

Attachment D

Class 32 Infill Exemption, Per CEQA Guidelines Section 15332

Article 19 of the California Environmental Quality Act (CEQA Guidelines Section 15300 to Section 15333) includes a list of classes of projects that have been determined to not have a significant effect on the environment and as a result, are exempt from review under CEQA. Among the classes of projects that are exempt from CEQA review are those projects that are specifically identified as urban in-fill development. CEQA Guidelines Section 15332 (Class 32) consists of projects characterized as in-fill development when meeting the following conditions:

- the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations
- the proposed development occurs within city limits, on a project site of no more than five acres, substantially surrounded by urban uses
- the project site has no value as habitat for endangered, rare or threatened species
- approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality, and
- the site can be adequately served by all required utilities and public services

The analysis presented in the following section provides substantial evidence that the proposed Project qualifies for an exemption under CEQA Guidelines Section 15332 as a Class 32 urban in-fill development, and would not have a significant effect on the environment. Section 15183(a) of the California Environmental Quality Act (CEQA) Guidelines states that "...projects which are consistent with the development density established by the existing zoning, community plan, or general plan policies for which an Environmental Impact Report (EIR) was certified shall not require additional environmental review, except as may be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site."

Section 15332(a): General Plan & Zoning Consistency

Yes No

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| ■ <input type="checkbox"/> | The Project is consistent with the applicable General Plan designation and all applicable planning policies, and is consistent with the applicable zoning designation and regulations. |
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As is fully documented in Attachment B, the Project is consistent with the applicable General Plan LUTE and its implementing policies, the Lake Merritt Station Area Plan and its effective policies, and the applicable regulatory standards of the D-LM-4 zoning district that apply to the Project. The Project meets all of the criteria of CEQA Guidelines Section 15332(a) as being consistent with the General Plan, the Lake Merritt Station Area Plan and applicable zoning regulations for the site, and findings regarding the Project's consistency with the zoning are included as Attachment B.

Section 15332(b): Project Location, Size & Context

Yes No

- The Project site is located within the city limits of Oakland, on a site of no more than five acres substantially surrounded by urban uses.

The approximately 0.22-acre Project site is located within the Oakland city limits, and within an urbanized portion of the downtown Central Business District, which is comprised of a dense mix of various land uses and development. The Project site is surrounded on all sides by urban land uses and/or properties undergoing redevelopment at higher density and urban scale. Based on these characteristics, the Project is consistent with the requirements of CEQA Guidelines Section 15332(b) as being within city limits, on a site of no more than five acres, and substantially surrounded by urban uses.

Section 15332(c): Endangered, Rare or Threatened Species

Yes No

- The Project site has no value as habitat for endangered, rare or threatened species.

As fully documented in the CEQA Checklist, the Project site consists of an existing building in a densely developed area. There is no vegetation on-site or in the immediate vicinity, and the site provides virtually no habitat for plants other than weedy plants or plants used for landscaping. The Project is absent of suitable habitat for endangered, rare or threatened plant and animal species based on proximity of streets and development, the lack of protective cover, and no street trees present along this segment of 12th Street. Special-status species are not expected to inhabit or use the Project site because of a lack of suitable habitat, prior disturbance and the current level of human activity. No tree removal is required by the Project. Therefore, the Project site has no value as habitat for endangered, rare or threatened species, and the Project qualifies for an exemption under CEQA Guidelines Section 15332(c) as a Class 32 urban in-fill development under this criteria.

Section 15332(d)(1): Traffic

Yes No

- Approval of the project would not result in any significant effects relating to traffic.

As fully documented in the CEQA Checklist, the Project would not exceed the City's applicable significance thresholds related to transportation.

The Project is located within a Traffic Analysis Zone (TAZ) that generates only 2.87 VMT per capita, and the Project's meets the City's map-based screening criteria for low VMT. The Project site is located less than one-quarter mile walk from the 12th Street/City Center BART station, has an FAR of approximately 3.6 (greater than 0.75), does not include any parking,¹ and is located in an area identified as a transit-

¹ There is no minimum parking requirement for the D-LM-4 zone under the City of Oakland Planning Code (Section 17.116.060).

priority development area. Based on these criteria, VMT impacts of the Project are presumed to be less than significant.

The Project would encourage the use of non-auto transportation modes by providing residential and retail uses in a dense, walkable urban environment that is well-served by both local and regional transit. The Project would not make any modifications to existing pedestrian or bicycle facilities in the surrounding area, and would not adversely affect installation of planned future facilities. The Project would not adversely affect the longer-term plans of the Lake Merritt Station Area Plan for 12th Street to become a Bus Rapid Transit (BTR) route, and would not preclude a planned pedestrian bulb-out at the corner of 12th Street and Harrison (the Project site is located mid-block on 12th Street).

Although not required to mitigate a significant impact under CEQA, the Project applicant would be required to implement the following SCAs applicable to traffic and transportation

- SCA Transportation-1: Construction Activity in the Public Right-of-Way
- SCA Transportation-2: Bicycle Parking, and
- SCA Transportation-3: Transportation Impact Fee ²

The Project would not result in a significant effect relating to traffic, and therefore qualifies for an exemption under CEQA Guidelines Section 15332(d)(1) as a Class 32 urban in-fill development under the traffic criteria.

Section 15332(d)(2): Noise

Yes No

- Approval of the Project would not result in any significant effects relating to noise.

As fully documented in the CEQA Checklist, the Project would not exceed the City's applicable significance thresholds related to noise or vibration. The Project is not located within the vicinity of a private airstrip or a public airport and would not expose people residing or working in the area to excessive aircraft noise levels. The Project would result in construction noise and vibration at levels similar to most other mid-rise construction projects within the Lake Merritt Station Plan Area. There is nothing unique or peculiar about the Project or its construction that would suggest that the Project would have greater construction noise or vibration impacts than other typical mid-rise construction projects as analyzed in the Lake Merritt Station Area Plan EIR, and the Project would be required to implement all applicable SCAs to reduce construction noise. The Project would include stationary sources of operational noise such as mechanical heating, ventilating, and air conditioning (HVAC) equipment that is standardized for noise reduction, as well as an emergency generator for the elevator. Stationary equipment would operate within the restrictions of the City's Noise Ordinance (Chapter 17.120.050 of the City of Oakland Planning Code), which specifies the maximum sound level received at residential, public open spaces and commercial land uses. Traffic noise impacts of the Project would be less than significant.

The Project applicant would be required to implement the following SCAs applicable to noise:

² Since the Project does not generate 50 or more net new a.m. or p.m. peak hour vehicle trips, the SCA requiring a Transportation and Parking Demand Management Plan is not applicable. Additionally, since the Project does not require on- or off-site transportation-related improvements, the SCA requiring implementation of such improvements is also not applicable.

- SCA Noise-1: Construction Days/Hours
- SCA Noise-2: Construction Noise
- SCA Noise-3: Extreme Construction Noise
- SCA Noise-4: Exposure to Community Noise
- SCA Noise-5: Operational Noise
- SCA Noise-6: Vibration Impacts on Adjacent Structures or Vibration-Sensitive Activities

With implementation of all required SCAs pertaining to noise (see Attachment A for full text of applicable SCAs), the Project would not result in significant effects related to noise or vibration, and would meet the criteria pursuant to CEQA Guidelines Section 15332(d)(2) for an Infill Exemption based on noise impacts.

Section 15332(d)(3): Air Quality

Yes No

- Approval of the project would not result in any significant effects relating to air quality.

As fully documented in the CEQA Checklist, the Project would not exceed the City’s applicable significance thresholds related to air quality. The Project is consistent with the policies and standards of the Lake Merritt Station Area Plan, is located in an area that is well served by transit, and does not include any parking. As such, the Project is also considered to be consistent with the Clean Air Plan. The Project does not exceed screening criteria published by the BAAQMD air quality emissions resulting from construction or operations. Construction-related TAC emissions from the Project will be reduced to a less than significant level with implementation of required City of Oakland (see below). The Project’s operations would not be a substantial source of toxic air contaminants, would not pose a health risk to others. Pursuant to City SCAs, installation of MERV 13 air filters as part of the Project’s HVAC system is a requirement of the Project, and will remove TAC emissions from indoor air to a level that health risks would be reduced to less than significant levels.

The Project is subject to each of the following applicable City’s SCAs related to air quality:

- SCA Air-1: Dust Controls - Construction Related
- SCA Air-2: Criteria Air Pollutant Controls - Construction Related
- SCA Air-3: Exposure to Air Pollution - Toxic Air Contaminants
- SCA Air-4: Stationary Sources of Air Pollution - Toxic Air Contaminants, and
- SCA Air-5: Asbestos in Structures

With implementation of all required SCAs pertaining to air quality (see Attachment A for full text of applicable SCAs), the Project would not result in significant effects related to air quality, and would meet the criteria pursuant to CEQA Guidelines Section 15332(d)(3) for an Infill Exemption based on air quality impacts.

Section 15332(d)(4): Water Quality

Yes No

- Approval of the project would not result in any significant effects relating to water quality.

As fully documented in the CEQA Checklist, the Project would not exceed the City's applicable significance thresholds related to water quality. The Project site is currently developed and has 100 percent impervious surface (rooftop). The Project would not increase the amount of impervious surface or increase stormwater runoff, and would not substantially increase runoff as a source of polluted runoff from the site. The Project is subject to regulatory requirements and City SCAs for smaller projects, which encourage site design measures that reduce the amount of stormwater runoff and that limit pollution in stormwater runoff. On-site ground disturbance is limited to approximately 160 square feet within the boundaries of the site, and will be subject to City SCAs requiring implementation of BMPs to reduce erosion, sedimentation and water quality impacts. The Project would not increase the amount of impervious surface on the site, would not increase the rate or volume of surface stormwater runoff, and would not increase the volume of potentially polluted runoff. The Project site is in a highly urbanized environment. The nearest surface water body is Lake Merritt, approximately 0.4 miles to the east, and is separated from the Project site by urban development. There are no other lakes, creeks or other surface waters in the immediate proximity. The Project site is not located near any creeks and is not subject to the City of Oakland Creek Protection Ordinance. The Project site is served by the City's existing stormwater system and downstream conveyance channels that will receive runoff from the Project.

The Project is subject to all of the following applicable City's SCAs related to water quality:

- SCA Hydrology-1: Erosion and Sedimentation Control Measures for Construction
- SCA Hydrology-2: Site Design Measures to Reduce Stormwater Runoff
- SCA Hydrology-3: Source Control Measures to Limit Stormwater Pollution
- SCA Hydrology-4: NPDES C.3 Stormwater Requirements for Small Projects

With implementation of all required SCAs pertaining to water quality (see Attachment A for full text of applicable SCAs), the Project would not result in significant effects related to water quality, and would meet the criteria pursuant to CEQA Guidelines Section 15332(d)(4) for an Infill Exemption based on no resulting water quality impacts.

Section 15332(e): Utilities and Public Services

Yes No

- The Project site can be adequately served by all required utilities and public services.

As fully documented in the CEQA Checklist, the Project would not exceed the City's applicable significance thresholds related to utilities and public services. The Project site is located within a fully urbanized portion of the City of Oakland's Central Business District, and is served by all needed utilities (e.g. water, electricity, sanitary sewer facilities, and storm drain facilities), and all required public services (e.g. police and fire services, and public schools). The Project will require specific on-site extensions and improvements to existing utility infrastructure to serve the new building. In coordination with utility providers such as EBMUD and the City, an extension or upgrade of sanitary sewer lines,

water supply pipelines or storm drains that currently serve the existing building may be needed to serve the increased utility demands of the increase in office space and additional 27 residential units.

Although not required to mitigate a significant impact under CEQA, the Project applicant would be required to implement the following SCAs applicable to public services and utilities:

- SCA Services-1: Capital Improvements Impact Fee
- SCA Utilities-1: Construction and Demolition Waste Reduction and Recycling
- SCA Utilities-2: Underground Utilities
- SCA Utilities-3: Recycling Collection and Storage Space
- SCA Utilities-4: Green Building Requirements
- SCA Utilities-5: Water Efficient Landscape Ordinance

With implementation of all required SCAs pertaining to utilities and public service (see Attachment A for full text of applicable SCAs), the Project would not result in significant effects related to utilities or public services, and would meet the criteria pursuant to CEQA Guidelines Section 15332(d)(5) for an Infill Exemption based on no resulting utility or public service impacts.

Exceptions to Categorical Exemptions Checklist

In addition to investigating the applicability of CEQA Guidelines Section 15332 (Class 32), this environmental review document also assesses whether any of the exceptions to qualifying for the Class 32 categorical exemption for an Infill Project are present. The following analysis compares the criteria of CEQA Guidelines Section 15300.2 (Exceptions) to the Project.

Section 15300.2(a): Location

Yes No

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | There is no exception to the Class 32 exemption for the Project related to its location. This exception applies only to CEQA exemptions under Classes 3, 4, 5, 6, or 11. Since the project qualifies as a Class 32 urban infill exemption, this criterion is not applicable, and is provided here for information purposes only. |
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The Project is not located in a particularly sensitive environment and would not impact any environmental resources of hazardous or critical concern as designated, mapped or adopted pursuant to law by federal, state, or local agencies. The exception under CEQA Guidelines §15300.2(a) does not apply.

Section 15300.2(b): Cumulative Impacts

Yes No

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | There is no exception to the Class 32 exemption for the Project related to cumulative impacts. The Project would not make a significant contribution to cumulative impacts of successive projects of the same type and in the same place, over time. |
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The Project is consistent with the Land Use and Transportation Element (LUTE) of the General Plan, the 2014 Lake Merritt Station Area Plan, and all applicable zoning regulations. The Project is required to

implement all applicable mitigation measures and SCAs identified in the 2014 Lake Merritt Station Area Plan EIR, which serves as a “Program EIR” pursuant to CEQA Guidelines Sections 15183. Consistent with CEQA Guidelines Section 15183, which allows for streamlined environmental review, this environmental review document need not re-consider cumulative effects already addressed under this Program EIR. As addressed in the Project’s CEQA Checklist under the topics of historic resources, traffic, noise and air quality, the Project’s potential effects are assessed in relation to the combined cumulative effects of other approved, pending and reasonably foreseeable future projects of generally the same type, and in the same general vicinity as the Project. As concluded in the CEQA Checklist, the Project would not make a considerable contribution to any cumulative effects related to traffic, noise or air quality.

The Project would be required to implement applicable City SCAs, which would serve to reduce the Project’s contribution to cumulative effect to less than significant. Since the Project is consistent with the development assumed in the Lake Merritt Station Area Plan EIR, the Project’s potential contribution to cumulatively significant effects has already been addressed in that EIR, there are no further cumulative effects associated with the Project, and an exception under CEQA Guidelines Sec. 15300.2(b) does not apply to the Project.

The Historic Resources Evaluation included in the CEQA Checklist also concludes that there are no other known probable future projects within or adjacent to the King Block on file with the City. As such, there is no known cumulative scenario whereby the effects of the Project may combine with the effects of other past projects, current projects or probable future projects that might result in cumulatively considerable impacts to the historic resources of the King Block API.

Section 15300.2(c): Significant Effect Due to Unusual Circumstances

Yes No

- There is no exception to the Class 32 exemption for the Project related to unusual circumstances. There is no reasonable possibility that the Project will have a significant effect on the environment due to unusual circumstances.

As analyzed throughout the CEQA Checklist, the Project would not result in any significant effects on the environment. There are no unusual circumstances specific to the Project as compared to its surroundings, or to other similar projects (including other infill development in the LMSAP) that would pose a reasonable possibility of causing a significant effect on the environment. Therefore, the exception under CEQA Guidelines Sec. 15300.2(c) pertaining to unusual circumstances does not apply to the Project.

Section 15300.2(d): Scenic Highway

Yes No

- There is no exception to the Class 32 exemption for the Project related to scenic highways. The Project will not result in damage to scenic resources (trees, historic buildings, rock outcroppings or similar resources) within a highway officially designated as a state scenic highway.

There are no designated scenic highways in the immediate Project vicinity. The closest designated scenic highway is I-580, located more than a mile north of the Project site. As such, the Project would not

adversely affect any scenic resources within the scenic highway. Based on this finding, the exception under CEQA Guidelines Section 15300.2(d) does not apply to the Project.

Section 15300.2(e): Hazardous Waste Sites

Yes No

- There is no exception to the Class 32 exemption for the Project related to being a hazardous waste site. The Project is not located on a site that is included on any list compiled pursuant to Section 65962.5 of the California Government Code.

A Phase I Environmental Site Assessment (ESA) was prepared for the Project site in 2018.³ That Phase I ESA concluded that the Project site was not included on any of the data resources that provide information regarding facilities or sites meeting the "Cortese List" requirements, and the exception under CEQA Guidelines Section 15300.2(e) does not apply to the Project.

A Phase II ESA was conducted in May of 2020 to evaluate potential vapor-phase migration concerns and the potential for vapor intrusion from off-site location into the existing building. To proactively address this concern, the Project applicant's building permit application included an under-slab vapor barrier, which was installed during construction pursuant to the City's prior approval.

The Project applicants have also filed a Service Request Application for Preliminary Site Review with Alameda County Department of Environmental Health (ACDEH), and ACDEH is now providing regulatory oversight for further investigation of VOCs in soil vapor below the building. Pursuant to a Workplan accepted by ACDEH in July 2001, additional data is to be obtained to help inform decisions regarding potential additional remediation and/or mitigation at the site. Based on preliminary review of the data, mitigation requirements for the Project may include, but are not limited to installation of vapor intrusion engineering controls, a de-pressurization system, making the existing vapor system active, adding a retro-coat epoxy topical coating to the existing slab, and installing SVE wells for long-term monitoring.

ACDEH is targeting a date of mid-August for approval of a Corrective Action Plan (CAP), at which time ACDEH anticipates issuance of a conditional approval letter (similar to other letters issued for redevelopment projects that ACDEH and the City of Oakland are coordinating on) to facilitate entitlement and redevelopment of the Project.

The Project applicant would be required to implement the following SCAs applicable to hazardous materials:

- SCA Hazards 1: Hazardous Materials Related to Construction
- SCA Hazards-2: Hazardous Building Materials and Site Contamination
- SCA Hazards-3: Regulatory Permits and Authorizations from Other Agencies

³ AEI Consultants, Phase I Environmental Site Assessment, November 29, 2018

Section 15300.2(f): Historical Resources

Yes No

- There is no exception to the Class 32 exemption for the Project related to historic resources.

As fully documented in the CEQA Checklist, the Project site is located on 12th Street, mid-block between Webster Street and Harrison Street. This entire city block is known as the King Block. The King Block is a group of five connected buildings and a center alley that, as a whole, is identified as a historic district eligible for listing on the National Register of Historic Places (Nation Register) and the California Register of Historic Resources (California Register), and identified locally as an Area of Primary Importance (API). Based on these criteria, the King Block is a historic district as recognized pursuant to CEQA. The existing building on the Project site is individually considered a C-rated building pursuant to the OCHS, indicating that this building is not individually considered eligible for listing on the National Register or the California Register, but is considered a historic resource pursuant to CEQA as a contributor to the historic King Block.

The CEQA Checklist also documents that although the Project does not propose to demolish the historic building at 316 12th Street, it does propose new construction above this building, specifically adding 3 stories of new residential use. The residential addition has been evaluated according to the rehabilitation standards of the Secretary of the Interior's Standards for the Treatment of Historic Properties, and found to be consistent with those standards – both individually and as a contributor to the historic King Block.⁴ The Historic Project Evaluation concludes that the Project will not detrimentally affect the extant historic integrity of the King Block or of the individual building at 316 12th Street.

The Project applicant would be required to implement the following SCAs applicable to cultural and historic resources:

- SCA Cultural 1: Archaeological and Paleontological Resources – Discovery During Construction
- SCA Cultural-2: Human Remains – Discovery During Construction

Section 15300.2(g): Other Potential Effects

Yes No

- There is no exception to the Class 32 exemption for the Project related to substantial adverse impacts other than those discussed above.

The 2014 Lake Merritt Station Area Plan EIR identified significant and unavoidable cumulative impacts related to transportation (roadway segment operations), air quality (exposure of sensitive receptors to TAC), and cultural resources. These topics have been evaluated at the Project level in the CEQA Checklist analysis, and the Projects contribution to these impacts have been determined to be less than significant with implementation of applicable SCAs. The City's CEQA thresholds have since been amended to no longer include roadway segment level of service as a threshold concern, having been replaced by VMT as the appropriate metric for transportation impacts.

⁴ Preservation Architecture, 316 12th Street - Oakland Historical Project Evaluation, July 2021

The 2014 Lake Merritt Station Area Plan EIR (including its Initial Study Checklist) determined that development consistent with the Area Plan would result in impacts that would be reduced to a less than significant level with implementation of mitigation measures and/or Standard Conditions of Approval (SCAs) related to air quality (conflicts with the Bay Area Clean Air Plan), hazards materials, hydrology and water quality (runoff in excess of existing capacity), noise, utilities and public services, and biological resources (fish or wildlife species, riparian habitat, wetlands). These topics have also been evaluated at the Project level in the CEQA Checklist, and the Projects impacts have been determined to be less than significant with implementation of applicable SCAs.

As to all other CEQA topics and thresholds (including aesthetics, cultural resources, greenhouse gas emissions and global climate change, geology and soils, flooding and groundwater depletion, and intersection operations in the downtown), the 2014 Lake Merritt Station Area Plan EIR determined that impacts related to these topics would be reduced to less than significant levels with implementation of all applicable mitigation measures and/or SCAs.

The Project will be required to implement the following SCAs pertaining to the topics of aesthetics, greenhouse gas emissions and global climate change, and geology and soils:

- SCA Aesthetics-1: Trash and Blight Removal
- SCA Aesthetics-2: Graffiti Control
- SCA Aesthetics-3: Landscape Plan
- SCA Aesthetics-4: Lighting
- SCA Geology-1: Construction-Related Permits
- SCA Geology-2: Soils Report
- GHG-1: Project Compliance with the ECAP Consistency Checklist

With implementation of these SCAs, the Project's impacts related to topics other than those discussed above would be reduced to levels of less than significant. The Project would not present an exception to an Infill Exemption based on the CEQA Guidelines Section 15300.2(g) criteria of other impacts.

Conclusions

As demonstrated above, the Project qualifies for an exemption under CEQA Guidelines §15332 as a Class 32 Urban Infill development, and there are no exceptions to the CEQA exemption pursuant to CEQA Guidelines Section 15300.2 that apply to the Project.