to reduce proximity of incompatible uses, the Downtown CBD zoning districts seek to create a mix of uses that help foster a vibrant, downtown environment. The issue raised by Appellant is not an issue analyzed under CEQA because it is not an impact of the Project on the environment, but rather an impact of the existing environment on the proposed Project. The California Supreme Court has ruled that agencies are not required to analyze the impact of existing environmental conditions on a project's future users or residents as part of CEQA.

E. *Appellant argues the applicant will not satisfy the minority workforce requirement on new development. (Pages 22-24)*

Appellant Argument: The appellant argues that the City has a minimum requirement of 50% of the workforce be of minority decent. Additionally, the appellant states that, “historically minority construction companies, specifically of African American descent, are unilaterally excluded from gaining access to large commercial developments due to a plethora of reasons such as racism and nepotism.”

Staff Response: This requirement the appellant is referring to applies to public projects where public funds are used. The City has workforce programs exclusively for Oakland residents as an opportunity for them to partake in the City’s economic mainstream and gain experience in the construction trades. These programs are under the Local and Small Local Business Enterprise Program (L/SLBE, which were created to stimulate economic development through the support and empowerment of the local community. Contractors who participate in the City's development projects must comply with Oakland's Local Hire Compliance Ordinance and meet Oakland resident hiring goals. However, privately developed projects not utilizing City funding are not subject to these requirements.

Planning staff have been informed that the applicant is working closely with the Cypress Mandela Training Center, Construction Resource Center, and the National Association of Minority Contractors on promoting minority contractor participation. City Planning staff is not delegated with authority to impose requirements pertaining to construction workforce for private projects.

F. *Appellant argues that the Planning Commission exceeded its authority for the disbursement of Public Art funding. (Pages 25-28)*

Appellant Argument: The Appellant argues that the Planning Commission exceeded its authority by adding a condition of approval requiring 20% of the Project’s public art funds be equally allocated to the Malonga Casquelourd Center for the Arts and the African American Museum and Library, which are City-owned facilities. Appellant contends this decision is within the purview of the Public Art Advisory Committee. The appellant also references OMC 15.78.070(C)(2)(i)(1), in which the City Administrator may approve a contribution to the City if the City-owned Arts Facility or Facilities are in need of capital improvements and argues this condition would “imperil the vitality of an adjacent historic privately-owned arts facility (410 14th Street) to transfer funds to City-owned projects which will suffer no similar immediate threat from this project”.

Staff Response: Planning Code Sections 17.03.020 and 17.03.030 list the powers and duties of the Planning Commission. Included in the purview of the Planning Commission is encouraging and achieving preservation of worthy structures, other physical features, sites, and areas and the Planning Commission may explore means of financing the restoration or maintenance thereof. The Planning Commission could apply new conditions to projects at the time of the hearing. At times, project-specific conditions may require additional approval and review.

Project Standard Condition of Approval SCA 58, Public Art for Private Development, requires the Project to comply with the City’s Public Art Requirement for Private Development. The public art contribution requirements are equivalent to 0.5 percent for residential building development costs and 1.0 percent of non-residential building development costs. The contribution

requirement can be met through the installation of accessible art on site, the installation of accessible art within a quarter mile of the Project site, or the satisfaction of alternative compliance methods described in the ordinance, including in-lieu fee contributions or through special application to the City to make a contribution to the City for purpose of capital improvement to a specified City-owned arts facility within half a mile of the development.

The amended condition of approval allocating 20% of the public art fee generated from this Project for the Malonga Casquelourd Center for the Arts and the African American Museum and Library is consistent with the City's public art ordinance, which requires capital improvements at the facilities be reviewed and approved by the City Administrator at a future date. The purpose of discussing this process at the Planning Commission was to tie that future approval process to the Commission's Conditions of Approval for the Project. The incorporation of the applicant's commitment of disbursement into the Project's conditions provides assurances that these commitments would be honored.

G. *Appellant criticizes Tidewater Capital (Applicant). (Pages 30-31)*

Appellant Argument: The Appellant states that the Applicant had promised improvements to his building and partnerships but ended up being unwilling to reach a respectable agreement.

Staff Response: This is a private matter between the Appellant and the Applicant. The City does not intervene in civil disputes. **Attachment C** was provided by the Applicant; it documents the interactions they have had with the Appellant regarding the Project.

FISCAL IMPACT

The Project involves a private development and does not request or require public funds. If constructed, the Project would provide a positive fiscal impact for the City through increased property taxes, sales taxes, utility user taxes, and business license taxes, while at the same time increasing the level of municipal services that must be provided.

PUBLIC OUTREACH / INTEREST

The Applicant acquired the site in November 2019 and has spent the last few years conducting community engagement efforts. In November 2019, the Applicant conducted their first community outreach via email and in October 2020 held their first introductory meeting. To date, the Applicant has had over 175 meetings and phone calls with local stakeholders and held seven in-person or virtual community meetings. The Applicant has also provided a timeline of communication with the Appellant, included as **Attachment C**.

COORDINATION

This report and legislation were prepared in coordination with the City Attorney's Office and the Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: Allowing the Project to proceed would establish a new multi-family development on an underutilized downtown property and would increase property taxes to the City.

Environmental: Developing in already urbanized environments reduces pressure to build on agricultural and other undeveloped land. Sites near mass transit enable residents to reduce dependency on automobiles and further reduce adverse environmental impacts.

Race & Equity: The Project will be developed by a private entity and is not subject to Oakland's minority workplace programs. However, the Applicant is working closely with the Cypress Mandela Training Center, Construction Resource Center, and the National Association of Minority Contractors on promoting minority contractor participation.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A detailed CEQA analysis was prepared (<https://www.oaklandca.gov/resources/currentenvironmental-review-ceqa-eir-documents-2011-2022>) which concluded that the proposed Project qualifies for CEQA streamlining under Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning) and Public Resources Code Section 21094.5 and CEQA Guidelines Section 15183.3 (Streamlining for Infill Projects). Also, the proposed Project qualifies to tier off Program EIRs and EIRs prepared for redevelopment projects per CEQA Guidelines Section 15168 (Program EIRs) and Section 15180 (Redevelopment Projects), and the proposed Project qualifies for an exemption as specified in CEQA Guidelines Section 15332 (Infill Development Projects). Specifically:

- The Project meets the requirements for a community plan exemption, as it is permitted in the zoning district where the Project site is located and is consistent with the land uses envisioned for the site. The prepared CEQA document concludes that the Project would not result in significant impacts that (1) are peculiar to the Project or Project site; (2) were not identified as significant project-level, cumulative, or off-site effects in the Program EIRs; or (3) were previously identified as significant effects but are determined to have a more severe adverse impact than discussed in identified Program EIRs. Pursuant to CEQA Guidelines Section 15183, the Project qualifies for a community plan exemption.
- The Project meets the requirements for streamlining for infill projects since the Project (1) is located in an urban area on a site that has been previously developed and is surrounded by existing urban uses, (2) satisfies performance standards identified in Appendix M of the CEQA Guidelines, and (3) is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area. No additional environmental review is required since this Project is an infill project would not cause any new specific effects or more significant effects.
- The Project would not result in substantial changes or involve new information that would warrant preparation of a subsequent EIR, per CEQA Guidelines Section 15168 and Section 15180 (Redevelopment Projects), because the level of development now proposed for the site is within the broader development assumptions analyzed in the Program EIRs; and

- The Project is consistent with the list of classes of projects that have been determined to not have a significant effect on the environment and as a result, are exempt for review under CEQA as described in CEQA Guidelines Section 15332 (Class 32, projects characterized as in-fill development when meeting certain conditions).

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council adopt Resolution No.____ 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).

For questions regarding this report, please contact Michele Morris, Planner III, at (510) 238-2235.

Respectfully submitted,



William A. Gilchrist
Director, Department of Planning & Building

Reviewed by:
Edward Manasse
Deputy Director, Bureau of Planning

Reviewed by:
Catherine Payne, Dev. Planning Manager
Bureau of Planning

Prepared by:
Malinda Lim
Contract Planner, Interwest Consulting

Attachments (4):

- A. February 15, 2023 Planning Commission Meeting Staff Report
- B. February 24, 2023 Appeal by Geoffrey Pete
- C. Timeline of Applicant's Communication with Appellant
- D. Applicant's Consistency Analysis with Black Arts Movement and Business District ([Link](#))