

ATTACHMENT J: ENVIRONMENTAL DETERMINATION

ENVIRONMENTAL DETERMINATION

Several past environmental documents discussed and evaluated the environmental impacts associated with this proposal and reliance on them satisfies any requirements under the California Environmental Quality Act (CEQA). In addition, the project is considered exempt from CEQA under Sections 15183 and/or 15061(b)(3) of the CEQA Guidelines.

Environmental Impact Report (EIR) for the LUTE

The EIR for the LUTE evaluated the environmental impacts of the proposal and anticipated future reliance on it for actions that were consistent with it and intended to implement it. Reliance on the LUTE EIR is appropriate as stated on page I-4 of that document:

The EIR may also be used at a future date by the Planning Commission and City Council to evaluate the environmental impacts of subsequent actions that are consistent with the Land use and Transportation Element or are intended to implement the Land Use and Transportation Element.

Further, the changes to the ordinance and zoning map being proposed were evaluated by the LUTE EIR. The LUTE EIR specifically states that the document may be used to evaluate the environmental impacts of “amendments of the Zoning Ordinance and Zoning Map for General Plan consistency”. This LUTE EIR contains several mitigation measures that reduce development impacts proposed by the LUTE to less than significant and identify others as unavoidable or irreversible. Staff has considered and incorporated the mitigations into the proposal. The following are relevant policies, mitigations, and impacts in the LUTE regarding the CBD as well as the proposal’s implementation of these policies and mitigations.

Land Use. Impact A.1 identifies the following impact:

Implementation of the proposed Land Use and Transportation Element would alter the Oakland General Plan land use classification, changing the densities that are allowed in various residential designations and restructuring the commercial and industrial designation to reflect a broader range of industry and business than anticipated in the 1980 (General) Plan. Development consistent with the new definitions could result in a broader range of commercial and industrial uses in some areas (III.A-6)

The EIR states that the new CBD designation would not create a significant impact because prior General Plan designations set no upper limit on development intensity and the prior General Plan allowed a mix of uses similar to the 1998 plan. The EIR further identifies measures that mitigate impacts beyond the mitigations implemented by policies in the Land Use section of the EIR. The most relevant mitigation includes the following:

During the revision of the zoning ordinance and map, develop zoning district definitions and map boundaries to project enclaves of lower density residential development that may be designated for more inclusive density categories on the

Land Use and Transportation Diagram. Use the General Plan Strategy Diagram as a means of making this determination (page III.A-12).

The proposal implements this impact by proposing the least intense height areas to the lower scale residential neighborhoods toward the edges of downtown (see Attachment xx). The proposal also implements the Strategy Diagram by limiting the allowed height and density in areas east of Harrison Street, particularly the Lakeside Apartment District (see Attachment xx for further analysis).

The EIR identifies the LUTE encouraging more commercial and mixed use activities in downtown as a possible environmental impact. In particular, the plan identifies Specific Impact Type A.2f on page II.A-26 of the plan:

Proposed General Plan map changes would reclassify some residentially designated land for commercial or mixed uses. This impact is less than significant due to proposed policies in the Element that address land use compatibility.

The proposal has incorporated mitigations regarding this compatibility by not allowing impactful commercial or industrial activities in residentially zoned neighborhoods. Further, any commercial activities in a residential neighborhood greater than 7,500 square feet would require a conditional use permit to allow the City to evaluate the impacts of larger projects. Most of downtown currently has a mix of residential and commercial activities. Therefore, the proposal is consistent with development patterns already found in downtown. Finally, the current planning code has regulations regarding the buffering of residential activities from commercial activities.

Population, Housing, and Employment. The LUTE EIR describes the potential impact of the LUTE on population, housing, and employment and identifies mitigation measures to address any significant adverse impact. The EIR anticipated significant increases in Oakland's housing and employment capacity and adopted several policies that decrease impacts to less than significant. In particular, the expanded number of jobs in Oakland was expected to increase demand for housing and housing costs.

The proposal implements mitigations by allowing residential high rises and high density housing throughout downtown. Further, the Housing Element of the EIR has identified sites for residential developments in Downtown. This element is currently in the process of being updated.

Public Services. The LUTE EIR describes the impact of the LUTE on public services to the Oakland Planning Area, including water, sewer, storm drainage, solid waste, police, fire, schools, libraries, and parks. The LUTE states that impacts on public services are less than significant due to existing policies and identified mitigations in the EIR including: 1) reviewing large development projects in terms of capital improvement and public service levels; 2) requiring new developments to contribute to capital improvements; 3) promoting recycling, composting, and other activities; and 4) soliciting comments from the Oakland Police and Fire Departments on major new developments. These mitigations are regularly implemented through the development review processes. Other mitigations relate to the operation of relevant public service providers.

Air Quality. The LUTE EIR identifies two air quality impacts resulting from the new CBD development anticipated by the LUTE: 1) the mix of uses proposed by the LUTE could result in odor nuisance problems for residents; and 2) construction activity could result in dust impact. The EIR mitigates the first impact through requiring appropriate venting and appropriate equipment design. These mitigations are implemented through the building code. The second impact is mitigated through the standard conditions of approval regarding construction management that the City applies to development projects.

Visual and Aesthetic Conditions. The EIR states that the LUTE encourages high rise development in downtown. This policy could potentially have impacts on views and solar access and create visually incongruities between new and old buildings. The LUTE identifies the following mitigations that would reduce the impact to less than significant:

1. Develop guidelines or step backs for height and building for new development projects in the downtown area. Developments should be encouraged to be designed at pedestrian scale on the street-side, with towers or strong vertical elements stepping back from the street.
2. Analyze the desired height of downtown office development and develop zoning regulations that support the preferred skyline design;
3. Define view corridors and, based upon these views, designate appropriate height limits and other requirements. Views of Lake Merritt, the Estuary, and architecturally or historically significant building should be considered.

The proposal implements each of these mitigations. The proposal requires a “base and tower” high rise development design for much of downtown that requires new construction to have a reduction in mass in its upper stories. Several design requirements encourage a strong pedestrian orientation on the street such as maximum setbacks, required window transparencies, minimum ground floor heights, and other provisions. The proposed height map establishes the Broadway core as the focus of the skyline, with building heights graduating down to the west and the east. The proposed base and tower design promotes views and a varied skyline. Special regulations require that building design allow views to and from the lake. Finally, the proposal recommends a study of view corridors for Lake Merritt and important downtown structures.

Cultural and Historic Resources. The EIR states that LUTE policies regarding high density construction downtown could encourage the demolition of historic resources. The LUTE incorporates the 24 policies and 66 actions contained in the HPE designed to project historic buildings. In addition to these policies, the EIR references LUTE policies regarding the preservation of Old Oakland and the locations that create a sense of history and community wherever feasible. Other LUTE policies referenced in the EIR include:

1. Policy D1.1: The characteristics that make downtown Oakland unique, including its strong core area, proximity to destinations such as the Jack London Waterfront, Lake Merritt, historic areas, cultural, arts, and entertainment activities, and housing stock should be enhanced and used to strengthen the downtown as a local and regional asset (page III.G-17);
2. Policy D2.1: Downtown development should be visually interesting, harmonize with its surrounding, respect and enhance important views in and of the downtown, and contribute to an attractive skyline (page III.G-17); and

3. Policy N11.4: The City encourages rehabilitation efforts which respect the architectural integrity of a building's original style (page III.G-17).

The EIR also identifies the following mitigation measures:

1. Mitigation Measure G.3a: Amend the Zoning Regulations text to incorporate the new preservation regulations and Districts (page III.G.16); and
2. Mitigation Measure G3b: Develop and adopt design guidelines for Landmarks and Preservation Districts (page III.G.16).

The plan implements these policies and mitigations through several new regulations relating to the demolition, rehabilitation, and preservation of historic resources (see "Historic Resources" section, above) and other design regulations, including:

1. Findings required for the demolition of new structures. These findings are consistent with those described in the HPE;
2. Required design review findings for additions and alterations (including rehabilitation) to historic structures. These findings require alterations that are consistent with the historic design and architecture of the building;
3. Required design review findings for new construction and additions in historic districts. These findings require new construction to reflect the patterns of the district;
4. Limited height maximums in historic neighborhoods where height is a character defining feature of the district. These height maximums discourage demolition of historic buildings;
5. New processes requiring hearings in front of the LPAB; and
6. New regulations encouraging view preservation and high quality design throughout downtown (see "Visual and Aesthetic Conditions," above).

Energy. The EIR identifies the additional construction, population, and employment anticipated by the LUTE to use marginally more energy than would have been required under the previous General Plan. The EIR, however, states that this impact is lessened by a reduction of vehicle trips made by providing more jobs and population near transit, and reducing the length of commutes. The LUTE EIR also identifies several policies in the OSCAR that reduce the impact on energy to less than significant.

Soil, Surface Fault Rupture, and Ground Shaking and Ground Failure Impacts. The EIR states that adoption of the LUTE could result in development on soil that could cause structural damage to new and existing buildings. The EIR also states that new buildings and facilities constructed as a result of the LUTE could be vulnerable to seismic events. That plan states that these impacts are less than significant due to the existing regulatory structure and several polices contained within the OSCAR.

Noise. Impact L.8 of the EIR (page III.L-19) identifies the construction of new downtown projects as a significant noise and vibration impact. The EIR identifies noise control measures that would lessen these noise impacts. These measures have been incorporated into standard conditions of approval for new development projects.

Impacts L.9 and L.10 of the EIR (page III.L-23) identifies additional noise as a result of more downtown traffic as a possible impact. The EIR, however, states that these increases would be

only slightly noticeable, within acceptable levels of residential, commercial, and office activities, and would not a significant impact.

Wind. The EIR states that the construction of high rise buildings could change downtown wind patterns. The document states that a podium and tower design such as currently proposed would lessen wind impacts. Further, the City new towers to study wind impacts for CEQA review. The EIR, nonetheless, identifies wind as a significant and unavoidable impact.

EIR for Amendments to the Historic Preservation Element of the General Plan

In 1998, the City certified an EIR to evaluate the impacts of four new policies proposed for the Historic Preservation Element. The proposed amendments affected Policy 3.2, which delineates the process that city-owned and controlled properties are considered for historic designation; Policy 3.3, which delineates a process that requires property owners to apply for historic designation as a condition of receiving City financial assistance; Policy 3.5, which addresses design review requirement for Potentially Designated Historic Properties; and Policy 3.8, which addresses the City's thresholds for environmental significance for historic properties. This EIR contains several mitigation measures that reduce development and demolition impacts on historic properties to less than significant and identifies others as unavoidable or irreversible. Staff has considered and incorporated the mitigations into the proposal.

The EIR states that implementation of findings regarding the demolition of historic structures mitigates the impacts resulting from demolition of historic properties. The current proposal would implement these findings through new findings in the Planning Code for the demolition of historic buildings.

Initial Study/Mitigated Negative Declaration for the 2004 Housing Element Update

In 2004, The City certified an Initial Study/Mitigated Negative Declaration for an update to the Housing Element. The element was based on eight goals that provide direction and guidance for meeting the City's housing needs through 2006:

1. Provide adequate sites suitable for all income groups;
2. Promote the development of adequate housing for low- and moderate-income households;
3. Remove constraints to the availability and affordability of housing for all income groups;
4. Conserve and improve older housing and neighborhoods;
5. Preserve affordable rental housing;
6. Promote equal housing opportunity;
7. Promote sustainable development and smart growth; and
8. Increase public access to information through technology.

The Initial Study/Mitigated Negative Declaration (IS/MND) for the element contains several mitigation measures that reduce the impacts of the actions directed by the Housing Element to less than significant. Staff has considered and incorporated the mitigations into the proposal. The IS/MND largely depends on the analysis contained in the LUTE EIR (see above). The document also contains additional analysis regarding air quality and noise impacts due to new construction. The mitigations listed in the IS/MND are implemented through the current standard conditions of approval applied to new development.

Based upon the foregoing, further environmental review is not required as none of the requirements of CEQA Guidelines section 15162 and/or 15163 have been met.

As a separate and independent basis, the proposal is exempt from CEQA under CEQA Guidelines sections 15183 and/or 15061(b)(3), as detailed below,

CEQA Guidelines Section 15183

As a separate and independent basis, the proposal is exempt from CEQA under CEQA Guidelines section 15183, which provides that projects that are consistent with the development density established by existing general plan policies for which an EIR was certified shall not require additional environmental review, except to examine project-specific significant effects that are peculiar to the project. This allowed exemption streamlines the review of projects.

1. As discussed in the “General Plan Analysis” section of this document, the project is consistent with the LUTE, for which an EIR was certified in March 1998, and the Historic Preservation Element (HPE) of the General Plan, for which an EIR was certified in 1998.
2. Feasible mitigation measures identified in the LUTE and HPE EIRs were adopted and have been, or will be, undertaken;
3. The LUTE and HPE EIRs and this environmental review evaluated impacts peculiar to the project and/or project site, as well as off-site and cumulative impacts, and found them to be adequately addressed. The project is an implementation of the LUTE and the HPE and, therefore, no new impact should result from the project not anticipated by the EIRs for those plans.
4. Uniformly applied development policies and/or standards (imposed as Standard Conditions of Approval) have previously been adopted by the City Council on November 8, 2008, and found, when applied to future projects in the CBD, substantially mitigate impacts.
5. Substantial new information does not exist to show that these Standard Conditions of Approval and mitigations identified above will not substantially mitigate the project and cumulative impacts.

CEQA Guidelines Section 15061(b)(3)

As a further separate and independent basis, the proposal is also exempt from CEQA under CEQA Guidelines section 15061(b)(3), which provides that where it can be seen with certainty that a project will not have significant impacts, no environmental review is required. Here, the proposal is more restrictive than the current zoning and is consistent with the current development pattern with respect to historic resources that have height as a character defining element.

The proposed height regulations, findings, and processes regulated to the preservation of historic properties make it certain that the proposal will not have a significant impact. Height maximums similar to existing context assure that new construction will be compatible to other buildings in

Areas of Primary Interest (APIs) where height is a characteristic feature. Proposed section 17.136.055 contains further findings and processes required for development in these types of APIs.