

**California Environmental Quality Act
Residential Infill Exemption
966 B Street**

The project is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15195, Residential Infill Exemptions, which exempts certain residential infill projects from environmental review in that it meets the following criteria set forth by subsection 15195(a):

- (1) The project meets the threshold criteria set forth in section 15192 as described below; and the community-level environmental review required by section 15192(b) (in this case, the Final Environmental Impact Report certified and adopted by the City Council for the Downtown Specific Plan on July 2, 2019) was adopted within five years of the date that the Planning Division deemed Major Site Plan Review and Density Bonus Application No. 23-0006 complete on September 18, 2023.
- (2) The project meets both of the following size criteria:
 - (A) The project site is not more than four acres in total area in that it is only 0.17 acres; and
 - (B) The project does not include any single level building that exceeds 100,000 square feet in that the proposed building contains a total of 44,064 square feet.
- (3) The project meets both of the following requirements regarding location:
 - (A) The project is a residential project on an infill site in that it contains 30 residential apartment units on a site that previously housed two commercial buildings that burned down in 2019, and that the site is surrounded by urban development on all four sides; and
 - (B) The project is within one-half mile of a major transit stop in that it is located just over ¼-mile away from the Hayward BART Station.
- (4) The project meets both of the following requirements regarding number of units:
 - (A) The project does not contain more than 100 residential units in that it only contains 30 residential apartment units; and
 - (B) The project promotes higher density infill housing in that it features a proposed density, including the Density Bonus, of 170 units per net acre on a parcel that has a General Plan land use designation that allows a density or range of 40 to 110 units per net acre.
- (5) The project meets the requirement regarding availability of affordable housing in that it results in not less than 5 percent of the housing being rented to families of very low income in that it will provide 15 percent of the units at rates affordable to very low-income households), and in that the applicant has provided sufficient legal commitments to the City through the Affordable Housing Plan (Attachment VI) to ensure the continued availability and use of the housing units at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

In addition to the project meeting the criteria set forth in (1) through (5) of subsection 15192(a), above, it also meets the following criteria set forth in subsection 15192(b):

- (1) There is no reasonable possibility that it will have a project-specific, significant effect on the environment due to unusual circumstances in that the subject site was previously developed with commercial buildings which burned down in 2019 and whose original foundations still remain. As such, the site contains no habitat or other unique environmental resources that could be impacted by the proposed development and is already served by all necessary municipal utilities and services. Furthermore, the project is consistent with the City's General Plan and Downtown Specific Plan, and largely complies with the applicable development standards of the Zoning Ordinance with the exception of an increase in density and waivers afforded under State Density Bonus Law;
- (2) No substantial changes with respect to the circumstances under which the project is being undertaken that are related to it have occurred since community-level environmental review (in this case, the Final Environmental Impact Report certified and adopted by the City Council for the Downtown Specific Plan on July 2, 2019) was adopted; and
- (3) No new information has become available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known and could not have been known at the time the community-level environmental review was adopted.

As required by subsection 15195(a)(1) of CEQA Guidelines, above, the project must meet the following criteria set forth by Section 15192 of the CEQA Guidelines:

- (a) The project is consistent with:
 - (1) The City's Hayward 2040 General Plan and Downtown Specific Plan as described in the staff report and findings, including the applicable mitigation measures required by these plans, which have been included as conditions of approval, as they existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and
 - (2) The City's Zoning Ordinance, except for a total of seven of the applicable development standards it contains for which the applicant is utilizing waivers afforded the project under State Density Bonus Law.
- (b) Community-level environmental review for the geographical area in which the project is located was adopted when the City Council certified and adopted the Final Environmental Impact Report for the Downtown Specific Plan on July 2, 2019.
- (c) The project can be adequately served by existing utilities in that the development was reviewed and cleared by the City's Utilities Division of the Public Works Department, and in that other utility providers including for electric, gas and telecommunications service reviewed the proposed project and confirmed their ability to do so. Further, the applicant will be required to install utilities and to pay development impact fees,

including Park Impact Fees and School District fees, which are required to be paid prior to issuance of the building permit for the project.

- (d) The project site:
- (1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations in that it was previously fully developed with commercial buildings, and still contains the original foundations of those buildings with no open space that could qualify as a wetland;
 - (2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection in that it only contains the foundations of the commercial buildings that previously occupied the site for several decades before they were destroyed by a fire in 2019, and nothing more than a small amount of ruderal vegetation growing among the remaining structures;
 - (3) Does not harbor any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 [commencing with Section 1900] of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 [commencing with Section 2050] of Division 3 of the Fish and Game Code, in that it only contains the foundations of the commercial buildings that previously occupied the site for several decades before they were destroyed by a fire in 2019, and nothing more than a small amount of ruderal vegetation growing among the remaining structures; and
 - (4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete. The only potential habitat for any protected wildlife species are the street trees in the adjacent public right-of-ways along B Street and Main Street, and a condition of approval is included which requires a qualified wildlife biologist or ornithologist to conduct a nesting bird survey of these trees prior to the commencement of any demolition, grading or construction activities.
- (e) The project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code, as confirmed by a Phase I Environmental Site Assessment conducted by AEI Consultants on August 27, 2021.
- (f) The project was subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. AEI Consultants conducted an Additional Subsurface Investigation on March 18, 2022 after completing a Phase I Environmental Site Assessment, which detected the presence of hazardous chemicals in soil gas on the site above the residential and commercial environmental screening levels resulting from the site's previous use as a dry cleaning business. The following steps have been taken in response to the results of this assessment through the inclusion of a condition of approval requiring clearance of the site by the Alameda County Department of Environmental Health's Local Oversight Program, which is responsible for overseeing the investigation and cleanup of hazardous materials releases to the environment throughout Alameda County:

- (1) Either the contaminated soil shall be removed, or any significant effects of the release of hazardous substances shall be mitigated to a level of insignificance in compliance with state and federal requirements.

The Phase I Environmental Site Assessment and subsequent Additional Subsurface Investigation conducted by AEI Consultants did not identify and potential for exposure of the project's future occupants to significant health hazards from surrounding properties or activities.

- (g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code in that the site is not occupied by any extant buildings.
- (h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, in that it is located in the heart of the City's downtown area outside of any Fire Hazard Severity Zones, and is surrounded by urban development.
- (i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties in that it is surrounded by a mix of ordinary commercial uses typically found in most older downtown districts, including retail and service commercial uses, public facilities and parking facilities. There is no commercial or industrial use operating adjacent to the or nearby whose daily operations have a significant potential to cause a fire or explosion that could harm the proposed development or its occupants.
- (j) The project site does not present a risk of public health exposure at a level that would exceed the standards established by any state or federal agency in that a Health Risk Assessment was conducted by Ascent Environmental on July 27, 2023, as required by the Mitigation Monitoring and Reporting Program contained in the Final Environmental Impact Report adopted by the City Council on July 2, 2019 for the Downtown Specific Plan, which determined that, with the implementation of the Bay Area Air Quality Management District's (BAAQMD) "Basic Construction Mitigation Measures," the project would not pose a public health risk. Accordingly, a condition of approval has been included requiring implement of BAAQMD's "Basic Construction Mitigation Measures."
- (k) Although the site is located within the Hayward Fault Zone as identified by the State Alquist-Priolo Earthquake Fault Zoning Act, the City's General Plan and Zoning Ordinance contains provisions that allow development within the Fault Zone provided that a licensed geotechnical engineer conducts a study and makes recommendations as to the design of the development which must be adhered to in order to ensure the maximum safety of the building(s) and its occupants. In January 2022, a geotechnical investigation was conducted by Stevens, Ferrone & Baily Engineering Company, Inc., a licensed geotechnical engineer, in accordance with the requirements of the Alquist-Priolo Act which concluded the site could be developed safely for the proposed

residential and commercial uses provided that the recommendations contained in the investigation are adhered to during the project's structural design and construction. A condition of approval has been included requiring adherence to the recommendations of the geotechnical investigation throughout the project's foundation and structural design and construction which will be reviewed and verified through the grading permit, improvement plan, building permit and construction inspection process.

- (l) The project site does not present a landslide, flood plain or flood way hazard in that it is not located in either a landslide zone, flood hazard zone or dam failure inundation zone.
- (m) The project site is not located on developed open space in that it was previously developed entirely with commercial buildings that burned down in 2019, and still contains the foundations of those structures.
- (n) The project site is not located within the boundaries of a state conservancy in that it is located in the center of the City's downtown district which features development dating back several decades, far from the nearest state-identified habitats of any Species of Special Concern.
- (o) The project site has not been divided into smaller projects to qualify for one or more of the exemptions set forth in CEQA Guidelines Sections 15193 and 15195 in that the subject parcel has not been altered in any way since it was originally developed several decades ago with commercial buildings in the early 20th century.

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