

SUPPLEMENTAL COMMUNICATIONS AND REPORTS 3

BERKELEY CITY COUNCIL SPECIAL MEETING

DATE OF MEETING: TUESDAY, APRIL 22, 2025

TIME: 6:00 P.M.

The agenda packet for this meeting was distributed/posted on April 14, 2025. Communications in this supplement were received after 12pm on April 21, 2025. This communication packet was distributed/posted on April 24, 2025.

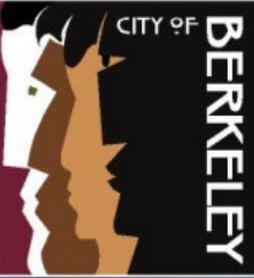
Each item in this supplement follows the corresponding item on the City Council Agenda for this date.

Action Calendar

Item #1: ZAB Appeal: 2274 Shattuck Avenue, Use Permit #ZP2023-0079

- 73. Presentation submitted by the Planning Department
- 74. James M. Lloyd
- 75. Julia Robertson
- 76. Todd Darling
- 77. Gretta Goldenman
- 78. Lee Bishop
- 79. Laura Morland
- 80. Madeleine Roberts Rich (2)
- 81. John Carnahan
- 82. Paul Bickmore
- 83. Michael Fullerton
- 84. Rafa Sonnefeld
- 85. Robin R. Baral
- 86. Jack Farrell
- 87. Nancy D. Kates
- 88. Eileen Adams
- 89. Robin R. Baral on behalf of Hanson Bridgett LLP
- 90. James Hendry
- 91. Annie Wormhoudt
- 92. 8 Similarly worded form letters "Please reject the appeal"

93.10 Similarly worded form letters "Stop the demolition"
94. Unknown
95. Unknown



2274 Shattuck Mixed-Use Project (United Artists Theater)

73



#ZP2023-0079

City Council Appeal

April 22, 2025

Sharon Gong, Principal Planner

Zoning Map



Legend



AC Transit Bus Route

C-DMU: Downtown Mixed-Use District

Core: C-DMU Core Sub-Area

Buffer: C-DMU Buffer Sub-Area

Corridor: C-DMU Corridor Sub-Area

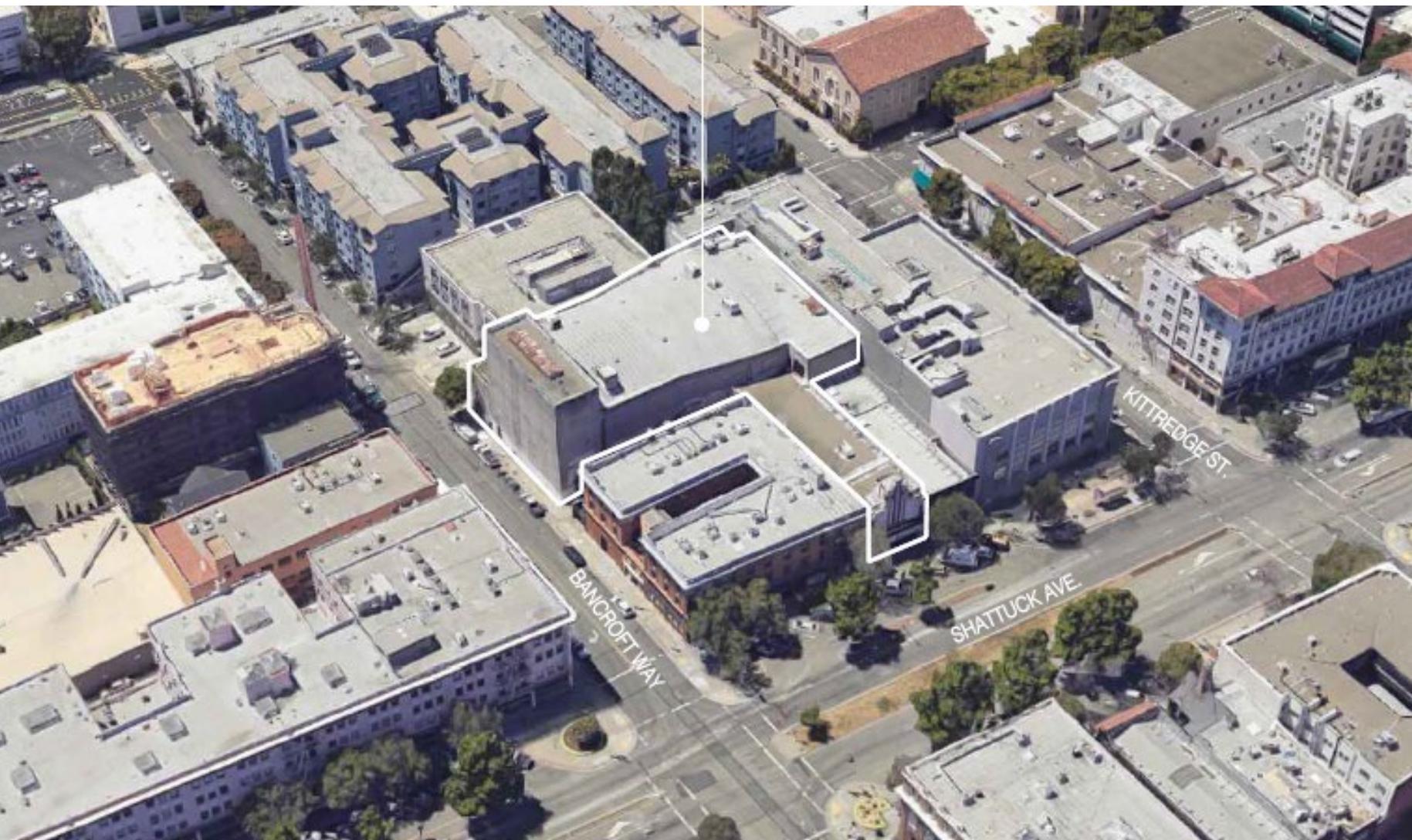
Outer Core: C-DMU Outer Core Sub-Area



Aerial Plan View – Existing



Aerial 3D View – Existing



Historic Resource

- SB 330 Preliminary Application vested site's historical resource status – NOT a City Landmark – November 2022
- Landmarks Preservation Commission (LPC) designated UA Theater a City Landmark, March 2024
- Distinguishing features that shall be preserved and restored:
 - upper portion of Shattuck Ave. building façade in relation to overall height and massing of façade
 - architectural and decorative features of upper portion of Shattuck Ave. building façade
- LPC considered request to designate whole building, but chose to designate only the building façade and its decorative detail



AB 1633 and CEQA Exemption

- AB 1633: effective January 2024, revised Housing Accountability Act (HAA) – developers can claim violation of HAA if local agency fails to determine exemption from CEQA when project is eligible
- March 2024: Applicant submitted AB 1633 Notice and technical reports to support exemption
- October 2024:
 - Staff determined project eligible for Infill Development exemption
 - Project would preserve / restore character-defining feature (upper façade) – does not meet criteria for historical resource *exception* to the exemption



Project Approved by ZAB, December 12, 2024

Demolish existing movie theater:

- Preserve and restore/renovate Shattuck façade and theater lobby

Construct Mixed-Use Residential Building:

- 17 stories, 183 feet in height, plus 5-foot parapet
- 227 dwelling units – 32 studios, 49 two-bedroom, 80 three-bedroom, 66 four-bedroom
- 634 bedrooms total
- 23 VLI density bonus qualifying units
- ~8,000 square feet of usable open space – ground-floor common space, private patios, roof deck
- 72-space bike room
- ~900-square-foot, ground-floor café



Proposed Project – Preserve/Restore Façade



Proposed



Existing

Appeal Point 1: Historic Resource Status

Appellant:

The UA Theater is a "mandatory" historic resource via its listing in the CRHR; the historic status encompasses more than the facade.

Substantial demolition of the theater would cause a substantial adverse change in its historic significance; therefore, the historic resource exemption exception applies.

Appeal Point 1: Historic Resource Status

Response:

- The whole building is on the CRHR and is an historic resource
- Substantial evidence:
 - Historic Resource Evaluation – significant loss of integrity “negates the property’s ability to convey significance”
 - Project Impact Analysis (PIA)
 - Character-defining feature (upper Shattuck façade) preserved in the Project
 - Project consistent with Secretary of Interior Standards for Rehabilitation

Appeal Point 1: Historic Resource Status

Response (Cont'd):

- **Upon consideration of all evidence on the record:**
 - Project application materials, plans and technical reports
 - Peer reviews of submitted technical reports and historic resource reports
 - Revised PIA prepared by the City's Consultant
 - LPC designation and findings
 - City Attorney guidance
 - City Council's deliberations in closed session
- **Staff determined:**
 - **Project is eligible for Infill Exemption**
 - **Historical Resource *exception* to the exemption does not apply**

Appeal Point 2: DAP Consistency

Appellant:

The categorical exemption is not consistent with the Downtown Plan, including policies for the protection and expansion of historic theaters that specifically reference UA Berkeley (Theater).

Appeal Point 2: DAP Consistency

Response:

- Policy ED-1.7 broadly encourages retention and expansion of cinema, live theater and music venues
- Project complies with the Policy by preserving what is feasible
- Preserving / rehabilitating the entire building is not feasible
- ZAB found Project consistent with General Plan and Downtown Area Plan

Appeal Point 3: Project Description

Appellant:

The project description relied upon in ZAB's review is not finite or stable, and is inadequate for consideration for categorical exemption, per the applicant's recent public assertions that the application will be substantially modified.

Appeal Point 3: Project Description

Response:

- The CEQA exemption applies to use permit approved by ZAB
- Any substantial change to the project as approved by ZAB would require Use Permit Modification
 - New staff review (new CEQA determination)
 - New decision by the ZAB on the modified project
- No application to modify the project has been submitted

Appeal Point 4: No Public Review

Appellant:

There was a potential “due process violation” in the ZAB proceedings, based on a representation in the applicant’s letter to ZAB that “the City approved the Class 32 categorical exemption in October of 2024 after deliberation by the City Council and in consultation with the City Attorney”, where there has been no public review before any City Council deliberation regarding the subject categorical exemption.

Appeal Point 4: No Public Review

Response:

- Common practice for exemption determinations to be made by staff
- Staff reviewed the Project in accordance with AB 1633
- City Council met in closed session September 2024 to discuss potential litigation related to the Project under CEQA
- No public discussion regarding the CEQA determination is required by AB 1633/HAA

Appeal Point 5: Technical Reports

Appellant:

The ZAB was not provided with all relevant City reports from architectural historians regarding the UA Berkeley (Theater).

Appeal Point 5: Technical Reports

Response:

- City Consultant's peer review of the historic resource reports and revised PIA publicly released w/ CEQA Determination Letter on October 4, 2024.
- The reports staff used for CEQA determination were not necessary for ZAB to approve / disapprove the Project's use permit.
- All technical reports publicly available well in advance of the hearing on December 12, 2024.

Conclusions

CEQA Findings:

- Staff determined that project is exempt from CEQA under the Infill Exemption

Housing Accountability Act:

- Project cannot be denied, nor the density be reduced unless findings of “specific adverse impact” to public health and safety can be made

Permit Streamlining Act / Senate Bill 330, Housing Crisis Act:

- Tonight’s hearing is the 4th out of 5 that the City can conduct for a decision on the project

City Council Action:

- 1) Continue; 2) Reverse, affirm, or modify ZAB approval; 3) Remand to ZAB



Durr, Jasmine

From: James Lloyd <james@calhdf.org>
Sent: Monday, April 21, 2025 4:08 PM
To: Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark
Cc: Planning Dept. Mailbox; City Clerk; City Attorney's Office; Manager, C
Subject: public comment re item 1 for 4/22/25 Council meeting
Attachments: Berkeley - 2274 Shattuck Avenue - HAA Letter.pdf

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Berkeley City Council:

The California Housing Defense Fund ("CalHDF") submits the attached public comment regarding the proposed 227-unit apartment building at 2274 Shattuck Avenue, which includes 23 very low-income units, calendared as **agenda item 1** for the April 22, 2025 Council meeting

Sincerely,

James M. Lloyd
Director of Planning and Investigations
California Housing Defense Fund
james@calhdf.org
CalHDF is grant & donation funded
Donate today - <https://calhdf.org/donate/>



Apr 21, 2025

City of Berkeley
2180 Milvia St,
Berkeley, CA 94704

Re: Proposed Housing Development Project at 2274 Shattuck Avenue

By email: mayor@berkeleyca.gov; rkesarwani@berkeleyca.gov;
ttaplin@berkeleyca.gov; bbartlett@berkeleyca.gov; itregub@berkeleyca.gov;
sokeefe@berkeleyca.gov; bblackaby@berkeleyca.gov; clunaparra@berkeleyca.gov;
mhumbert@berkeleyca.gov

Cc: planning@berkeleyca.gov; clerk@cityofberkeley.info; attorney@berkeleyca.gov;
CManager@berkeleyca.gov

Dear Berkeley City Council:

The California Housing Defense Fund ("CalHDF") submits this letter to remind the Council of its obligation to abide by all relevant state housing laws when evaluating the appeal against the proposed 227 unit apartment building at 2274 Shattuck Avenue, which includes 23 very low-income units, calendared as **agenda item 1** for the April 22, 2025 Council meeting. These laws include the Housing Accountability Act ("HAA"), SB 330, the Density Bonus Law ("DBL") and California Environmental Quality Act ("CEQA") guidelines.

The HAA provides the project legal protections. It requires approval of zoning and general plan compliant housing development projects unless findings can be made regarding specific, objective, written health and safety hazards. (Gov. Code, § 65589.5, subds. (d), (j).) The HAA also bars cities from imposing conditions on the approval of such projects that would render the project infeasible or reduce the project's density unless, again, such written findings are made. (*Id.* at subd. (d).) As a development with at least two-thirds of its area devoted to residential uses, the project falls within the HAA's ambit, and it complies with local zoning code and the City's general plan. Increased density, concessions, and waivers that a project is entitled to under the DBL (Gov. Code, § 65915) do not render the project noncompliant with the zoning code or general plan, for purposes of the HAA. (Gov. Code, § 65589.5, subd. (j)(3).) The HAA's protections therefore apply, and the City may not reject the project except based on health and safety standards, as outlined above.

CalHDF also writes to emphasize that the DBL offers the proposed development certain protections. The City must respect these protections. In addition to granting the increase in residential units allowed by the DBL, the City must not deny the project the proposed waivers and concessions with respect to height, front and side setback minima, front setback maximum, diagonal measurement about 120 feet in height, open space, and bicycle parking, unless it makes written findings as required by Government Code, section 65915, subdivision (e)(1) that the waivers would have a specific, adverse impact upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, or as required by Government Code, section 65915, subdivision (d)(1) that the concessions would not result in identifiable and actual cost reductions, that the concessions would have a specific, adverse impact on public health or safety, or that the concessions are contrary to state or federal law. The City, if it makes any such findings, bears the burden of proof. (Gov. Code, § 65915, subd. (d)(4).) Of note, the DBL specifically allows for a reduction in required accessory parking in addition to the allowable waivers and concessions. (*Id.* at subd. (p).) Additionally, the California Court of Appeal has ruled that when an applicant has requested one or more waivers and/or concessions pursuant to the DBL, the City “may not apply any development standard that would physically preclude construction of that project as designed, even if the building includes ‘amenities’ beyond the bare minimum of building components.” (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 775.)

Additionally, the project is exempt from state environmental review under the Class 32 CEQA categorical exemption (In-Fill Development Projects) pursuant to section 15332 of the CEQA Guidelines, as the project is consistent with the applicable general plan designation and all applicable general plan policies as well as the 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. And recent caselaw from the California Court of Appeal affirms that local governments err, and may be sued, when they improperly refuse to grant a project a CEQA exemption or streamlined CEQA review to which it is entitled. (*Hilltop Group, Inc. v. County of San Diego* (2024) 99 Cal.App.5th 890, 911.)

Given that the project approval has been appealed on the basis of the environmental review, the City should be aware that AB 1633 amended the HAA so that its definition of a project disapproval now includes a failure to make a determination as to whether a project is eligible for a CEQA exemption. (Gov. Code, § 65589.5, subd. (h)(6)(I).) In other words, if the

Council affirms the appeal and denies the Class 32 CEQA exemption, this action may constitute a disapproval of the project pursuant to the HAA.

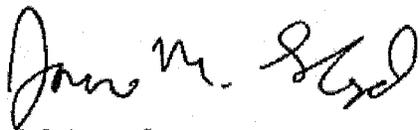
As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. New housing such as this is a public benefit: it will bring new customers to local businesses; it will grow the City's tax base; and it will reduce displacement of existing residents by reducing competition for existing housing. Given that this project is in the center of Berkeley, within walking distance of campus and employment opportunities, this project will help the state achieve its climate goals by reducing vehicle miles traveled and lessening the demand for greenfield development in far-flung areas of the state. While no one project will solve the statewide housing crisis, the proposed development is a step in the right direction. CalHDF urges the Council to approve it, consistent with its obligations under state law.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dylan Casey', with a long horizontal flourish extending to the right.

Dylan Casey
CalHDF Executive Director

A handwritten signature in black ink, appearing to read 'James M. Lloyd', with a long horizontal flourish extending to the right.

James M. Lloyd
CalHDF Director of Planning and Investigations

Durr, Jasmine

From: JULIA ROBERTSON <juliarobertson@me.com>
Sent: Monday, April 21, 2025 3:16 PM
To: All Council
Cc: Isabella Miller; Abby Ginzberg
Subject: Congratulations and a Call to Protect Berkeley's Historic UA Theater

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mayor Ishi,

First, congratulations on your new position as Mayor! I was proud to support your campaign and have long admired your colleague Julie Sinai, dating back to the Mayor Bates era.

Mayor Bates is actually the one who appointed me to the Board of Directors of the Berkeley Film Foundation over 12 years ago. I served as the Board President and now act as Treasurer. Since our founding, we've awarded nearly \$2 million in grants to local filmmakers, helping to nurture a thriving creative community here in Berkeley.

Lately, however, I've been deeply troubled by the loss of our historic film theaters. While I understand the impact of streaming services and the profound disruption caused by the pandemic, the cultural cost of these closures is significant.

I recently learned there may still be a chance to save one of our most iconic and beloved downtown venues—the UA Theater.

This theater holds both personal and community value. I spent countless hours there with my kids as they were growing up, and I miss the communal experience of watching films in a proper theater setting. Even at this year's Oscars, an award-winning filmmaker used their moment on stage to call for saving our historic theaters.

The UA is a true architectural and cultural treasure. Built by Hollywood legends Charlie Chaplin and Mary Pickford, it represents a piece of our shared history that can't be replaced. It was added to the state historical register in 2015, recognizing its significance.

Despite this, the theater is still on track for demolition. After a group submitted a landmark designation application, the City's Landmark Preservation Committee (LPC) on February 1, 2024, chose to landmark only the front façade. The lobby received "rehabilitation status," which does not fully protect its original features such as the Art Deco brass railings, fixtures, or murals—and, most importantly, it offers no protection for the auditorium itself.

State law requires the city to treat the UA as a "historical resource," which means it must explore ways to mitigate the impact of any proposed development. Housing is essential, but we must not break the law or destroy an irreplaceable landmark in the process.

I urge your leadership to help preserve this Art Deco gem and explore a future in which it can play a revitalizing role in downtown Berkeley. Let's bring people together again—to watch films, share stories, and celebrate the arts as a community.

Warm regards,
Julia Robertson
Treasurer, Berkeley Film Foundation

julia robertson
Pinch Me Films
510 910-6690
juliarobertson@me.com
Sent from my iPhone

julia robertson
Pinch Me Films
510 910-6690
juliarobertson@me.com
Sent from my iPhone

Durr, Jasmine

From: Todd Darling <toddardlingfilms@gmail.com>
Sent: Monday, April 21, 2025 12:11 PM
To: Bartlett, Ben; All Council; Berkeley Mayor's Office
Subject: Shattuck United Artists Theater

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mayor Ishii, Vice Mayor Bartlett, and City Council,

The United Artists Theater on Shattuck premiered my feature documentary "Occupy The Farm" in late 2014. We convinced the theater chain to book the film for a full week, four screenings a day. The opening night was packed, the gorgeous, vintage lobby was buzzing, and this film made about Berkeley and the Gill Tract ended the week as the multiplex theater's top grossing film. The theater chain extended the film's run by a week, and put the film into twenty more theaters. This film went on to play in sixty theaters and sixty cities coast to coast, and then streamed on Amazon Prime.

This is an example of locally grown culture, given a space, and taking flight. This could have only happened at a commercial theater. PFA would never have facilitated such a run, or taken such a chance. Now, Berkeley is set to terminate all three commercial cinemas, each one near the downtown Berkeley BART station. Berkeley wants to replace them with hamster sized dorm rooms and cramped, expensive two-bedroom apartments. Adios culture, hello gentrification. This is not planning, this is cultural myopia. A lot of money coming from and going to developers, which will result in a city left with a deficit of culture and a surplus of the kind of housing that few desire or need.

The historic UA theater, an architectural gem, needs to be saved. The City cannot in the wake of the pandemic, and the tsunami of hedge fund "housing" investors wipe out its cultural institutions at their weakest moments and imagine that it will not impoverish the City.

This City has helped remove public open space at People's Park and erect a twelve-story dorm. Wipe out all the cinemas, and simply abandon the art form to Emeryville. Build hundreds of tiny apartments, and half of which sit empty while restaurants and stores are evicted, and 100 year old neighborhoods are now shaded and without amenities. Without end, without any environmental, cultural or economic consideration this goes on. "Density uber alles" will not serve us well.

Buildings and neighborhoods do embody culture. Demolishing buildings also demolishes culture.

Please save the UA Theater. At this moment in our national history, where we seem hell-bent on re-capitulating the Gilded Age and the corrupt Robber Barons, the Berkeley City Council has a chance to act with vision and courage.

Sincerely,
Todd Darling
Director, (DGA)

From: Gretta Goldenman <grettagoldenman@gmail.com>
Sent: Tuesday, April 22, 2025 5:06 PM
To: All Council
Subject: Preservation of the UA Theater on Shattuck Avenue

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Berkeley City Council,

I urge you to defend and rebuild downtown Berkeley as a lively cultural center by doing your part to help preserve the UA Theater.

The UA Theater is a historical jewel that is listed on the California Register of Historic Resources. Its historic, cultural and economic value lies not just in the facade and the marquee, but in its murals, ceilings, furnishings and more as well as in its potential to again serve as an active movie palace or other cultural center.

I personally prefer to go to see a movie in a theater, in order to have that communal experience, rather than streaming it at home. While the UA Theater was open, I went there many, many times.

Downtown Berkeley needs more theaters, music venues, restaurants and bookstores in order to remain a vibrant community center. I find it shocking that Berkeley has allowed the closure of the other movie theatres that once made downtown Berkeley such a fun place to be. I do believe that the audiences will come back if the UA Theater is preserved.

Please do the right thing and do not let this cultural icon disappear.

Gretta Goldenman
1740 Rose Street
Berkeley CA 94703

]

From: Lee Bishop <bishoplm@gmail.com>
Sent: Tuesday, April 22, 2025 4:37 PM
To: All Council
Subject: Homes at UA Theater please!

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hello Council,

I saw that there is momentum building to "Save the UA Theater", and I want to write in support of building homes there as planned. The most likely outcome of "saving" the theater would be to leave the site to fall into further disrepair, as I don't see any clear description of how we would fund the much needed repairs to the multiplex. If we want to have movies come back to Berkeley, we need more people to go to movies. Please don't stand in the way of that future. This site is ideal for homes with its close proximity to BART and downtown amenities.

Thank you,
Lee
District 1

From: Laura Morland <lmorland@gmail.com>
Sent: Tuesday, April 22, 2025 4:27 PM
To: All Council; Berkeley Mayor's Office
Subject: Please save our historic cinema!

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Berkeley Councilmembers,

I hope it's not too late to add my voice to the clamor of those who feel strongly, as I do, that the UA cinema is worth saving.

I have lived in Berkeley for nearly all my adult life, but I would like to share the story of my hometown of DeLand, Florida. We had an old cinema -- the Athens Theatre -- there that was disintegrating and threatened with destruction. A group of concerned citizens raised the funds to restore it to its 1920s beauty. It took a while, but fifteen years ago, they transformed it into a combination cinema and live theater venue. It has now become a drawing card -- a tourist attraction -- for the entire area.

Think what a revived UA Cinema could do for *our* entire downtown, which -- *aside from the "Arts District" on Addison and Center streets* -- desperately needs a destination that will draw people in.

Please vote to save the cinema! Your children, and children's children, will thank you.

Laura Morland
1203 Walnut Street
Berkeley, CA 94709
510.527.5656

From: Madeleine Roberts <madeleine.octavia@gmail.com>
Sent: Tuesday, April 22, 2025 3:56 PM
To: All Council; Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark
Cc: Gong, Sharon; Klein, Jordan; City Attorney's Office; Save the UA Berkeley
Subject: Re: 2274 Shattuck Avenue - California Law that shows the Categorical Exemption was improperly granted

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And here it is more clearly spelled out in CEQA Guidelines §15300.2(f), where it states that "a categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource."

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[LII](#) > [State Regulations](#) > [California Code of Regulations](#) > [Title 14 - Natural Resources](#) > [Division 6 - Resources Agency](#) > [Chapter 3 - Guidelines for Implementation of the California Environmental Quality Act](#) > [Article 19 - Categorical Exemptions](#) > [Cal. Code Regs. Tit. 14, § 15300.2 - Exceptions](#)

Cal. Code Regs. Tit. 14, § 15300.2 - Exceptions

[State Regulations](#) [Compare](#)

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located--a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

On Tue, Apr 22, 2025 at 3:35 PM Madeleine Roberts <madeleine.octavia@gmail.com> wrote:

Hello Mayor and City Council Members -

In October of last year, the City Attorney and Planner Sharon Gong granted a categorical exemption to the developers of 2274 Shattuck Avenue.

California Law (see California Public Resources Code, Section 21084; I have attached its text below) specifies that properties on the California Register of Historical Resources shall not receive categorical exemptions to CEQA.

2274 Shattuck Avenue has been on the California Register of Historical Resources since 2006.

The Rincon Consultants reports (there were two) that were commissioned by Planning over the summer confirmed the same.

Neither SB 330 nor AB 1633 get in the way of CEQA law in this regard.

The categorical exemption should never have been granted.

We ask for legitimate due process according to CEQA law. This projects need a MND or an EIR.

I encourage you to do the right thing tonight and remand the project back to staff for another review of CEQA.

PS: The developer was well aware of this when they closed on the land. They know they need to go through a CEQA process. They surely accounted for it in their due diligence.

cal. Pub. Resources Code § 21084

Download PDF

Current through the 2024 Legislative Session.

Section 21084 - Guidelines to include classes of projects exempt from division

Previous Section Section 21083.9 - Scoping meeting required

New Section Section 21084.1 - Project may cause substantial adverse change in significance of historical resource

(g) A project that may cause a substantial adverse change in the significance of a historical resource, as specified in Section 21084.1, shall not be exempted from this division pursuant to subdivision (a).

Cal. Pub. Res. Code § 21084

Amended by Stats 2013 ch 76 (AB 322), § 175, eff. 1/1/2014.
Amended by Stats 2018 ch 218 (AB 2662), § 6, eff. 1/1/2019.
Amended by Stats 2011 ch 269 (SB 228), § 6, eff. 1/1/2011.

cal. Pub. Resources Code § 21084.1

Download PDF

Current through the 2024 Legislative Session.

Section 21084.1 - Project may cause substantial adverse change in significance of historical resource

A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed to, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subdivision (k) of Section 2020.1, or deemed significant pursuant to criteria set forth in subdivision (g) of Section 2024.4, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 2024.4 shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.

Cal. Pub. Res. Code § 21084.1

Added by Stats 1994, Ch. 1075, Sec. 6, Effective January 1, 1995.

I believe this word is the most important part of what will be argued should a CEQA MND or EIR process be granted.

2274 Shattuck has been on the California Register of Historical Resources since 2008.

Best regards,
Madeleine Roberts Rich
(510) 414-7707

Best regards,
Madeleine Roberts Rich
(510) 414-7707

Durr, Jasmine

From: Madeleine Roberts <madeleine.octavia@gmail.com>
Sent: Tuesday, April 22, 2025 3:36 PM
To: All Council; Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark
Cc: Gong, Sharon; Klein, Jordan; City Attorney's Office
Subject: 2274 Shattuck Avenue - California Law that shows the Categorical Exemption was improperly granted

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hello Mayor and City Council Members -

In October of last year, the City Attorney and Planner Sharon Gong granted a categorical exemption to the developers of 2274 Shattuck Avenue.

California Law (see California Public Resources Code, Section 21084; I have attached its text below) specifies that properties on the California Register of Historical Resources shall not receive categorical exemptions to CEQA.

2274 Shattuck Avenue has been on the California Register of Historical Resources since 2006.

The Rincon Consultants reports (there were two) that were commissioned by Planning over the summer confirmed the same.

Neither SB 330 nor AB 1633 get in the way of CEQA law in this regard.

The categorical exemption should never have been granted.

We ask for legitimate due process according to CEQA law. This projects need a MND or an EIR.

I encourage you to do the right thing tonight and remand the project back to staff for another review of CEQA.

PS: The developer was well aware of this when they closed on the land. They know they need to go through a CEQA process. They surely accounted for it in their due diligence.

Cal. Pub. Resources Code § 21084

Download PDF

Current through the 2024 Legislative Session.

Section 21084 - Guidelines to include classes of projects exempt from division

- (a) The guidelines prepared and adopted pursuant to Section 21084 shall include a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from this division. In adopting the guidelines, the Secretary of the Natural Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment.
- (b) A project's greenhouse gas emissions shall not, in and of themselves, be deemed to cause an exemption adopted pursuant to subdivision (a) to be inapplicable if the project complies with all applicable regulations or requirements adopted to implement statewide, regional, or local plans consistent with Section 15182.5 of Title 14 of the California Code of Regulations.
- (c) A project that may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway designated as an official state scenic highway, pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, shall not be exempted from this division pursuant to subdivision (a). This subdivision does not apply to improvements or mitigation for a project for which a negative declaration has been approved or an environmental impact report has been certified.
- (d) A project located on a site that is included on any list compiled pursuant to Section 69662.5 of the Government Code shall not be exempted from this division pursuant to subdivision (a).
- (e) A project that may cause a substantial adverse change in the significance of a historical resource, as specified in Section 21084.1, shall not be exempted from this division pursuant to subdivision (a).

Cal. Pub. Res. Code § 21084

Amended by Stats 2023 ch 76 (SB 37), § 175, eff. 1/1/2024.
Amended by Stats 2022 ch 598 (SB 266), § 4, eff. 1/1/2023.
Amended by Stats 2021 ch 469 (SB 220), § 2, eff. 1/1/2021.

Previous Section
Section 21083.9 - Scoping
finding required

Next Section
Section 21084.1 - Project
may cause substantial
adverse change in
significance of historical
resource

Cal. Pub. Resources Code § 21084.1

Download PDF

Current through the 2024 Legislative Session.

Section 21084.1 - Project may cause substantial adverse change in significance of historical resource

A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subdivision (4) of Section 50240, or deemed significant pursuant to criteria set forth in subdivision (6) of Section 50241, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (6) of Section 50241 shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.

Cal. Pub. Res. Code § 21084.1

Added by Stats 1991, Ch. 1075, Sec. 8, Effective January 1, 1993.

I believe this word is the most important part of what will be argued should a CEQA MND or EIR process be granted.

Previous Section
Section 21084 - Guidelines
to include classes of projects
exempt from division

Next Section
Section 21084.2 - Project
may cause substantial
adverse change in
significance of tribal cultural
resources

2274 Shattuck has been on the California Register of Historical Resources since 2006.

Best regards,
Madeleine Roberts Rich
(510) 414-7707

From: John Carnahan <carnahan02@gmail.com>
Sent: Tuesday, April 22, 2025 1:56 PM
To: All Council
Subject: Yes to CEQA review on the UA Berkeley

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Mayor and council members,

As someone who has taught film history at CSU East Bay for 16 years, I can attest that the UA Berkeley is indeed an historical significant movie palace and, for decades, a cornerstone of the downtown business district. It's a good place for a speakeasy cinema like the Parkway or the Cerrito. Other local cinemas with programming that responds to the community, like the Grand Lake and the Roxie, have retained their audiences despite all the problems faced by movie exhibition. Film is not something Berkeley should see off, any more than live music or theatre.

Where is the art cinema in the Fine Arts Building? Where is the feminist bookstore in the Gaia Building? These businesses were supposed to be retained as the bottom floor of a Panoramic building, but that never seems to happen. Please don't let the United Artists Building become another tombstone over a Berkeley cultural space.

thanks,

John Carnahan in District 3

--
Ce qu'on te reproche, cultive le, c'est toi. -- Jean Cocteau
https://linktr.ee/cursd_captain

Durr, Jasmine

From: Paul <paulbickmore@gmail.com>
Sent: Tuesday, April 22, 2025 1:18 PM
To: All Council
Subject: Get Us Housing at the Vacant UA Theater!

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Mayor and Berkeley City Council:

I'm a renter and I support housing being built on the vacant UA Theater on Shattuck. Although I wish we had more movie theaters and have seen movies at this theater when it was open, a big reason why we don't have more theaters anymore is that people are getting pushed out of the area by high rents.

Furthermore, the historically important parts of this building are getting preserved by being turned into housing. Otherwise, we will have a decaying, historic structure not being used.

We need more housing, period. I am able to survive in the area for now, but if I had kids to support, there's no way I could do it without moving farther away, displacing people already there. I'd have to buy a car, too.

Support housing at the UA Theater!

Thank you,

Paul Bickmore

From: Michael Fullerton <msf22@earthlink.net>
Sent: Tuesday, April 22, 2025 10:39 AM
To: All Council
Subject: Save UA Theater

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Please save this cultural treasure. Thanks

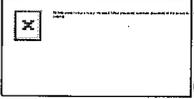
Michael Fullerton
Berkeley resident since 1968

From: Rafa Sonnenfeld <rafa@yimbylaw.org>
Sent: Tuesday, April 22, 2025 9:48 AM
To: All Council
Subject: Re: Item #1: ZAB Appeal: 2274 Shattuck Avenue, Use Permit #ZP2023-0079
Attachments: 2274 Shattuck Ave Letter of Support.pdf

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Please see attached our organization's support letter for the 2274 Shattuck Ave project.

Rafa Sonnenfeld he/him
Senior Manager



[Check out everything we achieved in 2024!](#)

YIMBY Law

2261 Market Street STE 10416
San Francisco, CA 94114
hello@yimbylaw.org



YIMBY LAW

April 22, 2025

City Council
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Re: 2274 Shattuck Avenue

Dear City Councilmembers,

YIMBY Law writes to urge the City Council to uphold the approval of Use Permit #ZP2023-0079, allowing for the mixed-use redevelopment at 2274 Shattuck Avenue (the "Project") at the appeal hearing scheduled for April 22, 2025. The Project would bring much needed housing in close proximity to the UC Berkeley Campus. YIMBY reminds the City that the Project is subject to protections of the Housing Accountability Act (HAA) and Assembly Bill 1633 (AB 1633).

YIMBY Law is a 501(c)(3) nonprofit organization dedicated to increasing housing accessibility and affordability throughout California. YIMBY Law holds cities accountable when they fail to comply with state housing laws. YIMBY Law closely monitors projects such as the one at 2274 Shattuck Avenue to ensure that all relevant state laws are properly applied, including the HAA and AB 1633. Should the City fail to follow these laws, YIMBY Law will not hesitate to file suit to ensure state housing policies are enforced.

YIMBY Law was heartened to see the Zoning Adjustments Board ("ZAB") approve the Project in December 2024. ZAB's approval correctly recognized the Project's consistency with applicable law and its critical role in helping the City address its pressing housing needs. YIMBY Law was also encouraged by the fact that the City, with ZAB approval, found this project exempt from CEQA in accordance with AB 1633.

Unfortunately, the meritless appeal puts these urgently needed housing units in jeopardy: in total, 227 housing units with a diversity of floorplans, including 32 studios,

YIMBY Law

2261 Market Street STE 10416

San Francisco, CA 94114

hello@yimbylaw.org



YIMBY LAW

49 two-bedroom units, 80 three-bedroom units, and 66 four-bedroom units. In addition, 23 of the approved units will be reserved for very-low income households. Given the Project's proximity to the UC Berkeley campus, it will provide desperately needed student-oriented housing to alleviate housing insecurity among students – as this Council is likely aware, 10% of undergraduate and graduate UC Berkeley students have reported instances of homelessness. Unreported instances of student homelessness are likely much greater.

There is no basis for the City Council to grant the appeal before it. As ZAB correctly determined, the Project meets all applicable objective standards in the City's General Plan, Downtown Area Plan and the Commercial Downtown Mixed-Use zone. As a reminder, the HAA prohibits a city from denying housing development projects that are compliant with the city's zoning ordinance or general plan at the time the application was deemed complete, unless the locality can make findings that the proposed housing development would be a threat to public health and safety. No such findings are appropriate here, and any attempt to overturn ZAB's approval would violate state law.

Furthermore, any attempt to overturn the ZAB's determination that the Project qualifies for the Class 32 Infill Exemption risks violating AB 1633. As City staff has previously noted, the project meets all of the eligibility criteria for AB 1633 and is situated in an area that does not qualify as environmentally sensitive. Substantial evidence established that the Project meets the criteria for the Class 32 Infill Exemption. While the City's approval of the AB 1633 exemption took longer than allowed by state law, we applaud the City for ultimately following the requirements of AB 1633 in approving the CEQA exemption.

We now urge the City Council to take the necessary action to affirm the City's legal obligations under the HAA, AB 1633, and CEQA, and to reject the appeal. It is unfortunate that opposition groups continue to organize attempts to delay and obstruct this and other much-needed infill residential projects. This project, in particular, should be applauded given the overall challenge in developing financially feasible, high-density residential projects throughout the Bay Area. Fortunately, the law has evolved in a manner that supports – and in this case requires – the City Council's approval of this much-needed housing. Any reversal would send the wrong message about Berkeley's commitment to fair housing, and would further delay a much-needed infill project while tying up the City in an expensive legal battle.

YIMBY Law

2261 Market Street STE 10416
San Francisco, CA 94114
hello@yimbylaw.org



YIMBY LAW

I am signing this letter both in my capacity as the Executive Director of YIMBY Law, and as a resident of California who is affected by the shortage of housing in our state.

Sincerely,

A handwritten signature in black ink that reads "Sonja Trauss". The signature is written in a cursive, flowing style.

Sonja Trauss
Executive Director
YIMBY Law

Durr, Jasmine

From: Robin R. Baral <RBaral@hansonbridgett.com>
Sent: Tuesday, April 22, 2025 9:27 AM
To: Brown, Farimah F.; Stephens, Sara; Gong, Sharon; All Council
Subject: City Council Appeal - Supplemental Correspondence
Attachments: City Council Appeal LTR.pdf

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Good morning- please see the attached correspondence to be included in the record of proceedings for the ZAB appeal to the City Council regarding 2274 Shattuck Avenue, Use Permit #ZP2023-0079.

Regards,
Robin

Robin R. Baral
Partner
RBaral@hansonbridgett.com
Direct: (415) 995-6331



Hanson Bridgett LLP
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Costa Mesa • Los Angeles • Sacramento • San Francisco • San Rafael • Walnut Creek



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April 22, 2025

Berkeley City Council
2180 Milvia Street
Berkeley, CA 94704

Re: Use Permit #ZP2023-0079 – 2274 Shattuck Avenue

Dear Mayor Ishii and the Berkeley City Council:

Hanson Bridgett LLP represents 2274 Shattuck QOZB, LLC (“Panoramic Interests”), the project sponsor for the mixed-use project proposed at 2274 Shattuck Avenue. We concur with the recommendations in the staff report and respectfully request that the City Council affirm the Zoning Adjustments Board’s (“ZAB”) approval of the project and the City’s determination that the project is exempt from CEQA pursuant to the AB 1633/Class 32 Infill Exemption. None of the issues raised by the appellant, or any other party, should cause the City to alter any of the findings in the staff report and proposed use permit. We submit this letter primarily to address key areas where the appellant’s and other parties’ claims are factually or legally incorrect.

OVERVIEW

1. The Class 32 Infill Exemption is supported by technical reports confirming that the project will not cause significant impacts related to biological resources, noise, transportation, and air or water quality. The City should disregard comments asserting noise and vibration impacts as they are based on false assumptions that the project will use piledriving and/or air chillers.
2. Substantial evidence supports the City’s findings that there are no exceptions to the Class 32 Infill Exemption, specifically, that the project will not cause a substantial adverse change in the significance of a historical resource. The evidence includes a Historic Resources Evaluation, a Project Impact Analysis, and subsequent clarifications by Left Coast Architectural History (“Left Coast”),¹ and determinations at the Landmarks Preservation Commission (“LPC”). Materials submitted by the appellant, such as a 19 year-old letter from the State Historic Preservation Office for a separate project in San Rafael, have no bearing on the City’s findings in this project.
3. This project was one of the first to be submitted to the City pursuant to AB 1633, an amendment to the Housing Accountability Act that requires the City to determine that infill residential projects are exempt from CEQA, if findings for the exemption (and the absence of any exceptions) are supported by substantial evidence. Arguments raised by the appellant are almost entirely based on an assertion that the “fair argument” standard of review should apply to the historical resources exception. Appellant’s position is inconsistent with caselaw and state housing law, which require the “substantial evidence” standard of review for this project.

¹ An April 7, 2025 letter from Left Coast to the City is attached hereto for reference as Attachment 1.

1. Substantial evidence supports the City's findings for the Class 32 Infill Exemption.

On October 4, 2024, the City found that the project meets all of the requirements for the Class 32 Infill Exemption². The general rule under CEQA is that the City, as the lead agency, cannot require the preparation of a negative declaration or environmental impact report ("EIR") if the project qualifies for a categorical exemption, unless the project is subject to an "exception" to the categorical exemptions.³ In addition, this project is subject to a new state housing law ("AB 1633"),⁴ effective as of January 1, 2024, which shifted CEQA's legal framework (i.e., the burden of proof and standard of review) to require that cities – and courts – defer to applicants of high-density infill housing development projects when documenting the Class 32 Infill Exemption, and when confirming that "the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2 of [the CEQA] guidelines."⁵ Section 3 of this letter summarizes some of the changes to CEQA's legal framework for AB 1633 projects.

To be eligible for the Class 32 Infill Exemption, a project must (1) be consistent with the applicable general plan designations, policies, and zoning standards; (2) be located within city limits, on a project site of no more than five acres, and substantially surrounded by urban uses; (3) have no biological value as habitat for protected species; (4) have no significant effects relating to traffic, noise, air quality, or water quality; and (5) be adequately served by utilities and public services.⁶

The use permit cites numerous technical reports and studies that support all five of the above-referenced findings. The details of those reports, the City's findings in reliance on those reports, and any subsequent supplement to those reports, are included in the record of proceedings and do not need to be reexamined. Prior to the ZAB hearing, however, comments were raised questioning the viability of the Class 32 Infill Exemption by asserting that the project would cause significant noise and vibration impacts. The appellant has also alleged that the project is inconsistent with the Downtown Area Plan. The project sponsor and its consultants have reviewed those comments and can confirm that they have no factual or legal merit.

- A. *Comments alleging noise and vibration impacts are based on false assumptions about the project and, in any event, potential noise impacts are addressed by the City's standard use permit conditions.*

A detailed noise analysis was prepared for the project, establishing that neither construction nor operation of the project will result in significant noise impacts on the environment. Comments submitted prior to the ZAB hearing, however, argued that the project's noise analysis is flawed.⁷ Those comments, however, were based on unfounded assumptions and factual inaccuracies.

² 14 Cal. Code Reg. § 15332

³ 14 Cal Code Reg. §§ 15300.2, 15300.4; Pub. Res. Code § 21080(b)(9)

⁴ For ease of reference, this letter refers to the provisions in Government Code section 65589.5.1 as "AB 1633." AB 1633 (Wicks 2023) amended the Housing Accountability Act by adding subdivisions (h)(6)(D)-(E) and (7)(A)-(B) to Government Code § 65589.5. The HAA was subsequently amended by AB 1413 (Ting 2024) largely to relocate the original provisions of AB 1633 related to CEQA exemptions to new Government Code section 65589.5.1, and the provisions of AB 1633 related to EIRs to new Government Code section 65589.5.2.

⁵ Gov. Code § 65589.5.1(a)(4)(B)

⁶ 14 Cal Code Reg. § 15332

⁷ See December 12, 2024 Letter from Adams Broadwell Joseph & Cardozo to ZAB re Agenda Item No. 6: 2274 Shattuck Avenue Project (Use Permit #ZP2023-0079) ("Adams Broadwell Letter").

(i) Construction Noise

Commenters have incorrectly claimed (and provided no evidence) that the project cannot be constructed without pile-driving equipment.⁸ They further claimed that the use of hypothetical pile-driving equipment would result in significant noise and vibration impacts.⁹ Substantial evidence in the record, however, establishes that the project will be constructed without pile driving, relying instead on augured cast-in-place (ACIP) piles, torque-down piles, and deep soil mixing ground improvement, each of which is associated with significantly less construction noise and vibration.¹⁰ These measures were accounted for in the project's noise analysis.

Commenters have also incorrectly claimed that the noise analysis failed to consider impacts of demolition and grading activities on multi-family residences approximately 65 feet south of the project site.¹¹ The noise analysis specifically analyzed those potential impacts by modeling the noise impacts on those residences using noise levels and usage factors based on industry-standard Federal Transportation Agency data. The noise analysis concluded that construction noise would not exceed the applicable thresholds.¹²

Commenters have also erroneously claimed that the noise analysis did not consider potential noise from vertical construction¹³ or construction-related traffic.¹⁴ The noise analysis, however, concluded that noise impacts from vertical construction will be less than the noise impacts caused by demolition and grading activities.¹⁵ The noise analysis included a detailed analysis of construction-related noise and concluded that impacts will be less than significant.¹⁶

Furthermore, the City may properly rely on compliance with standard conditions of approval when evaluating whether there is substantial evidence that the project qualifies for a CEQA exemption.¹⁷ Commenters ignore the requirement that the project must comply with the City's standard conditions of approval, which require a Construction Noise Plan.¹⁸ Pursuant to this condition, the applicant must develop a site-specific noise reduction program, subject to City approval, to reduce construction noise to levels that comply with the Berkeley Municipal Code.

In summary, comments regarding the project's construction noise impacts are based on flawed assumptions, and fail to take into account the City's standard conditions that require a Construction Noise Plan, which applies to this project under use permit condition 16. Construction of the project will not cause significant noise or vibration impacts.

⁸ See Adams Broadwell Letter at pp. 7-8; Exhibit A, p. 1-2.

⁹ *Id.*

¹⁰ See April 18, 2025 letter from Rockridge Geotechnical, Inc., attached hereto as Attachment 2

¹¹ See Adams Broadwell Letter at p. 8.

¹² See March 1, 2024, Noise Impact Analysis for the 2274 Shattuck Avenue Mixed Use Project in Berkeley, California, prepared by FCS International, Inc., ("Noise Impact Analysis") at pp. 9-10; Table 6; Attachment B.

¹³ See Adams Broadwell Letter at p. 8.

¹⁴ *Id.*

¹⁵ Noise Impact Analysis at p. 10.

¹⁶ Noise Impact Analysis at p. 11.

¹⁷ See *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 823 (holding that a city may rely on standard conditions of approval for ensuring adherence to generally applicable thresholds, such as interior noise standards regulated by local ordinance).

¹⁸ See ZAB Findings and Conditions for Use Permit #ZP2023-0079 at Condition 16. The use permit conditions are based on a set of standard conditions that the City has administered for many years and, for each development project, the City determines which of those standard conditions should be imposed by the Zoning Adjustments Board.

(ii) Operational Noise

Commenters have raised a claim that the noise analysis failed to properly account for impacts from the project's HVAC system during night hours.¹⁹ This argument also relies on several unsupported assumptions advanced by the commenters.

First, the commenter claimed that the project plans inaccurately depict the amount of MEP space that will be needed for the project, and that the project will require the use of a large air-cooled chiller in an enclosed mechanical room.²⁰ The commenter, however, provided no evidence to support these claims. The project plans accurately depict the location of the building's MEP spaces – a mechanical room on the first floor and mechanical equipment space on the roof level with space for a cooling tower and heat generation systems.²¹ The project will not utilize a large, air-cooled chiller located in an enclosed mechanical room. The project's cooling tower and heat generation systems will be located on the roof, will not be enclosed, and will not create a noise condition for neighbors.²²

Second, the commenter claimed that the noise analysis mischaracterized existing ambient external noise during nighttime hours and, therefore, use of a hypothetical large, air-cooled chiller has the potential to exceed nighttime thresholds for indoor noise.²³ The commenter is incorrect. The project's noise analysis correctly assumed use of a typical HVAC system and determined that operation of such a system would result in interior noise below the lowest nighttime threshold for indoor noise.²⁴ Substantial evidence supports the finding that the project will not exceed indoor noise standards. That said, the noise analysis utilized the City's documented 24-hour average to determine ambient exterior noise.²⁵ The analysis conservatively assumed that HVAC equipment would operate continuously and would not be muted by the building's rooftop parapet.²⁶ In reality, the climate conditions of the City will likely result in HVAC operating, at most, 50 percent of the time, and the building's rooftop parapet will result in shielding to reduce noise at neighboring residences.²⁷ Accordingly, operational noise levels of HVAC equipment will exceed neither the City's most conservative nighttime exterior noise threshold nor the City's most conservative nighttime interior noise threshold.²⁸

Again, these claims do not account for the City's standard conditions of approval, which include a condition for HVAC Noise Reduction. This standard condition requires the City Planning and Development Department to review the project's proposed HVAC system to ensure compliance with the noise standards in the Berkeley Municipal Code.²⁹ The City's standard condition related to HVAC Noise Reduction is included in the use permit for this project as condition 28.

¹⁹ See Adams Broadwell Letter at pp. 8-9.

²⁰ See Adams Broadwell Letter at p. 8; Exhibit A, p. 3.

²¹ See April 18, 2025 Letter from CB Engineers, attached hereto as Attachment 3.

²² *Id.*

²³ See Adams Broadwell Letter at p. 8; Exhibit A, p. 3.

²⁴ Noise Impact Analysis, at p. 12.

²⁵ See April 21, 2025 First Carbon Solutions Supplemental Noise Impacts Analysis for the 2274 Shattuck Avenue Mixed Use Project in Berkeley, attached hereto as Attachment 4.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ See ZAB Findings and Conditions for Use Permit #ZP2023-0079 at Condition 27; the condition for HVAC Noise Reduction is among those standard conditions incorporated into a project approval City-wide, regardless of the project's environmental determination under CEQA.

- B. *Comments alleging inconsistency with the Downtown Area Plan have no merit; the only applicable policies for this project are objective development standards; the project is consistent with all applicable policies and standards as a matter of law; and the record includes a robust set of consistency findings.*

Appellants claim that the project is inconsistent with certain provisions of the Downtown Area Plan and, on that basis, cannot qualify for the Class 32 Infill Exemption. Appellant's position fails to recognize that this project is being processed pursuant to the Housing Accountability Act ("HAA") and is therefore deemed consistent with the Downtown Area Plan as a matter of law. In addition, pursuant to the HAA, only the objective policies in the Downtown Area Plan can legally be applied to this project.

When evaluating general plan and zoning consistency for the purposes of the Class 32 exemption, the City is limited to considering only those City standards that are "applicable" to the project.³⁰ In determining the applicable zoning and general plan standards for a Class 32 exemption, the City must take into account state housing laws that dictate whether certain standards are in fact applicable to a particular project. If they are not applicable, they cannot be evaluated as part of the Class 32 exemption.³¹

Under the HAA, if the City believes that a project is inconsistent with an applicable plan, program, policy or similar provision, it must inform the applicant of that inconsistency within 60 days of the project application being complete.³² If the City does not identify any inconsistency with a particular plan, then *the project is deemed compliant with that plan as a matter of law.*³³ Here, the City deemed the project application complete on January 4, 2024, and did not identify any inconsistencies with objective standards or general plan policies in the subsequent 60 days, or at any time thereafter. Accordingly, the project is consistent with all City plans, including the Downtown Area Plan, as a matter of law, and must also be considered consistent with the *applicable* general plan and zoning standards for the Class 32 exemption, consistent with prior case precedent.³⁴

Regardless of the above provision, the HAA also mandates that the project can only be subject to *objective development standards.*³⁵ The HAA defines objective development standards very narrowly, in part as constituting "criteria that involve *no personal or subjective judgment by a public official* and are uniformly verifiable by reference to an external and uniform benchmark or criterion."³⁶

The appellant, on the other hand, cited several vague provisions of the Downtown Area Plan, focusing on language directing the City to "encourage," "promote," or "work to retain" certain activities. These vague statements do not constitute mandatory policies or objective development standards, as compliance is not uniformly verifiable by reference to an external and uniform benchmark and is instead entirely subject to personal or subjective judgment.³⁷ The

³⁰ 14 Cal. Code Reg. § 15332(a).

³¹ *Wollmer v. City of Berkeley* (2011) 193 Cal. App. 4th 1329

³² Gov. Code § 65589.5(j)(2)(A)(ii).

³³ Gov. Code § 65589.5(j)(2)(B).

³⁴ *Wollmer, supra*

³⁵ Gov. Code § 65589.5(j)(1).

³⁶ Gov. Code § 65589.5(h)(9)

³⁷ See *California Renters Legal Advoc. & Educ. Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 840.

provisions of the Downtown Area Plan cited by the appellant are not applicable to the project as a matter of law and therefore are not applicable for the purposes of the Class 32 exemption.

Lastly, regardless of the above state housing law mandates, the use permit and staff report include findings that the project complies with the Downtown Area Plan. The staff report for the ZAB hearing, the staff report for the City Council appeal, and the use permit contain detailed discussions of the applicable Downtown Area Plan policies and all conclude that the project complies with the applicable policies.

2. Substantial evidence supports the City's findings that there are no "exceptions" to the Class 32 Infill Exemption for this project.

Under CEQA, a categorical exemption may not apply if a project is subject to an "exception" to the categorical exemption. The "exceptions" to categorical exemptions include the "unusual circumstances" exception, the "cumulative impacts" exception, and the "historical resources" exception.³⁸

The staff report and use permit include express findings that "none of the exceptions in CEQA Guidelines Section 15300.2 apply..." to the project. The use permit cites to the evidence in the record that supports those findings:

The project applicant filed an AB 1633 Notice with the City on March 4, 2024 and attached technical reports that supported the... inapplicability of any Exceptions to the exemption (CEQA Guidelines, Section 15300.2). Submitted technical reports included the following: Traffic Impact Analysis, Historic Resources Evaluation,³⁹ Project Impacts Analysis,⁴⁰ Air Quality Impacts Analysis, Noise Impact Analysis, and Water Quality Impact Analysis. All technical reports were peer reviewed by a CEQA consultant, and were revised or supplemented for adequacy.⁴¹

As detailed in Section 3 below, AB 1633 requires that these reports be submitted by the applicant. The City reviewed the applicant's AB 1633 notice and on October 4, 2024, determined that the Class 32 Infill Exemption applied to the project.⁴²

Prior to the ZAB hearing for this project, the applicant learned that the City commissioned peer reviews, of both the Historic Resources Evaluation prepared by Left Coast (the "HRE Peer Review") and Project Impact Analysis prepared by Left Coast (the "PIA Peer Review"). The peer reviews did not include a physical inspection of the building or the numerous archival materials that were reviewed by Left Coast. The PIA Peer Review ultimately concluded that the project would cause an adverse impact on a historical resource. As detailed herein, however, the PIA Peer Review, which provides the basis for most of appellant's claims, is based on the legally

³⁸ 14 Cal. Code Reg. § 15300.2

³⁹ This is in reference to the December 7, 2023, 2274 Shattuck Avenue Historic Resource Evaluation Memorandum prepared by Left Coast Architectural History.

⁴⁰ This is in reference to the March 1, 2024, 2274 Shattuck Avenue Project Impacts Analysis prepared by Left Coast Architectural History.

⁴¹ Staff Report, p. 14 (referencing Use Permit, p. 2, Findings and Conditions)

⁴² As a matter of law, the City's determination that the project was categorically exempt included an implied finding that none of the exceptions to the exemption were applicable. (*Arcadians for Environmental Preservation v. City of Arcadia* (2023) 88 Cal.App.5th 418, 437; *World Business Academy v. State Lands Comm.* (2018) 24 Cal.App.5th 476, 497; *San Francisco Beautiful v. City & County of San Francisco* (2014) 226 Cal.App.4th 1012, 1022). In addition, the use permit expressly includes findings that none of the exceptions apply, with citations to evidence that supports those findings.

flawed premise that demolition of the theater portion of the building would cause a substantial adverse change under CEQA. That premise cannot be supported, however, when applying CEQA to the facts in this case. In addition, recent amendments to state housing law change the CEQA standard of review – but only for a small subset of eligible infill, high-density residential projects, such as the project subject to this appeal.

- A. *In reviewing impacts to historic resources under CEQA, the City must analyze potential impacts of the proposed project, not on the building in its entirety, but on the character-defining historical features of the building.*

The record is clear on this issue: the project will not cause a significant impact on any of the remaining, character-defining historical features of the building. CEQA defines a “historical resource” to include buildings that are listed in the California Register of Historical Resources.⁴³ There is no dispute that the building, in its entirety – which consists of an entryway atrium, lobby concession area, theater space and adjacent rooms, is listed under the California Register and is deemed a mandatory historical resource under CEQA. Even so, *CEQA does not require that any impact, alteration or demolition of a mandatory historical resource should be deemed a significant effect on the environment.* Rather, CEQA establishes a specific process for lead agencies to follow in determining a project’s potential impacts to historical resources:

A project with an effect that may cause a *substantial adverse change in the significance of an historical resource* is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the *significance of an historical resource would be materially impaired.*

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those *physical characteristics of an historical resource that convey its historical significance* and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those *physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or*

(C) Demolishes or materially alters in an adverse manner those *physical characteristics of a historical resource that convey its historical significance* and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.⁴⁴

⁴³ 14 Cal. Code Reg. § 15064.5; Pub. Res. Code § 5024.1; 14 Cal. Code Reg. § 4850 et seq.

⁴⁴ 14 Cal. Code Reg. § 15064.5(b) (emphasis added).

The above-referenced provisions use the *present tense* in evaluating potential impacts to historical resources. This is consistent with the requirement that lead agencies must evaluate potential impacts of a project based on the “environmental baseline” i.e., the existing conditions of a site at the time that a project application is submitted for City review.⁴⁵ As such, a baseline report was needed to identify the existing physical characteristics of the historical resource that convey its historical significance – i.e., the building’s character-defining historical features.

B. *Substantial evidence in the record establishes that the only remaining character-defining historical features of the building are limited to the upper portions of the Shattuck Avenue façade.*

(i) Left Coast’s Historic Resources Evaluation

The Left Coast HRE established the environmental baseline of historical resources for the project by conducting a detailed review of the remaining, or extant, character-defining features of the former theater. The Left Coast HRE exhaustively reviewed all archival materials related to the building⁴⁶ and concluded that the theater portion of the building no longer conveys the hallmark features of Art Deco architecture. The Left Coast HRE included, for example, extensive photo documentation showing that the Art Deco architecture of the theater has been lost due to its subdivision into four screening halls; that the proscenium arch and plasterwork of the theater were punched through and structurally compromised during installation of an HVAC system; that most of the original paintings have been destroyed; and that several upper balconies have been removed. In addition, the HRE found that damage to the building’s original features was not fully accounted for in earlier studies; that prior historical surveys addressing the site were not performed using modern standards; and that, therefore, many of the building’s alterations over time were likely not considered in those prior surveys.

Left Coast evaluated inconsistent findings from prior surveys regarding the theater’s sheer concrete façade facing Bancroft Way and determined that the sheer concrete façade is not a character-defining feature of the building. The evidence in support of this finding includes a 1978 Historic Resources Inventory, a 2004 Update Sheet, and proceedings at the Landmarks Preservation Commission. Left Coast’s April 7, 2025, letter to the City also addressed some of the inconsistent findings in prior surveys, and in the HRE and PIA Peer Reviews. The use permit’s CEQA findings cite to the Left Coast HRE, PIA and supplemental materials, thus incorporating Left Coast’s findings by reference into the City’s determination that the historical resources exception does not apply to this project.

(ii) Landmarks Preservation Commission Hearing

In December 2023, a petition was filed that sought to designate the former theater as a local landmark or structure of merit. The petition recommended that the entire building be landmarked, including the façade facing Shattuck Avenue, including the marquee and details above the marquee, along with the concrete façade facing Bancroft Way.

Prior to the landmark hearing, the applicant offered to tour each LPC commissioner through the building so that they could physically inspect the building’s condition firsthand. Five LPC

⁴⁵ *Bottini v. City of San Diego* (2018) 27 Cal.App.5th 281

⁴⁶ See Left Coast HRE, p. 3 for all archival information, permit records and prior surveys that were referenced in preparing the report.

commissioners toured the site: Chairperson Twu, and Commissioners Crandall, Orbuch, Hall Montgomery, and Finacom.

The application for this project was deemed complete prior to the LPC hearing. Under state housing law, the project therefore became vested against the City's landmark determination.⁴⁷ While the project entitlements are vested from the LPC's landmark determination under state law, the LPC findings could require analysis, pursuant to CEQA, of the building's *eligible* inclusion as a structure of merit or landmark under the City's landmarks preservation ordinance.⁴⁸ The Left Coast HRE, and the Left Coast PIA, appropriately analyzed the building as an *eligible* historic resource under CEQA that could be included in a "local register" – in addition to being a mandatory resource due to its listing on the California Register.

The Landmark Preservation Commission ("LPC") held a hearing on February 1, 2024, to review the petition to landmark the building. While the petition's goal was clearly to landmark the entire building, the LPC considered, but ultimately rejected landmarking the entire building. The LPC concluded that the Eligible Features to be Preserved should be identified as only the upper portion of the Shattuck Avenue façade, above the marquee.⁴⁹ Of the LPC Commissioners who toured the building, all but one voted in favor of the LPC's determination, which was to landmark only the upper portion of the Shattuck Avenue façade, above but not including the marquee.

In summary, the HRE and the LPC's findings establish that the character-defining features of the building, in its present condition, are limited to the upper portions of the building façade facing Shattuck Avenue, above the marquee. The proposed project, although it is vested from the LPC's landmark determination, has nevertheless been designed to avoid demolition of the Shattuck Avenue façade and the Eligible Features to be Preserved in the LPC's determination. By design, the proposed project will avoid demolition of not only the Shattuck Avenue façade, but the atrium entryway and former concession area.

C. Evidence in the record supports the finding that the project will not cause a substantial adverse change in the significance of a historical resource, and that the project complies with the Secretary of Interior Standards for Rehabilitation.

The Left Coast PIA supports the City's finding that the project is not subject to the historical resources exception because (1) the project will not cause a "substantial adverse change in the significance of a historical resource," and (2) the project complies with the Secretary of Interior's Standards for Rehabilitation.

Left Coast's recent correspondence to the City clarified the PIA's findings that the project will not cause a substantial adverse change to a historical resource:

The Left Coast PIA... concluded that "the project does not demolish any of the physical characteristics of the site that convey its historical significance, that justify its inclusion in the California Register of Historical Resources, that account for its inclusion in the City of Berkeley's local register under the LPO [Landmark Preservation Ordinance], or any other features that would justify the site's eligibility for inclusion in the California Register." This conclusion is directly related to section 15064.5 of the CEQA Guidelines, and is supported by the findings from the

⁴⁷ Gov. Code §§ 65589.5, 65941.1

⁴⁸ 14 Cal. Code Reg. § 15064.5(b)(2)(B).

⁴⁹ The LPC proceedings were transcribed by a court reporter at the time of the hearing, and the transcript of those proceedings have been submitted to the City to be included in the administrative record for this project.

1978 [Historic Resources Inventory], the 2006 Listing [on the California Register], Left Coast's HRE, and subsequently the Berkeley LPC.⁵⁰

In addition to the above, CEQA provides an affirmative basis for establishing that a project will not cause impacts to historical resources:

Generally, a project that follows the... Secretary of the Interior's Standards for Rehabilitation... shall be considered as mitigated to a level of less than a significant impact on the historical resource.⁵¹

The PIA Peer Review's analysis of the Secretary of the Interior's Standards varied significantly from the analysis of those same Standards in the Left Coast PIA. Left Coast found that *the conclusions differ largely based on which portions of the property are considered to be significant.*⁵² In responding to the PIA Peer Review, which found that the project was not compliant with the Secretary of Interior's Standards, Left Coast concluded as follows: "At best, the Standards analysis in the PIA Peer Review is based on a difference in professional opinion regarding perceived impacts to the Bancroft façade."⁵³ As explained in Section 3 below, a difference in professional opinion is not an adequate basis for the City to bar the use of the Class 32 Infill Exemption because the "fair argument" standard does not apply to this project.

The appellant, likewise, presents an unsupported interpretation of CEQA. Appellant's legal counsel asserts "state policy" via a 2006 letter from the State Historic Preservation Office ("SHPO") to the City of San Rafael.⁵⁴ The SHPO letter, rather than being an official state policy, constitutes an informal advisory letter for a wholly separate project from more than 19 years ago. The SHPO letter has no bearing on this project and carries little weight given that it is not an official regulation or administrative policy.⁵⁵ The SHPO letter cites Public Resources Code section 5020.1 in opining that a historical resource "includes a building in its entirety, not parts of a building."⁵⁶ The SHPO and appellant's position, however, run counter to express provisions in the CEQA Guidelines that direct the City to determine whether the project would "[d]emolish or materially alter in an adverse manner those physical characteristics of an historical resource that convey [the building's] historical significance."⁵⁷

Appellant's interpretation of CEQA is contrary to the explicit direction given to lead agencies in reviewing historical resources. As noted above, the proper inquiry is whether a project would cause significant effects by demolishing or materially altering in an adverse manner "those physical characteristics of an historical resource that convey its historical significance..."⁵⁸ The City's findings in this case are based on substantial evidence in the record that the project will not demolish physical characteristics of the former theater that convey historical significance.

⁵⁰ Attachment 1 (citing Left Coast PIA, p. 5 et seq.)

⁵¹ 14 Cal. Code Reg. § 15064.5(b)(3)

⁵² Attachment 1 (emphasis added)

⁵³ *Id.*

⁵⁴ April 9, 2025, letter from the Law Offices of Tom Lippe to the City of Berkeley, p. 5

⁵⁵ *Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7 (citing *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559 in ruling that a state agency's "informal actions do not merit [judicial] deference")

⁵⁶ April 22, 2025, City Council Communications Packet, p. 249 (citing Pub. Res. Code § 5020.1)

⁵⁷ 14 Cal. Code Reg. § 15064.5(b)(2)(A)

⁵⁸ *Id.*

3. The substantial evidence standard applies to the City's CEQA exemption determinations for this project.

Appellant's assertion – that the fair argument standard should apply to the City's review of Section 15300.2 exceptions – relies on outdated caselaw and dicta. For this project, AB 1633 requires the City to use the substantial evidence standard in confirming that the "categorical exemption is not barred by one of the exceptions set forth in Section 15300.2 of [the CEQA] guidelines." AB 1633 makes clear that its standard of review, which is based on a revised definition of "abuse of discretion," is only applicable to AB 1633-eligible projects.⁵⁹ The standard of review under AB 1633 therefore only applies to a small subset of infill residential projects. For eligible projects, AB 1633 supersedes CEQA's more general provisions. This is particularly true given that AB 1633 is a later-enacted statute than the CEQA provisions at issue in this project.⁶⁰ The City Council should therefore disregard the appellant's unfounded assertion that the fair argument standard should apply to the City's review of the historical resources exception for this project.

Appellant cites *Valley Advocates*⁶¹ and *Berkeley Hillside*⁶² to support the contention that the fair argument standard should apply to the historical resource exception for this project. More recently, however, the court in *Historic Architecture Alliance*⁶³ held that the substantial evidence standard is the more appropriate test in reviewing the historical resources exemption for the Class 31 categorical exemption. Appellant noted that this appeal involves a different categorical exemption (Class 32). This distinction, however, is immaterial, particularly when the rationale in *Historic Architecture Alliance* is applied to AB 1633's statutory framework:

To establish the historical resource exception, it is not enough to merely make a fair argument the project did not comply with the Secretary's Standards. If this was all the challenger had to establish, the [Class 31] categorical exemption would be meaningless. It would prohibit the agency from weighing the conflicting evidence and making a finding based upon the weight of the competing evidence.⁶⁴

That same rationale applies here. AB 1633 effectively requires the City to determine that a project is exempt from CEQA if "there is substantial evidence in the record before the local agency that the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2 of those guidelines."⁶⁵ AB 1633 reverses the burden of proof and standard of review in favor of requiring the *applicant* to show there are no exceptions to the exemption, and *requiring* the City to approve that finding if supported by substantial evidence.

⁵⁹ Gov. Code § 65589.5.1(b)(1)

⁶⁰ *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960-961.

⁶¹ *Valley Advocs. v. City of Fresno* (2008) 160 Cal.App. 4th 1039.

⁶² *Berkeley Hillside Pres. v. City of Berkeley* (2015) 60 Cal.4th 1086, 1117.

⁶³ *Historic Architecture Alliance v. City of Laguna Beach* (2023) 96 Cal.App.5th 186

⁶⁴ *Id.*, at p. 210-11.

⁶⁵ See Gov. Code § 65589.5.1(b)(1) (citing subd. (a)(4)(B)).

- A. *AB 1633 requires the City to approve the use of a CEQA exemption if the applicant's AB 1633 notice includes substantial evidence establishing the exemption and that there are no applicable Section 15300.2 exceptions.*

AB 1633 includes four substantive provisions for cities to follow in determining if projects are eligible for CEQA streamlining. First, there must be "substantial evidence in the record before the local agency that the housing development project is not located in... a very high fire hazard severity zone..." and other criteria. These provisions ensure that the proposed housing will not be located on environmentally sensitive sites or subject to certain environmental hazards (e.g., flood hazard areas, wetlands, in addition to very high fire hazard severity zones). Second, a proposed project must meet specific infill or transit-oriented criteria, such as being located close to transit or located in an urbanized area that is predominantly developed with urban uses. Third, AB 1633 projects must meet a density threshold of 15 dwelling units per acre.

For the fourth substantive requirement for AB 1633, both of the following criteria must be met:

- (A) There [must be] substantial evidence in the record before the local agency that the housing development project is eligible for an exemption sought by the applicant.
- (B) If the exemption sought by the applicant is subject to an exception under the Guidelines for Implementation of the California Environmental Quality Act (Chapter 3 (commencing with Section 15000) of Division 6 of Title 14 of the California Code of Regulations), there [must be] substantial evidence in the record before the local agency that the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2 of those guidelines.

As applied to this project, substantial evidence in the record indisputably supports all of these findings. More importantly, as detailed below, the process for establishing an AB 1633 CEQA exemption varies in important ways from the general rules for establishing CEQA exemptions, or for asserting Section 15300.2 exceptions, for other projects that are not housing development projects under the HAA.

- B. *AB 1633 shift the burden of proof to the applicant to document that no exceptions to a categorical exemption apply to the proposed housing development project.*

The general rule for Section 15300.2 exceptions is that the "party challenging the exemption has the burden of producing evidence supporting an exception."⁶⁶ AB 1633 shifts this framework by requiring that *the applicant* for a housing development project provide documentation that the exemption applies, and that the "categorical exemption is not barred by one of the exceptions set forth in Section 15300.2."⁶⁷

The substantive provisions of AB 1633 are triggered by a notice that the applicant must provide to the City within 60 days after the application is deemed complete.⁶⁸ That notice must include references to all of the evidence that satisfies the findings for the categorical exemption, along with the finding that "there is substantial evidence in the record before the local agency that the application of that categorical exemption is not barred by one of the exceptions set forth in

⁶⁶ *Protect Tustin Ranch v. City of Tustin* (2021) 70 Cal.App.5th 951, 961 (citing *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105).

⁶⁷ Gov. Code § 65589.5.1(a)(5)(A)(iv)

⁶⁸ Gov. Code §§ 65589.5.1(a)(5)(A), (a)(5)(F)

Section 15300.2 of [the CEQA] guidelines.”⁶⁹ The City then has 90 days, or up to 180 days if additional time is needed, to review and confirm that substantial evidence does in fact support the exemption asserted in the applicant’s AB 1633 notice.⁷⁰

As such, AB 1633 effectively shifts the burden of proof, and the applicant now has the burden of proving that there are no applicable Section 15300.2 exceptions. This is an important shift from the general rule that the project opponent must provide the evidence to establish that a Section 15300.2 exception applies to the project. This shift, when viewed in connection with the HAA’s liability provisions detailed below, establishes that the City must use the substantial evidence standard of review for AB 1633 projects in reviewing and confirming that there are no applicable Section 15300.2 exceptions.

C *Under AB 1633, a city is liable under the Housing Accountability Act if substantial evidence supports a finding that a housing development project is exempt from CEQA, or that there are no applicable Section 15300.2 exceptions, yet the city fails to determine that the project is subject to the CEQA exemption.*

The above provisions, when combined with AB 1633’s definition of “abuse of discretion” refutes any notion that the fair argument standard should apply for AB 1633 projects. The substantial evidence standard of review for AB 1633 is expressly tied to the statutory definition of “abuse of discretion” (which, again, only applies to AB 1633 projects):

For purposes of [AB 1633], the following definitions apply:

(1) “Abuse of discretion” means that the conditions set forth in [Gov. Code § 65589.5.1 subdivision (a), paragraphs (1)-(4), (referenced above)] are satisfied, but the local agency does not determine that the project is exempt from [CEQA]. This paragraph sets forth the exclusive definition of “abuse of discretion” for purposes of [AB 1633].

Per the above definition, the City would be committing an abuse of discretion and would therefore be liable for significant penalties and attorney’s fees under the HAA, if the City were to ignore substantial evidence that supports the finding that there are no exceptions to the historical resources exception⁷¹ and determine that the project is not exempt from CEQA. The City’s denial of the requested CEQA exemption would constitute a violation of the HAA, and an unlawful denial of the project, as defined by AB 1633 to include an unlawful determination that a project is not exempt from CEQA, could result in attorney’s fees to the developer and statutory damages. Statutory damages are at least \$10,000 per unit⁷² and, if applied to this project, would total at least \$2.27 million. Conversely, the HAA drastically limits the award of attorney’s fees that may be awarded when the City acts in good faith to approve housing development projects that meet the siting and eligibility criteria of AB 1633. “It is the intent of the Legislature that attorney’s fees and costs shall rarely, if ever, be awarded if a local agency, acting in good faith, approved a housing development project that satisfies conditions established in paragraph (1), (2), or (3) of subdivision (a) of [AB 1633].”⁷³

⁶⁹ Gov. Code § 65589.5.1(a)(5)(A)(iv) (referencing AB 1633 requirements including subd. (a)(4)(B)).

⁷⁰ Gov. Code § 65589.5.1(a)(5)(D)

⁷¹ Gov. Code § 65589.5.1(a)(4)

⁷² Gov. Code § 65589.5(k)(1)(B)

⁷³ Gov. Code § 65589.5(p)(1)

In summary, the court's rationale for imposing the substantial evidence standard of review in *Historic Architectural Alliance* applies similarly to the City's review of AB 1633 projects. The California legislature clearly shifted the burden of proof, standard of review and other key provisions of CEQA, *by statute* to apply to all AB 1633-eligible projects. The fair argument standard, and the general rule that the petitioner has the burden to establish exceptions to a categorical exemption, are therefore superseded by AB 1633's clear mandate that cities must process CEQA exemptions in a manner that supports and expedites the delivery of much-needed, high-density infill housing.

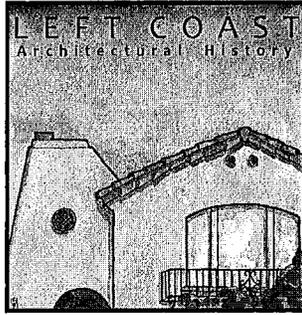
Thank you for considering these comments. While the City has made significant strides to approve more housing, the housing crisis unfortunately persists. We urge the City Council to affirm the ZAB approval so that this much-needed, transit-oriented infill housing can proceed lawfully and without undue delay.

Sincerely,

Hanson Bridgett LLP

Robin R. Baral
Partner

ATTACHMENT 1



P.O. Box 70415, Richmond, CA. 94807 • (415) 745-1906 • caitlin@leftcoastarchitecturalhistory.com

Date:	7 April 2025
To:	Sharon Gong, Senior Planner City of Berkeley – Planning and Development 1947 Center Street, 3 rd Floor Berkeley, CA 94704
From:	Caitlin Hibma, Principal/Architectural Historian Left Coast Architectural History

Dear Ms. Gong,

I am the principal of Left Coast Architectural History (Left Coast) and author of the “2274 Shattuck Avenue Historic Resource Evaluation Memo” (HRE) and the “2274 Shattuck Avenue Project Impacts Analysis” (PIA). The PIA found that the 2274 Shattuck Avenue Project (Project) would not have a significant impact on the former United Artists Theater (UA) or on the potential Shattuck Avenue Commercial Corridor Historic District (Potential District). The City agreed with these conclusions after considering two peer reviews by Rincon Consultants Inc. (Rincon): the “2274 Shattuck Avenue HRE Project Impacts Analysis,” June 21, 2024 (HRE Peer Review) and the “2274 Shattuck Avenue Project Impact Analysis,” dated August 2, 2024 (PIA Peer Review).¹ This letter responds to several points raised by the Peer Reviews.

The HRE and PIA evaluated the site as a historic resource.

The Peer Reviews repeatedly note that the UA is listed on the California Register and is therefore a historical resource under CEQA.² Left Coast’s HRE and PIA did not contest that the UA is currently listed on the California Register and is a historic resource under CEQA. The HRE and PIA identified the historic documentation of the UA to date:

- **California Register Listing.** The HRE states that “the California OHP (Office of Historic Preservation) formally designated the property to the California Register by a consensus through the Section 106 process, based on the National Register finding that was made by the 1978 evaluation and reiterated by the 2004-2005 documentation.”³ The PIA also indicates that the California Register listing (2006 Listing) “qualifies [the] UA as a mandatory historical resource...for purposes of CEQA.”⁴
- **Potential Historic District.** The HRE and PIA also discuss the UA’s identification as a contributor to the potential Shattuck Avenue Commercial Corridor Historic District, which was identified in a Context

¹ This memo refers collectively to Rincon’s HRE Peer Review and PIA Peer Review as the “Peer Reviews.”

² The Peer Reviews asserted that the HRE “recommended the property ineligible as a historical resource due, in part; to diminished integrity...” No such recommendation, however, was made. The Left Coast HRE concluded as follows: “Although the property is listed on the California Register, it would not qualify for listing had its loss of integrity been properly evaluated at the time of its designation (2006)....” The nuance here is that, while the property is still considered a historic resource, the site’s specific historic values or character-defining features have been greatly diminished, as documented in the HRE and PIA.

³ HRE at p. 2

⁴ p. 3; see also HRE at pp. 3, 22-23

Statement and Survey in 2015 (2015 Survey).⁵ The 2015 Survey did not make a formal determination of eligibility for the listing of the district on the California Register, and the City has not designated the Potential District.

- **City Landmark.** Shortly after the HRE was completed, the City’s Landmarks Preservation Commission (Berkeley LPC) designated the upper portion of the Shattuck façade as a Landmark. The landmark designation identified the upper portion of the Shattuck Avenue façade as the only “features to be preserved” for the site.⁶ Although the Project is vested from the landmark designation due to SB 330, the PIA analyzes the proposed project and finds the Project’s restoration of the upper portion of façade consistent with the designation.⁷

The HRE is consistent with explicit direction from the California Office of Historic Preservation.

The HRE Peer Review states that the HRE’s “effort to update the historical resource record with accurate information” as “generally consistent with OHP guidance,” but then goes on to criticize the HRE’s reevaluation as “not necessary because the property is already listed...and is considered a historic resource.”⁸

OHP calls for updates when:

A resource is reevaluated;

Changes occur to the resource and its setting;

Erroneous information needs correcting; and/or

Additional information is necessary for planning decisions.⁹

Here, all four criteria are met. Additional information was needed for purposes of evaluating the site under CEQA, for the City to make planning decisions on the mixed-use project proposed at the site, and for the Berkeley LPC to evaluate which, if any, character-defining features to landmark. The HRE also evaluated changes to the UA in light of extensive alterations not previously documented.¹⁰ In reviewing the prior surveys, the HRE corrected erroneous information in prior evaluations. Overall, the purpose of the HRE was to determine the remaining character-defining features of the site, and to resolve prior inconsistent findings; for example the differing treatment of the sheer concrete Bancroft façade in prior surveys.

Left Coast’s assessment of current site conditions does not remove (or recommend removal of) the site from the California Register or otherwise alter the building’s status as a mandatory historic resource under CEQA. Rather, a reevaluation of the building using current standards was needed to identify its remaining character-defining features, and to establish a baseline under which to evaluate potential impacts of the proposed mixed-use project for the purposes of CEQA.

The Peer Reviews’ identification of the auditorium as a character-defining feature conflicts with National Register Bulletin 15 and previous documentation of the UA.

The PIA Peer Review states that “one of the essential spaces that characterizes the property is its theater auditorium, and its proposed removal is not consistent with the guidance and Rehabilitation Standard No. 2 is not satisfied.”¹¹ Without first-hand observation of the theater building, or apparent consideration of Left Coast’s recent assessment of existing conditions, this statement fails to acknowledge loss of the auditorium’s integrity and its

⁵ HRE at p. 2, 6, 8-9; PIA at p. 2

⁶ PIA at p. 3

⁷ PIA at pp. 9-10

⁸ HRE Peer Review at p. 3

⁹ <https://ohp.parks.ca.gov/pages/1054/files/manual95.pdf>

¹⁰ Left Coast conducted a thorough review of permitted building modifications over the past 90 years at the site; this review was documented on page 14 of the HRE showing that most of the original features of the theater were modified or destroyed. The HRE is the only survey that thoroughly illustrated these changes and analyzed their effects on the site’s historic integrity.

¹¹ PIA Peer Review p. 7

subsequent inability to be a character defining feature (or “essential space”) of the property any longer. National Register Bulletin 15 supports the HRE’s conclusion that the interior of the theater does not qualify as a character-defining feature of the site – *particularly when taking into account its current condition*:

In some cases the loss of an interior will disqualify properties from listing in the National Register – a historic concert hall noted for the beauty of its auditorium and its fine acoustic qualities would be the type of property that if it were to lose its interior, it would lose its value as a historic resource.¹²

The same bulletin goes on to note that National Register-eligible properties “must not only retain their essential physical features, but the features must be visible enough to convey their significance. This means that even if a property is physically intact, its integrity is questionable if its significant features are concealed under modern construction.”¹³

The HRE cited numerous alterations, removal, and destruction of original features of the interior over the past 90 years, illustrating that a detrimental shift in integrity of the theater has occurred. Photographs of current and past conditions make clear that the significance of the auditorium has been lost through subdivision of the 1,800 seat single-theater auditorium into four separate theaters, and that numerous original features have been significantly altered, compromised or destroyed.¹⁴

Again, the purpose of the HRE is not to recommend that the theater be removed from the California Register. The HRE serves to identify what, if any, character-defining features of the site remain that should be protected. National Register Bulletin 15 supports the finding that the interior of the theater no longer conveys much of the original artistry, therefore the existing site condition does not support a finding that the interior auditorium is a character-defining historic feature of the site.

The PIA Peer Review recommends a period of significance ending in “1973, when the original single-screen theater was subdivided for multiple screens, resulting in several functional and aesthetic changes to the building.” (pg. 6) The PIA Peer Review therefore also acknowledges the loss of the auditorium's original design and function, and consequently, its integrity. Thus, there appears to be no support for claiming that the auditorium space, in its subdivided state, remains or can currently serve as a character defining feature of the property. As such, removal of the theater auditorium is not inconsistent with Rehabilitation Standard 2.

The Left Coast HRE and PIA concluded that the Bancroft façade is not a character-defining feature of the building, based on the findings of the 1978 report, on which the 2006 California Register Listing was based.

The Peer Reviews’ approach to the Secretary of the Interior's Standards (Standards) analysis varies significantly from the Left Coast Standards analysis in the PIA. The conclusions differ largely based on which portions of the property are considered to be significant.

The HRE Peer Review states “The building’s current status, however, and its reason for being a historical resource pursuant to CEQA, is tied to its listing in the CRHR, which extends to the whole building... The Standards analysis, therefore, cannot disqualify the proposed treatment of the rear portion of the building.”¹⁵ As noted above, however, the 1978 HRI, the 2006 Listing, the Left Coast HRE, and subsequently the Berkeley LPC, all made findings that the Bancroft façade is not a character defining feature of the site.

As noted above, the 2006 Listing was based almost entirely on the 1978 HRI, which described the Bancroft façade as the frontage of a “massive, irregularly shaped, concrete block... with service entrances and little else.” The 1978 HRI also found that “Plans at one time called for the Bancroft Way frontage – sheer concrete wall with just the least ridged pattern – to be decorated, but money was apparently not available.” It makes no obvious reference to that facade as a character defining or even important element of the building. The Finding of Effect for the 2006 Listing makes no mention of the Bancroft Way façade, but emphasizes that the Art Deco style of the UA is

¹² National Park Service, “National Register Bulletin (15): How to Apply the National Register Criteria for Evaluation,” 1995.

¹³ Id.

¹⁴ Photos from HRE at pp. 7-8

¹⁵ P. 4

“typified by its stepped pyramidal façade, which includes WPA-style sculpture representing Artistry United.”¹⁶ This approach to a value-engineered feature is consistent with National Register Bulletin 15, stating:

Art Deco detailing is not eligible...if the detailing was added merely as an afterthought, rather than fully integrated with the overall lines and massing typical of the Art Deco style.

A massive wall that was stripped of planned decoration to cut costs is not consistent with the original design of the rest of the UA, nor does it typify the Art Deco style.

Only the later 2015 Survey (post-dating the 2006 listing and never formally adopted) identified the “concrete wall structure and board-formed concrete rear wing with its vertical speed stripes” as a character-defining feature. The PIA Peer Review relies on this in their own interpretation, citing the “sheer form concrete wall with vertical speed stripes along Bancroft Way” and subsequently applies the Standards to the entire building.

Left Coast does not contest that the 2006 Listing applies to the entire property, but posits that its emphasis on the Shattuck facade, combined with the extensive loss of integrity to the remainder of the UA documented in the HRE, and the Berkeley LPC’s decision to landmark only the upper Shattuck facade, that the Bancroft Way façade is not significant or a character-defining feature of the site. Consequently, the PIA, addresses only the upper Shattuck Avenue facade as a significant or character-defining feature of the site. At best, the Standards analysis in the PIA Peer Review is based on a difference in professional opinion regarding perceived impacts to the Bancroft façade. Standards relating to effects on “distinctive” or “character-defining” features, however, cannot meaningfully apply to the “whole building” as asserted by the PIA Peer Review, or to other portions of the building, including the Bancroft façade, which have not formally been determined to be character-defining features of the site.

Left Coast’s HRE and PIA concluded that the proposed project will not impact the Potential District.

In 2015, the Shattuck Avenue Commercial Corridor Historic Context & Survey identified a potential historic district focused primarily on properties with frontage on six blocks of Shattuck Avenue between Durant and University Avenues.¹⁷ The 2015 Survey post-dates and was, thus, not a factor of the 2006 Listing, and has never been formally adopted by the City.

In an appendix, the 2015 Survey included a form (2015 Form) summarizing the UA but “did not perform any detailed or itemized analysis in regard to the theater’s significance or integrity in relation to a potential district, however; and never formally determined eligibility for, nor designated, a historic district in the area.”¹⁸ It reiterated and relied on “previous documentation” (i.e. the 2006 Listing and 1978 HRI) that “indicated that the interiors [of the UA] were also Art Deco from the 1930s.”¹⁹ It described the “strength of the second-floor façade design [as] continu[ing] to convey visual associations with Berkeley commercial/theater design in the early 20th century.”²⁰ In conflict with earlier documentation, it also characterized the blank wall on Bancroft as a character-defining feature, though the 1978 Form described it as a value-engineered feature.

The HRE Peer Review incorrectly states, “The [Left Coast] HRE does not make any conclusions regarding the property’s previously identified status as a contributor to a potential Shattuck Avenue Commercial Corridor Historic District.”²¹ To the contrary, the Left Coast HRE described the Potential District and related 2015 Survey, throughout the report. The Executive Summary specifically noted that the 2015 Survey, in evaluating the Potential District, “did not perform any detailed or itemized analysis in regard to the theater’s significance or integrity in relation to a potential district, however; and never formally determined eligibility for, nor designated, a historic district in the area.”²²

Moreover, the Left Coast HRE discussed the 2015 Survey for the Potential District at length, and concluded that some of its findings were inconsistent with earlier site evaluations. The 2015 survey’s lack of individualized

¹⁶ Id.

¹⁷ Archives & Architecture, LLC

¹⁸ HRE at p. 9

¹⁹ 2015 Form

²⁰ Id.

²¹ P. 2

²² P. 2

analysis, and findings that were inconsistent with earlier reports, are detailed at length in the HRE. Notably, the Bancroft Way facade was not identified by either the 1978 HRI or 2006 Listing as a character defining feature. The 2015 Survey – post-dating the site’s designation to the California Register of Historical Resources by ten years – is the only documentation that identifies it as such, in contradiction to its own description of the characteristics that typify Art Deco and theaters:

Typical character-defining features of Art Deco buildings are: overall vertical emphasis; angular geometric forms and lines; polychromatic decorative glass, glazed brick, or tile; chevron molding; decorative geometric panels and grills; stylized floral and animal patterns; decorative parapet; decorative cornice; ornamentation at windows and doors; and low-relief ornamentation.²³

A typical urban theater is notable for its recessed covered outdoor meeting space, marquee, blade sign(s), exterior box office, and bold façade ornamentation in place of fenestration.²⁴

As a result, findings regarding the Bancroft Way façade dating back to 1978 were re-evaluated by the Left Coast HRE. Ultimately, the HRE determined that the Bancroft façade was not a character-defining feature of the property. This finding agrees with the earlier documentation pertinent to the property’s designation, namely the 1978 HRI (upon which the 2006 Listing was primarily based).

The HRE concluded that only the upper portion of the Shattuck Avenue façade remained “intact and character defining” when evaluating the site in the context of Depression-era Art Deco movie theaters. (HRE, p. 21.) The Berkeley LPC ultimately concurred with those findings after substantial deliberation by landmarking only the upper portion of the Shattuck Avenue facade.

Given that the Shattuck Avenue District was never formally adopted, the PIA evaluates impacts to the Potential District, in accordance with section 15064.5 of the CEQA Guidelines. “By preserving the upper facade and instituting a neutral and compatible lower facade,” the PIA concluded, “the proposed project will preserve the historical, architectural, and aesthetic interest of the potential Shattuck Avenue Commercial Corridor district.” The replacement of the Bancroft façade, which is not typical of others in the Potential District, will not have an impact when considering it is essentially the rear frontage, on a secondary street in the six-block long Potential District.

The Left Coast PIA addressed CEQA’s “Adverse Impact” standard.

The PIA Peer Review report states, “Compliance with the Standards, however, is not the only way to demonstrate that a project would avoid causing a substantial adverse change in the significance of a historical resource.... The [Left Coast PIA] would benefit from being reframed to analyze if the proposed changes to 2274 Shattuck Avenue amount to substantial adverse change. The project impacts discussion is recommended to be revised and analyzed to consider if the changes proposed to the historical resource (the whole building) would result in material impairment as defined in Section 15064.5(b)(2)(A) of the CEQA Guidelines.”²⁵

The Left Coast PIA does address this issue where it concluded that “the project does not demolish any of the physical characteristics of the site that convey its historical significance, that justify its inclusion in the California Register of Historical Resources, that account for its inclusion in the City of Berkeley’s local register under the LPO [Landmark Preservation Ordinance], or any other features that would justify the site’s eligibility for inclusion in the California Register.”²⁶ This conclusion is directly related to section 15064.5 of the CEQA Guidelines, and is supported by the findings from the 1978 HRI, the 2006 Listing, Left Coast’s HRE, and subsequently the Berkeley LPC.

As has been stated above, the documentation that established the property’s CRHR designation, Left Coast’s own analysis, and the confirming decision of the Berkeley LPC to landmark only the upper Shattuck Avenue facade, culminate in an interpretation that the remaining character-defining features of the site are embodied in the upper Shattuck Avenue façade. The Left Coast PIA properly concluded that the proposed project complies with the

²³ Survey at p. 45

²⁴ Id. at p. 41

²⁵ HRE Review at p. 4

²⁶ P. 5 et seq

Standards. In relation to the character-defining upper Shattuck Avenue facade, it also naturally concluded that the "significance of the resource" (embodied in the upper Shattuck Avenue facade) will not suffer substantial adverse change and will not be materially impaired.

Thank you for your consideration of these responses.

Sincerely,

A handwritten signature in cursive script that reads "Caitlin Paige Hibma".

Caitlin Hibma
Principal/Architectural Historian
Left Coast Architectural History

ATTACHMENT 2

April 18, 2025
Project No. 22-2324

Mr. JP Walsh
2274 Shattuck QOZB LLC
100 Bush Street, Suite 1725
San Francisco, California 94104

Subject: Preliminary Geotechnical Investigation
Proposed Residential Building
2274 Shattuck Avenue
Berkeley, California

Dear Mr. Walsh:

As outlined in our preliminary geotechnical report dated April 17, 2025, viable foundation options for the proposed residential building at 2274 Shattuck Avenue include augered cast-in-place (ACIP) piles, torque-down piles, and deep soil mixing ground improvement. All of these methods are widely recognized for producing low levels of noise and vibration during installation and are routinely used in dense urban environments.

Driven piles were not included as a recommended foundation type in our report. The suggestion that pile driving is required for the project is incorrect.

Please contact us if you need any additional clarification.

Sincerely,
ROCKRIDGE GEOTECHNICAL, INC.



Clayton J. Proto, P.E., G.E.
Senior Engineer

ATTACHMENT 3



CB ENGINEERS
Building Experience

April 18, 2025

Mr. JP Walsh
2274 Shattuck QOZB LLC
100 Bush Street, Suite 1725
San Francisco, California 94104

Re: 2274 Shattuck Avenue

Dear Mr. Walsh:

I write to confirm certain aspects of the MEP space and HVAC operations for the proposed project at 2274 Shattuck Avenue. The Project plans accurately depict a mechanical room on the first floor, which will be appropriately sized for the domestic hot water generation system during the schematic phase of the project.

The Project plans also accurately depict a mechanical equipment space on the roof level with space for a cooling tower and heat generation systems, neither of which will be enclosed, and neither of which will create a noise condition for neighbors.

The Project will not utilize a large, air-cooled chiller located in an enclosed mechanical room. Furthermore, any street façade ventilation louvers will be designed with acoustic sound mitigation components such as a 'sound trap', thereby ensuring that the equipment will meet the City of Berkeley's property line noise ordinance.

Best regards,

Paul O' Neill, P.E., LEED AP
President

ATTACHMENT 4

Memorandum

Date: April 21, 2025

To: Project Applicant

From: Philip Ault, Director of Noise and Air Quality, FirstCarbon Solutions

Subject: Supplemental Noise Impacts Analysis for the 2274 Shattuck Avenue Mixed Use Project in Berkeley, California

At the request of the project applicant, FirstCarbon Solutions (FCS), prepared this memorandum to clarify certain aspects of the Noise Impact Analysis memorandum prepared for the proposed 2274 Shattuck Avenue Mixed Use Project (proposed project) dated May 22, 2024. In particular, we understand a comment has been raised questioning whether operation of the HVAC system of the proposed project would potentially exceed the City's applicable noise performance thresholds.

The noise impact analysis identified that worst-case noise levels would not exceed 52 dBA L_{eq} as measured at the nearest façade of the sensitive receptor (2030 Bancroft Way, 65 feet south of the project site). The analysis identified that reasonable worst case operational noise levels would not exceed the City's interior noise threshold of 40 dBA L_{eq} as measured at the interior of the nearest sensitive receptor land use. The analysis also identified that the exterior noise limits established by Municipal Code Section 13.40.050 are adjusted to reflect, at a minimum, the ambient noise level. Documented ambient noise levels in the project vicinity range between 70 and 75 dBA L_{dn} . Therefore, the analysis concluded that the proposed project's HVAC-related noise levels would not exceed ambient noise levels and therefore Municipal Code Section 13.40.050 exterior noise limits, as well.

The following points provide additional clarification to these findings and the supporting calculations.

1. This calculation provided the conservative reasonable worst-case of operation of the loudest type of equipment that could be used and assumed the equipment would operate continuously for an entire hour.
2. The calculation only accounted for distance attenuation (distance attenuation at 65-feet compared to the reference distance of 25-feet). It conservatively did not account for shielding that would be provided by the rooftop parapet. But the fact is there would be no direct line of sight from the proposed HVAC equipment on the rooftop of the proposed 22-story building to the rooftop of the 3-story residential receptor at 2030 Bancroft Way. Such shielding would provide a minimum of 5 dBA to 10 dBA reduction in the calculated operational noise level.

3. Given the yearly climate conditions of the City of Berkeley, HVAC equipment would clearly not operate continuously during nighttime hours, but at a maximum of only 50 percent of an hour. The calculated noise level from equipment rated at 60 dBA at a reference distance of 25 feet operating 50 percent of an hour would be 42 dBA L_{eq} hourly average as measured at 65 feet from the equipment during nighttime hours.
4. The project site is located in a very urban environment with known nighttime activity. As such, based on the documented 24-hour average noise levels of 70 and 75 dBA L_{dn} , it indicates that nighttime hourly average ambient noise levels would have to be 40 dBA or greater to result in these 24-hour average noise levels.

Therefore, assuming an hourly usage factor of 50 percent and a minimum reduction of 5 dBA for the rooftop parapet, nighttime operational noise levels would attenuate to below 37 dBA L_{eq} as measured at the edge of the rooftop of the residential land use at 2030 Bancroft Way. This would result in interior noise levels of 22 dBA L_{eq} as measured in the interior space of the nearest residential unit, even with windows open.

Thus, it can be confidently assured that operational noise levels of proposed HVAC equipment would not exceed the City's most conservative exterior noise performance threshold of 45 dBA L_{eq} , nor exceed the City's most conservative interior noise performance threshold of 40 dBA L_{eq} as measured at the nearest residential receptor located at 2030 Bancroft Way.

Thank you for the opportunity to conduct this noise impact analysis. Please feel free to contact Phil Ault (559.930.6191 or pault@fcs-intl.com) should you have any questions.

Sincerely,



Philip Ault, Director of Noise and Air Quality

FirstCarbon Solutions

2999 Oak Road, Suite 250
Walnut Creek, CA 94597

Durr, Jasmine

From: Jack Farrell <jack@yesinmybackyard.org>
Sent: Tuesday, April 22, 2025 6:33 AM
To: All Council
Cc: Robin R. Baral; JP Walsh; Patrick Kennedy
Subject: Letter of Support for 2274 Shattuck Avenue
Attachments: 2274 Shattuck Avenue letter of support - 4_22_25.docx

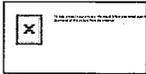
WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Good morning,

Please find attached correspondence from YIMBY Law regarding item 1 on the agenda for today's meeting of the City Council.

Sincerely,

Jack Farrell *he/him*
Research Attorney
267-218-1147



[Check out everything we achieved in 2024!](#)



YIMBY LAW

YIMBY Law

2261 Market Street STE 10416

San Francisco, CA 94114

hello@yimbylaw.org

April 22, 2024

City Council
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Re: 2274 Shattuck Avenue

Dear City Councilmembers:

YIMBY Law writes to urge the City Council to uphold the approval of Use Permit #ZP2023-0079, allowing for the mixed-use redevelopment at 2274 Shattuck Avenue (the "Project") at the appeal hearing scheduled for April 22, 2025. The Project would bring much needed housing in close proximity to the UC Berkeley Campus. YIMBY reminds the City that the Project is subject to protections of the Housing Accountability Act (HAA) and Assembly Bill 1633 (AB 1633).

YIMBY Law is a 501(c)(3) nonprofit organization dedicated to increasing housing accessibility and affordability throughout California. YIMBY Law holds cities accountable when they fail to comply with state housing laws. YIMBY Law closely monitors projects such as the one at 2274 Shattuck Avenue to ensure that all relevant state laws are properly applied, including the HAA and AB 1633. Should the City fail to follow these laws, YIMBY Law will not hesitate to file suit to ensure state housing policies are enforced.

YIMBY Law was heartened to see the Zoning Adjustments Board ("ZAB") approve the Project in December 2024. ZAB's approval correctly recognized the Project's consistency with applicable law and its critical role in helping the City address its



YIMBY LAW

YIMBY Law

2261 Market Street STE 10416

San Francisco, CA 94114

hello@yimbylaw.org

pressing housing needs. YIMBY Law was also encouraged by the fact that the City, with ZAB approval, found this project exempt from CEQA in accordance with AB 1633.

Unfortunately, the meritless appeal puts these urgently needed housing units in jeopardy: in total, 227 housing units with a diversity of floorplans, including 32 studios, 49 two-bedroom units, 80 three-bedroom units, and 66 four-bedroom units. In addition, 23 of the approved units will be reserved for very-low income households. Given the Project's proximity to the UC Berkeley campus, it will provide desperately needed student-oriented housing to alleviate housing insecurity among students – as this Council is likely aware, 10% of undergraduate and graduate UC Berkeley students have reported instances of homelessness. Unreported instances of student homelessness are likely much greater.

There is no basis for the City Council to grant the appeal before it. As ZAB correctly determined, the Project meets all applicable objective standards in the City's General Plan, Downtown Area Plan and the Commercial Downtown Mixed-Use zone. As a reminder, the HAA prohibits a city from denying housing development projects that are compliant with the city's zoning ordinance or general plan at the time the application was deemed complete, unless the locality can make findings that the proposed housing development would be a threat to public health and safety. No such findings are appropriate here, and any attempt to overturn ZAB's approval would violate state law.

Furthermore, any attempt to overturn the ZAB's determination that the Project qualifies for the Class 32 Infill Exemption risks violating AB 1633. As City staff has previously noted, the project meets all of the eligibility criteria for AB 1633 and is situated in an area that does not qualify as environmentally sensitive. Substantial evidence established that the Project meets the criteria for the Class 32 Infill Exemption. While the City's approval of the AB 1633 exemption took longer than



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allowed by state law, we applaud the City for ultimately following the requirements of AB 1633 in approving the CEQA exemption.

We now urge the City Council to take the necessary action to affirm the City's legal obligations under the HAA, AB 1633, and CEQA, and to reject the appeal. It is unfortunate that opposition groups continue to organize attempts to delay and obstruct this and other much-needed infill residential projects. This project, in particular, should be applauded given the overall challenge in developing financially feasible, high-density residential projects throughout the Bay Area. Fortunately, the law has evolved in a manner that supports – and in this case requires – the City Council's approval of this much-needed housing. Any reversal would send the wrong message about Berkeley's commitment to fair housing, and would further delay a much-needed infill project while tying up the City in an expensive legal battle.

I am signing this letter both in my capacity as the Executive Director of YIMBY Law, and as a resident of California who is affected by the shortage of housing in our state.

Sincerely,

Sonja Trauss
Executive Director
YIMBY Law

From: Nancy Kates <kates@questionwhy.film>
Sent: Wednesday, April 23, 2025 2:13 PM
To: All Council
Subject: UA theatre

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mayor and City Council —

I am utterly heartbroken and completely appalled that you would let a heartless developer destroy a Berkeley landmark and treasure. As a local filmmaker who has been thoroughly demoralized by the demise of the movie theaters here, as well as the council's callous disregard for our work and the award-winning local film community, I can't say that I am surprised. But you need to do better, both for the architecture of the city, the arts community, and the rest of the community. This decision honestly makes me want to move somewhere else. Where is the vision, council?

thanks,

Nancy D. Kates
Producer/Director
Question Why Films
2600 Tenth St., Suite 424-B
Berkeley, CA 94710
(510) 684-8934 cell

Kates@questionwhy.film

"Hope is like a teacup held aloft while swimming across an ocean of trouble. Who amongst us can possibly make it shore to shore? Swimming with just one arm? None of us. That's why it's a relay. "

--Ani Di Franco

"We need, in every community, a group of angelic troublemakers."

—Bayard Rustin

Durr, Jasmine

From: eaa@aol.com
Sent: Wednesday, April 23, 2025 2:58 PM
To: All Council
Subject: UA Theater Demolition

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mayor and City Council,

I am contacting you in regard to your vote to demolish the UA Theater. I have lived in Berkeley almost all of my life and have been proud to note that our town is the bastion of both intellectual and creative thoughts and actions. I should say 'was' as your decision to allow this demolition points to a fact that we in Berkeley are no longer a safe haven for artists and creators if we destroy what little remains of our creative heritage. The fact that you support this demolition without a CEQA assessment is appalling and without merit and only furthers the notion that you are in the pocket of the developers who have no regard for important and notable buildings. I remain saddened by your decision and hope there is another action which will save and restore this important and beloved structure.

Sincerely, Eileen Adams, 86 Tamalpais Rd.

ROBIN R. BARAL
PARTNER
DIRECT DIAL (415) 995-6331
E-MAIL rbaral@hansonbridgett.com



**RECEIVED AT
COUNCIL MEETING OF:**

APR 22 2025

**CITY OF BERKELEY
CITY CLERK DEPARTMENT**

April 22, 2025

Berkeley City Council
2180 Milvia Street
Berkeley, CA 94704

Re: Use Permit #ZP2023-0079 – 2274 Shattuck Avenue

Dear Mayor Ishii and the Berkeley City Council:

Hanson Bridgett LLP represents 2274 Shattuck QOZB, LLC (“Panoramic Interests”), the project sponsor for the mixed-use project proposed at 2274 Shattuck Avenue. We concur with the recommendations in the staff report and respectfully request that the City Council affirm the Zoning Adjustments Board’s (“ZAB”) approval of the project and the City’s determination that the project is exempt from CEQA pursuant to the AB 1633/Class 32 Infill Exemption. None of the issues raised by the appellant, or any other party, should cause the City to alter any of the findings in the staff report and proposed use permit. We submit this letter primarily to address key areas where the appellant’s and other parties’ claims are factually or legally incorrect.

OVERVIEW

1. The Class 32 Infill Exemption is supported by technical reports confirming that the project will not cause significant impacts related to biological resources, noise, transportation, and air or water quality. The City should disregard comments asserting noise and vibration impacts as they are based on false assumptions that the project will use piledriving and/or air chillers.
2. Substantial evidence supports the City’s findings that there are no exceptions to the Class 32 Infill Exemption, specifically, that the project will not cause a substantial adverse change in the significance of a historical resource. The evidence includes a Historic Resources Evaluation, a Project Impact Analysis, and subsequent clarifications by Left Coast Architectural History (“Left Coast”),¹ and determinations at the Landmarks Preservation Commission (“LPC”). Materials submitted by the appellant, such as a 19 year-old letter from the State Historic Preservation Office for a separate project in San Rafael, have no bearing on the City’s findings in this project.
3. This project was one of the first to be submitted to the City pursuant to AB 1633, an amendment to the Housing Accountability Act that requires the City to determine that infill residential projects are exempt from CEQA, if findings for the exemption (and the absence of any exceptions) are supported by substantial evidence. Arguments raised by the appellant are almost entirely based on an assertion that the “fair argument” standard of review should apply to the historical resources exception. Appellant’s position is inconsistent with caselaw and state housing law, which require the “substantial evidence” standard of review for this project.

¹ An April 7, 2025 letter from Left Coast to the City is attached hereto for reference as Attachment 1.

Hanson Bridgett LLP

425 Market Street, 26th Floor, San Francisco, CA 94105 hansonbridgett.com

1. Substantial evidence supports the City's findings for the Class 32 Infill Exemption.

On October 4, 2024, the City found that the project meets all of the requirements for the Class 32 Infill Exemption². The general rule under CEQA is that the City, as the lead agency, cannot require the preparation of a negative declaration or environmental impact report ("EIR") if the project qualifies for a categorical exemption, unless the project is subject to an "exception" to the categorical exemptions.³ In addition, this project is subject to a new state housing law ("AB 1633"),⁴ effective as of January 1, 2024, which shifted CEQA's legal framework (i.e., the burden of proof and standard of review) to require that cities – and courts – defer to applicants of high-density infill housing development projects when documenting the Class 32 Infill Exemption, and when confirming that "the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2 of [the CEQA] guidelines."⁵ Section 3 of this letter summarizes some of the changes to CEQA's legal framework for AB 1633 projects.

To be eligible for the Class 32 Infill Exemption, a project must (1) be consistent with the applicable general plan designations, policies, and zoning standards; (2) be located within city limits, on a project site of no more than five acres, and substantially surrounded by urban uses; (3) have no biological value as habitat for protected species; (4) have no significant effects relating to traffic, noise, air quality, or water quality; and (5) be adequately served by utilities and public services.⁶

The use permit cites numerous technical reports and studies that support all five of the above-referenced findings. The details of those reports, the City's findings in reliance on those reports, and any subsequent supplement to those reports, are included in the record of proceedings and do not need to be reexamined. Prior to the ZAB hearing, however, comments were raised questioning the viability of the Class 32 Infill Exemption by asserting that the project would cause significant noise and vibration impacts. The appellant has also alleged that the project is inconsistent with the Downtown Area Plan. The project sponsor and its consultants have reviewed those comments and can confirm that they have no factual or legal merit.

- A. *Comments alleging noise and vibration impacts are based on false assumptions about the project and, in any event, potential noise impacts are addressed by the City's standard use permit conditions.*

A detailed noise analysis was prepared for the project, establishing that neither construction nor operation of the project will result in significant noise impacts on the environment. Comments submitted prior to the ZAB hearing, however, argued that the project's noise analysis is flawed.⁷ Those comments, however, were based on unfounded assumptions and factual inaccuracies.

² 14 Cal. Code Reg. § 15332

³ 14 Cal Code Reg. §§ 15300.2, 15300.4; Pub. Res. Code § 21080(b)(9)

⁴ For ease of reference, this letter refers to the provisions in Government Code section 65589.5.1 as "AB 1633." AB 1633 (Wicks 2023) amended the Housing Accountability Act by adding subdivisions (h)(6)(D)-(E) and (7)(A)-(B) to Government Code § 65589.5. The HAA was subsequently amended by AB 1413 (Ting 2024) largely to relocate the original provisions of AB 1633 related to CEQA exemptions to new Government Code section 65589.5.1, and the provisions of AB 1633 related to EIRs to new Government Code section 65589.5.2.

⁵ Gov. Code § 65589.5.1(a)(4)(B)

⁶ 14 Cal Code Reg. § 15332

⁷ See December 12, 2024 Letter from Adams Broadwell Joseph & Cardozo to ZAB re Agenda Item No. 6: 2274 Shattuck Avenue Project (Use Permit #ZP2023-0079) ("Adams Broadwell Letter").

(i) Construction Noise

Commenters have incorrectly claimed (and provided no evidence) that the project cannot be constructed without pile-driving equipment.⁸ They further claimed that the use of hypothetical pile-driving equipment would result in significant noise and vibration impacts.⁹ Substantial evidence in the record, however, establishes that the project will be constructed without pile driving, relying instead on augured cast-in-place (ACIP) piles, torque-down piles, and deep soil mixing ground improvement, each of which is associated with significantly less construction noise and vibration.¹⁰ These measures were accounted for in the project's noise analysis.

Commenters have also incorrectly claimed that the noise analysis failed to consider impacts of demolition and grading activities on multi-family residences approximately 65 feet south of the project site.¹¹ The noise analysis specifically analyzed those potential impacts by modeling the noise impacts on those residences using noise levels and usage factors based on industry-standard Federal Transportation Agency data. The noise analysis concluded that construction noise would not exceed the applicable thresholds.¹²

Commenters have also erroneously claimed that the noise analysis did not consider potential noise from vertical construction¹³ or construction-related traffic.¹⁴ The noise analysis, however, concluded that noise impacts from vertical construction will be less than the noise impacts caused by demolition and grading activities.¹⁵ The noise analysis included a detailed analysis of construction-related noise and concluded that impacts will be less than significant.¹⁶

Furthermore, the City may properly rely on compliance with standard conditions of approval when evaluating whether there is substantial evidence that the project qualifies for a CEQA exemption.¹⁷ Commenters ignore the requirement that the project must comply with the City's standard conditions of approval, which require a Construction Noise Plan.¹⁸ Pursuant to this condition, the applicant must develop a site-specific noise reduction program, subject to City approval, to reduce construction noise to levels that comply with the Berkeley Municipal Code.

In summary, comments regarding the project's construction noise impacts are based on flawed assumptions, and fail to take into account the City's standard conditions that require a Construction Noise Plan, which applies to this project under use permit condition 16. Construction of the project will not cause significant noise or vibration impacts.

⁸ See Adams Broadwell Letter at pp. 7-8; Exhibit A, p. 1-2.

⁹ *Id.*

¹⁰ See April 18, 2025 letter from Rockridge Geotechnical, Inc., attached hereto as Attachment 2

¹¹ See Adams Broadwell Letter at p. 8.

¹² See March 1, 2024, Noise Impact Analysis for the 2274 Shattuck Avenue Mixed Use Project in Berkeley, California, prepared by FCS International, Inc., ("Noise Impact Analysis") at pp. 9-10; Table 6; Attachment B.

¹³ See Adams Broadwell Letter at p. 8.

¹⁴ *Id.*

¹⁵ Noise Impact Analysis at p. 10.

¹⁶ Noise Impact Analysis at p. 11.

¹⁷ See *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 823 (holding that a city may rely on standard conditions of approval for ensuring adherence to generally applicable thresholds, such as interior noise standards regulated by local ordinance).

¹⁸ See ZAB Findings and Conditions for Use Permit #ZP2023-0079 at Condition 16. The use permit conditions are based on a set of standard conditions that the City has administered for many years and, for each development project, the City determines which of those standard conditions should be imposed by the Zoning Adjustments Board.

(ii) Operational Noise

Commenters have raised a claim that the noise analysis failed to properly account for impacts from the project's HVAC system during night hours.¹⁹ This argument also relies on several unsupported assumptions advanced by the commenters.

First, the commenter claimed that the project plans inaccurately depict the amount of MEP space that will be needed for the project, and that the project will require the use of a large air-cooled chiller in an enclosed mechanical room.²⁰ The commenter, however, provided no evidence to support these claims. The project plans accurately depict the location of the building's MEP spaces – a mechanical room on the first floor and mechanical equipment space on the roof level with space for a cooling tower and heat generation systems.²¹ The project will not utilize a large, air-cooled chiller located in an enclosed mechanical room. The project's cooling tower and heat generation systems will be located on the roof, will not be enclosed, and will not create a noise condition for neighbors.²²

Second, the commenter claimed that the noise analysis mischaracterized existing ambient external noise during nighttime hours and, therefore, use of a hypothetical large, air-cooled chiller has the potential to exceed nighttime thresholds for indoor noise.²³ The commenter is incorrect. The project's noise analysis correctly assumed use of a typical HVAC system and determined that operation of such a system would result in interior noise below the lowest nighttime threshold for indoor noise.²⁴ Substantial evidence supports the finding that the project will not exceed indoor noise standards. That said, the noise analysis utilized the City's documented 24-hour average to determine ambient exterior noise.²⁵ The analysis conservatively assumed that HVAC equipment would operate continuously and would not be muted by the building's rooftop parapet.²⁶ In reality, the climate conditions of the City will likely result in HVAC operating, at most, 50 percent of the time, and the building's rooftop parapet will result in shielding to reduce noise at neighboring residences.²⁷ Accordingly, operational noise levels of HVAC equipment will exceed neither the City's most conservative nighttime exterior noise threshold nor the City's most conservative nighttime interior noise threshold.²⁸

Again, these claims do not account for the City's standard conditions of approval, which include a condition for HVAC Noise Reduction. This standard condition requires the City Planning and Development Department to review the project's proposed HVAC system to ensure compliance with the noise standards in the Berkeley Municipal Code.²⁹ The City's standard condition related to HVAC Noise Reduction is included in the use permit for this project as condition 28.

¹⁹ See Adams Broadwell Letter at pp. 8-9.

²⁰ See Adams Broadwell Letter at p. 8; Exhibit A, p. 3.

²¹ See April 18, 2025 Letter from CB Engineers, attached hereto as Attachment 3.

²² *Id.*

²³ See Adams Broadwell Letter at p. 8; Exhibit A, p. 3.

²⁴ Noise Impact Analysis, at p. 12.

²⁵ See April 21, 2025 First Carbon Solutions Supplemental Noise Impacts Analysis for the 2274 Shattuck Avenue Mixed Use Project in Berkeley, attached hereto as Attachment 4.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ See ZAB Findings and Conditions for Use Permit #ZP2023-0079 at Condition 27; the condition for HVAC Noise Reduction is among those standard conditions incorporated into a project approval City-wide, regardless of the project's environmental determination under CEQA.

- B. *Comments alleging inconsistency with the Downtown Area Plan have no merit; the only applicable policies for this project are objective development standards; the project is consistent with all applicable policies and standards as a matter of law; and the record includes a robust set of consistency findings.*

Appellants claim that the project is inconsistent with certain provisions of the Downtown Area Plan and, on that basis, cannot qualify for the Class 32 Infill Exemption. Appellant's position fails to recognize that this project is being processed pursuant to the Housing Accountability Act ("HAA") and is therefore deemed consistent with the Downtown Area Plan as a matter of law. In addition, pursuant to the HAA, only the objective policies in the Downtown Area Plan can legally be applied to this project.

When evaluating general plan and zoning consistency for the purposes of the Class 32 exemption, the City is limited to considering only those City standards that are "applicable" to the project.³⁰ In determining the applicable zoning and general plan standards for a Class 32 exemption, the City must take into account state housing laws that dictate whether certain standards are in fact applicable to a particular project. If they are not applicable, they cannot be evaluated as part of the Class 32 exemption.³¹

Under the HAA, if the City believes that a project is inconsistent with an applicable plan, program, policy or similar provision, it must inform the applicant of that inconsistency within 60 days of the project application being complete.³² If the City does not identify any inconsistency with a particular plan, then *the project is deemed compliant with that plan as a matter of law.*³³ Here, the City deemed the project application complete on January 4, 2024, and did not identify any inconsistencies with objective standards or general plan policies in the subsequent 60 days, or at any time thereafter. Accordingly, the project is consistent with all City plans, including the Downtown Area Plan, as a matter of law, and must also be considered consistent with the *applicable* general plan and zoning standards for the Class 32 exemption, consistent with prior case precedent.³⁴

Regardless of the above provision, the HAA also mandates that the project can only be subject to *objective development standards.*³⁵ The HAA defines objective development standards very narrowly, in part as constituting "criteria that involve *no personal or subjective judgment by a public official* and are uniformly verifiable by reference to an external and uniform benchmark or criterion."³⁶

The appellant, on the other hand, cited several vague provisions of the Downtown Area Plan, focusing on language directing the City to "encourage," "promote," or "work to retain" certain activities. These vague statements do not constitute mandatory policies or objective development standards, as compliance is not uniformly verifiable by reference to an external and uniform benchmark and is instead entirely subject to personal or subjective judgment.³⁷ The

³⁰ 14 Cal. Code Reg. § 15332(a).

³¹ *Wollmer v. City of Berkeley* (2011) 193 Cal. App. 4th 1329

³² Gov. Code § 65589.5(j)(2)(A)(ii).

³³ Gov. Code § 65589.5(j)(2)(B).

³⁴ *Wollmer, supra*

³⁵ Gov. Code § 65589.5(j)(1).

³⁶ Gov. Code § 65589.5(h)(9)

³⁷ See *California Renters Legal Advoc. & Educ. Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 840.

provisions of the Downtown Area Plan cited by the appellant are not applicable to the project as a matter of law and therefore are not applicable for the purposes of the Class 32 exemption.

Lastly, regardless of the above state housing law mandates, the use permit and staff report include findings that the project complies with the Downtown Area Plan. The staff report for the ZAB hearing, the staff report for the City Council appeal, and the use permit contain detailed discussions of the applicable Downtown Area Plan policies and all conclude that the project complies with the applicable policies.

2. Substantial evidence supports the City's findings that there are no "exceptions" to the Class 32 Infill Exemption for this project.

Under CEQA, a categorical exemption may not apply if a project is subject to an "exception" to the categorical exemption. The "exceptions" to categorical exemptions include the "unusual circumstances" exception, the "cumulative impacts" exception, and the "historical resources" exception.³⁸

The staff report and use permit include express findings that "none of the exceptions in CEQA Guidelines Section 15300.2 apply..." to the project. The use permit cites to the evidence in the record that supports those findings:

The project applicant filed an AB 1633 Notice with the City on March 4, 2024 and attached technical reports that supported the... inapplicability of any Exceptions to the exemption (CEQA Guidelines, Section 15300.2). Submitted technical reports included the following: Traffic Impact Analysis, Historic Resources Evaluation,³⁹ Project Impacts Analysis,⁴⁰ Air Quality Impacts Analysis, Noise Impact Analysis, and Water Quality Impact Analysis. All technical reports were peer reviewed by a CEQA consultant, and were revised or supplemented for adequacy.⁴¹

As detailed in Section 3 below, AB 1633 requires that these reports be submitted by the applicant. The City reviewed the applicant's AB 1633 notice and on October 4, 2024, determined that the Class 32 Infill Exemption applied to the project.⁴²

Prior to the ZAB hearing for this project, the applicant learned that the City commissioned peer reviews, of both the Historic Resources Evaluation prepared by Left Coast (the "HRE Peer Review") and Project Impact Analysis prepared by Left Coast (the "PIA Peer Review"). The peer reviews did not include a physical inspection of the building or the numerous archival materials that were reviewed by Left Coast. The PIA Peer Review ultimately concluded that the project would cause an adverse impact on a historical resource. As detailed herein, however, the PIA Peer Review, which provides the basis for most of appellant's claims, is based on the legally

³⁸ 14 Cal. Code Reg. § 15300.2

³⁹ This is in reference to the December 7, 2023, 2274 Shattuck Avenue Historic Resource Evaluation Memorandum prepared by Left Coast Architectural History.

⁴⁰ This is in reference to the March 1, 2024, 2274 Shattuck Avenue Project Impacts Analysis prepared by Left Coast Architectural History.

⁴¹ Staff Report, p. 14 (referencing Use Permit, p. 2, Findings and Conditions)

⁴² As a matter of law, the City's determination that the project was categorically exempt included an implied finding that none of the exceptions to the exemption were applicable. (*Arcadians for Environmental Preservation v. City of Arcadia* (2023) 88 Cal.App.5th 418, 437; *World Business Academy v. State Lands Comm.* (2018) 24 Cal.App.5th 476, 497; *San Francisco Beautiful v. City & County of San Francisco* (2014) 226 Cal.App.4th 1012, 1022). In addition, the use permit expressly includes findings that none of the exceptions apply, with citations to evidence that supports those findings.

flawed premise that demolition of the theater portion of the building would cause a substantial adverse change under CEQA. That premise cannot be supported, however, when applying CEQA to the facts in this case. In addition, recent amendments to state housing law change the CEQA standard of review – but only for a small subset of eligible infill, high-density residential projects, such as the project subject to this appeal.

- A. *In reviewing impacts to historic resources under CEQA, the City must analyze potential impacts of the proposed project, not on the building in its entirety, but on the character-defining historical features of the building.*

The record is clear on this issue: the project will not cause a significant impact on any of the remaining, character-defining historical features of the building. CEQA defines a “historical resource” to include buildings that are listed in the California Register of Historical Resources.⁴³ There is no dispute that the building, in its entirety – which consists of an entryway atrium, lobby concession area, theater space and adjacent rooms, is listed under the California Register and is deemed a mandatory historical resource under CEQA. Even so, *CEQA does not require that any impact, alteration or demolition of a mandatory historical resource should be deemed a significant effect on the environment.* Rather, CEQA establishes a specific process for lead agencies to follow in determining a project’s potential impacts to historical resources:

A project with an effect that may cause a *substantial adverse change in the significance of an historical resource* is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the *significance of an historical resource would be materially impaired.*

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those *physical characteristics of an historical resource that convey its historical significance* and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those *physical characteristics that account for its inclusion in a local register* of historical resources pursuant to section 5020.1(k) of the Public Resources Code *or its identification in an historical resources survey* meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) Demolishes or materially alters in an adverse manner those *physical characteristics of a historical resource that convey its historical significance* and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.⁴⁴

⁴³ 14 Cal. Code Reg. § 15064.5; Pub. Res. Code § 5024.1; 14 Cal. Code Reg. § 4850 et seq.

⁴⁴ 14 Cal. Code Reg. § 15064.5(b) (emphasis added).

The above-referenced provisions use the *present tense* in evaluating potential impacts to historical resources. This is consistent with the requirement that lead agencies must evaluate potential impacts of a project based on the “environmental baseline” i.e., the existing conditions of a site at the time that a project application is submitted for City review.⁴⁵ As such, a baseline report was needed to identify the existing physical characteristics of the historical resource that convey its historical significance – i.e., the building’s character-defining historical features.

B. Substantial evidence in the record establishes that the only remaining character-defining historical features of the building are limited to the upper portions of the Shattuck Avenue façade.

(i) Left Coast’s Historic Resources Evaluation

The Left Coast HRE established the environmental baseline of historical resources for the project by conducting a detailed review of the remaining, or extant, character-defining features of the former theater. The Left Coast HRE exhaustively reviewed all archival materials related to the building⁴⁶ and concluded that the theater portion of the building no longer conveys the hallmark features of Art Deco architecture. The Left Coast HRE included, for example, extensive photo documentation showing that the Art Deco architecture of the theater has been lost due to its subdivision into four screening halls; that the proscenium arch and plasterwork of the theater were punched through and structurally compromised during installation of an HVAC system; that most of the original paintings have been destroyed; and that several upper balconies have been removed. In addition, the HRE found that damage to the building’s original features was not fully accounted for in earlier studies; that prior historical surveys addressing the site were not performed using modern standards; and that, therefore, many of the building’s alterations over time were likely not considered in those prior surveys.

Left Coast evaluated inconsistent findings from prior surveys regarding the theater’s sheer concrete façade facing Bancroft Way and determined that the sheer concrete façade is not a character-defining feature of the building. The evidence in support of this finding includes a 1978 Historic Resources Inventory, a 2004 Update Sheet, and proceedings at the Landmarks Preservation Commission. Left Coast’s April 7, 2025, letter to the City also addressed some of the inconsistent findings in prior surveys, and in the HRE and PIA Peer Reviews. The use permit’s CEQA findings cite to the Left Coast HRE, PIA and supplemental materials, thus incorporating Left Coast’s findings by reference into the City’s determination that the historical resources exception does not apply to this project.

(ii) Landmarks Preservation Commission Hearing

In December 2023, a petition was filed that sought to designate the former theater as a local landmark or structure of merit. The petition recommended that the entire building be landmarked, including the façade facing Shattuck Avenue, including the marquee and details above the marquee, along with the concrete façade facing Bancroft Way.

Prior to the landmark hearing, the applicant offered to tour each LPC commissioner through the building so that they could physically inspect the building’s condition firsthand. Five LPC

⁴⁵ *Bottini v. City of San Diego* (2018) 27 Cal.App.5th 281

⁴⁶ See Left Coast HRE, p. 3 for all archival information, permit records and prior surveys that were referenced in preparing the report.

commissioners toured the site: Chairperson Twu, and Commissioners Crandall, Orbuch, Hall Montgomery, and Finacom.

The application for this project was deemed complete prior to the LPC hearing. Under state housing law, the project therefore became vested against the City's landmark determination.⁴⁷ While the project entitlements are vested from the LPC's landmark determination under state law, the LPC findings could require analysis, pursuant to CEQA, of the building's *eligible* inclusion as a structure of merit or landmark under the City's landmarks preservation ordinance.⁴⁸ The Left Coast HRE, and the Left Coast PIA, appropriately analyzed the building as an *eligible* historic resource under CEQA that could be included in a "local register" – in addition to being a mandatory resource due to its listing on the California Register.

The Landmark Preservation Commission ("LPC") held a hearing on February 1, 2024, to review the petition to landmark the building. While the petition's goal was clearly to landmark the entire building, the LPC considered, but ultimately rejected landmarking the entire building. The LPC concluded that the Eligible Features to be Preserved should be identified as only the upper portion of the Shattuck Avenue façade, above the marquee.⁴⁹ Of the LPC Commissioners who toured the building, all but one voted in favor of the LPC's determination, which was to landmark only the upper portion of the Shattuck Avenue façade, above but not including the marquee.

In summary, the HRE and the LPC's findings establish that the character-defining features of the building, in its present condition, are limited to the upper portions of the building façade facing Shattuck Avenue, above the marquee. The proposed project, although it is vested from the LPC's landmark determination, has nevertheless been designed to avoid demolition of the Shattuck Avenue façade and the Eligible Features to be Preserved in the LPC's determination. By design, the proposed project will avoid demolition of not only the Shattuck Avenue façade, but the atrium entryway and former concession area.

- C. *Evidence in the record supports the finding that the project will not cause a substantial adverse change in the significance of a historical resource, and that the project complies with the Secretary of Interior Standards for Rehabilitation.*

The Left Coast PIA supports the City's finding that the project is not subject to the historical resources exception because (1) the project will not cause a "substantial adverse change in the significance of a historical resource," and (2) the project complies with the Secretary of Interior's Standards for Rehabilitation.

Left Coast's recent correspondence to the City clarified the PIA's findings that the project will not cause a substantial adverse change to a historical resource:

The Left Coast PIA... concluded that "the project does not demolish any of the physical characteristics of the site that convey its historical significance, that justify its inclusion in the California Register of Historical Resources, that account for its inclusion in the City of Berkeley's local register under the LPO [Landmark Preservation Ordinance], or any other features that would justify the site's eligibility for inclusion in the California Register." This conclusion is directly related to section 15064.5 of the CEQA Guidelines, and is supported by the findings from the

⁴⁷ Gov. Code §§ 65589.5, 65941.1

⁴⁸ 14 Cal. Code Reg. § 15064.5(b)(2)(B).

⁴⁹ The LPC proceedings were transcribed by a court reporter at the time of the hearing, and the transcript of those proceedings have been submitted to the City to be included in the administrative record for this project.

1978 [Historic Resources Inventory], the 2006 Listing [on the California Register], Left Coast's HRE, and subsequently the Berkeley LPC.⁵⁰

In addition to the above, CEQA provides an affirmative basis for establishing that a project will not cause impacts to historical resources:

Generally, a project that follows the... Secretary of the Interior's Standards for Rehabilitation... shall be considered as mitigated to a level of less than a significant impact on the historical resource.⁵¹

The PIA Peer Review's analysis of the Secretary of the Interior's Standards varied significantly from the analysis of those same Standards in the Left Coast PIA. Left Coast found that *the conclusions differ largely based on which portions of the property are considered to be significant.*⁵² In responding to the PIA Peer Review, which found that the project was not compliant with the Secretary of Interior's Standards, Left Coast concluded as follows: "At best, the Standards analysis in the PIA Peer Review is based on a difference in professional opinion regarding perceived impacts to the Bancroft façade."⁵³ As explained in Section 3 below, a difference in professional opinion is not an adequate basis for the City to bar the use of the Class 32 Infill Exemption because the "fair argument" standard does not apply to this project.

The appellant, likewise, presents an unsupported interpretation of CEQA. Appellant's legal counsel asserts "state policy" via a 2006 letter from the State Historic Preservation Office ("SHPO") to the City of San Rafael.⁵⁴ The SHPO letter, rather than being an official state policy, constitutes an informal advisory letter for a wholly separate project from more than 19 years ago. The SHPO letter has no bearing on this project and carries little weight given that it is not an official regulation or administrative policy.⁵⁵ The SHPO letter cites Public Resources Code section 5020.1 in opining that a historical resource "includes a building in its entirety, not parts of a building."⁵⁶ The SHPO and appellant's position, however, run counter to express provisions in the CEQA Guidelines that direct the City to determine whether the project would "[d]emolish or materially alter in an adverse manner those physical characteristics of an historical resource that convey [the building's] historical significance."⁵⁷

Appellant's interpretation of CEQA is contrary to the explicit direction given to lead agencies in reviewing historical resources. As noted above, the proper inquiry is whether a project would cause significant effects by demolishing or materially altering in an adverse manner "those physical characteristics of an historical resource that convey its historical significance...."⁵⁸ The City's findings in this case are based on substantial evidence in the record that the project will not demolish physical characteristics of the former theater that convey historical significance.

⁵⁰ Attachment 1 (citing Left Coast PIA, p. 5 et seq.)

⁵¹ 14 Cal. Code Reg. § 15064.5(b)(3)

⁵² Attachment 1 (emphasis added)

⁵³ *Id.*

⁵⁴ April 9, 2025, letter from the Law Offices of Tom Lippe to the City of Berkeley, p. 5

⁵⁵ *Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7 (citing *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559 in ruling that a state agency's "informal actions do not merit [judicial] deference")

⁵⁶ April 22, 2025, City Council Communications Packet, p. 249 (citing Pub. Res. Code § 5020.1)

⁵⁷ 14 Cal. Code Reg. § 15064.5(b)(2)(A)

⁵⁸ *Id.*

3. The substantial evidence standard applies to the City’s CEQA exemption determinations for this project.

Appellant’s assertion – that the fair argument standard should apply to the City’s review of Section 15300.2 exceptions – relies on outdated caselaw and dicta. For this project, AB 1633 requires the City to use the substantial evidence standard in confirming that the “categorical exemption is not barred by one of the exceptions set forth in Section 15300.2 of [the CEQA] guidelines.” AB 1633 makes clear that its standard of review, which is based on a revised definition of “abuse of discretion,” is only applicable to AB 1633-eligible projects.⁵⁹ The standard of review under AB 1633 therefore only applies to a small subset of infill residential projects. For eligible projects, AB 1633 supersedes CEQA’s more general provisions. This is particularly true given that AB 1633 is a later-enacted statute than the CEQA provisions at issue in this project.⁶⁰ The City Council should therefore disregard the appellant’s unfounded assertion that the fair argument standard should apply to the City’s review of the historical resources exception for this project.

Appellant cites *Valley Advocates*⁶¹ and *Berkeley Hillside*⁶² to support the contention that the fair argument standard should apply to the historical resource exception for this project. More recently, however, the court in *Historic Architecture Alliance*⁶³ held that the substantial evidence standard is the more appropriate test in reviewing the historical resources exemption for the Class 31 categorical exemption. Appellant noted that this appeal involves a different categorical exemption (Class 32). This distinction, however, is immaterial, particularly when the rationale in *Historic Architecture Alliance* is applied to AB 1633’s statutory framework:

To establish the historical resource exception, it is not enough to merely make a fair argument the project did not comply with the Secretary’s Standards. If this was all the challenger had to establish, the [Class 31] categorical exemption would be meaningless. It would prohibit the agency from weighing the conflicting evidence and making a finding based upon the weight of the competing evidence.⁶⁴

That same rationale applies here. AB 1633 effectively requires the City to determine that a project is exempt from CEQA if “there is substantial evidence in the record before the local agency that the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2 of those guidelines.”⁶⁵ AB 1633 reverses the burden of proof and standard of review in favor of requiring the *applicant* to show there are no exceptions to the exemption, and *requiring* the City to approve that finding if supported by substantial evidence.

⁵⁹ Gov. Code § 65589.5.1(b)(1)

⁶⁰ *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960-961.

⁶¹ *Valley Advocs. v. City of Fresno* (2008) 160 Cal.App. 4th 1039.

⁶² *Berkeley Hillside Pres. v. City of Berkeley* (2015) 60 Cal.4th 1086, 1117.

⁶³ *Historic Architecture Alliance v. City of Laguna Beach* (2023) 96 Cal.App.5th 186

⁶⁴ *Id.*, at p. 210-11.

⁶⁵ See Gov. Code § 65589.5.1(b)(1) (citing subd. (a)(4)(B)).

- A. *AB 1633 requires the City to approve the use of a CEQA exemption if the applicant's AB 1633 notice includes substantial evidence establishing the exemption and that there are no applicable Section 15300.2 exceptions.*

AB 1633 includes four substantive provisions for cities to follow in determining if projects are eligible for CEQA streamlining. First, there must be "substantial evidence in the record before the local agency that the housing development project is not located in... a very high fire hazard severity zone..." and other criteria. These provisions ensure that the proposed housing will not be located on environmentally sensitive sites or subject to certain environmental hazards (e.g., flood hazard areas, wetlands, in addition to very high fire hazard severity zones). Second, a proposed project must meet specific infill or transit-oriented criteria, such as being located close to transit or located in an urbanized area that is predominantly developed with urban uses. Third, AB 1633 projects must meet a density threshold of 15 dwelling units per acre.

For the fourth substantive requirement for AB 1633, both of the following criteria must be met:

(A) There [must be] substantial evidence in the record before the local agency that the housing development project is eligible for an exemption sought by the applicant.

(B) If the exemption sought by the applicant is subject to an exception under the Guidelines for Implementation of the California Environmental Quality Act (Chapter 3 (commencing with Section 15000) of Division 6 of Title 14 of the California Code of Regulations), there [must be] substantial evidence in the record before the local agency that the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2 of those guidelines.

As applied to this project, substantial evidence in the record indisputably supports all of these findings. More importantly, as detailed below, the process for establishing an AB 1633 CEQA exemption varies in important ways from the general rules for establishing CEQA exemptions, or for asserting Section 15300.2 exceptions, for other projects that are not housing development projects under the HAA.

- B. *AB 1633 shift the burden of proof to the applicant to document that no exceptions to a categorical exemption apply to the proposed housing development project.*

The general rule for Section 15300.2 exceptions is that the "party challenging the exemption has the burden of producing evidence supporting an exception."⁶⁶ AB 1633 shifts this framework by requiring that *the applicant* for a housing development project provide documentation that the exemption applies, and that the "categorical exemption is not barred by one of the exceptions set forth in Section 15300.2."⁶⁷

The substantive provisions of AB 1633 are triggered by a notice that the applicant must provide to the City within 60 days after the application is deemed complete.⁶⁸ That notice must include references to all of the evidence that satisfies the findings for the categorical exemption, along with the finding that "there is substantial evidence in the record before the local agency that the application of that categorical exemption is not barred by one of the exceptions set forth in

⁶⁶ *Protect Tustin Ranch v. City of Tustin* (2021) 70 Cal.App.5th 951, 961 (citing *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105).

⁶⁷ Gov. Code § 65589.5.1(a)(5)(A)(iv)

⁶⁸ Gov. Code §§ 65589.5.1(a)(5)(A), (a)(5)(F)

Section 15300.2 of [the CEQA] guidelines.”⁶⁹ The City then has 90 days, or up to 180 days if additional time is needed, to review and confirm that substantial evidence does in fact support the exemption asserted in the applicant’s AB 1633 notice.⁷⁰

As such, AB 1633 effectively shifts the burden of proof, and the applicant now has the burden of proving that there are no applicable Section 15300.2 exceptions. This is an important shift from the general rule that the project opponent must provide the evidence to establish that a Section 15300.2 exception applies to the project. This shift, when viewed in connection with the HAA’s liability provisions detailed below, establishes that the City must use the substantial evidence standard of review for AB 1633 projects in reviewing and confirming that there are no applicable Section 15300.2 exceptions.

- C *Under AB 1633, a city is liable under the Housing Accountability Act if substantial evidence supports a finding that a housing development project is exempt from CEQA, or that there are no applicable Section 15300.2 exceptions, yet the city fails to determine that the project is subject to the CEQA exemption.*

The above provisions, when combined with AB 1633’s definition of “abuse of discretion” refutes any notion that the fair argument standard should apply for AB 1633 projects. The substantial evidence standard of review for AB 1633 is expressly tied to the statutory definition of “abuse of discretion” (which, again, only applies to AB 1633 projects):

For purposes of [AB 1633], the following definitions apply:

- (1) “Abuse of discretion” means that the conditions set forth in [Gov. Code § 65589.5.1 subdivision (a), paragraphs (1)-(4), (referenced above)] are satisfied, but the local agency does not determine that the project is exempt from [CEQA]. This paragraph sets forth the exclusive definition of “abuse of discretion” for purposes of [AB 1633].

Per the above definition, the City would be committing an abuse of discretion and would therefore be liable for significant penalties and attorney’s fees under the HAA, if the City were to ignore substantial evidence that supports the finding that there are no exceptions to the historical resources exception⁷¹ and determine that the project is not exempt from CEQA. The City’s denial of the requested CEQA exemption would constitute a violation of the HAA, and an unlawful denial of the project, as defined by AB 1633 to include an unlawful determination that a project is not exempt from CEQA, could result in attorney’s fees to the developer and statutory damages. Statutory damages are at least \$10,000 per unit⁷² and, if applied to this project, would total at least \$2.27 million. Conversely, the HAA drastically limits the award of attorney’s fees that may be awarded when the City acts in good faith to approve housing development projects that meet the siting and eligibility criteria of AB 1633. “It is the intent of the Legislature that attorney’s fees and costs shall rarely, if ever, be awarded if a local agency, acting in good faith, approved a housing development project that satisfies conditions established in paragraph (1), (2), or (3) of subdivision (a) of [AB 1633].”⁷³

⁶⁹ Gov. Code § 65589.5.1(a)(5)(A)(iv) (referencing AB 1633 requirements including subd. (a)(4)(B)).

⁷⁰ Gov. Code § 65589.5.1(a)(5)(D)

⁷¹ Gov. Code § 65589.5.1(a)(4)

⁷² Gov. Code § 65589.5(k)(1)(B)

⁷³ Gov. Code § 65589.5(p)(1)

In summary, the court's rationale for imposing the substantial evidence standard of review in *Historic Architectural Alliance* applies similarly to the City's review of AB 1633 projects. The California legislature clearly shifted the burden of proof, standard of review and other key provisions of CEQA, *by statute* to apply to all AB 1633-eligible projects. The fair argument standard, and the general rule that the petitioner has the burden to establish exceptions to a categorical exemption, are therefore superseded by AB 1633's clear mandate that cities must process CEQA exemptions in a manner that supports and expedites the delivery of much-needed, high-density infill housing.

Thank you for considering these comments. While the City has made significant strides to approve more housing, the housing crisis unfortunately persists. We urge the City Council to affirm the ZAB approval so that this much-needed, transit-oriented infill housing can proceed lawfully and without undue delay.

Sincerely,

Hanson Bridgett LLP

Robin R. Baral
Partner

ATTACHMENT 1



P.O. Box 70415, Richmond, CA. 94807 • (415) 745-1906 • caitlin@leftcoastarchitecturalhistory.com

Date:	7 April 2025
To:	Sharon Gong, Senior Planner City of Berkeley – Planning and Development 1947 Center Street, 3 rd Floor Berkeley, CA 94704
From:	Caitlin Hibma, Principal/Architectural Historian Left Coast Architectural History

Dear Ms. Gong,

I am the principal of Left Coast Architectural History (Left Coast) and author of the “2274 Shattuck Avenue Historic Resource Evaluation Memo” (HRE) and the “2274 Shattuck Avenue Project Impacts Analysis” (PIA). The PIA found that the 2274 Shattuck Avenue Project (Project) would not have a significant impact on the former United Artists Theater (UA) or on the potential Shattuck Avenue Commercial Corridor Historic District (Potential District). The City agreed with these conclusions after considering two peer reviews by Rincon Consultants Inc. (Rincon): the “2274 Shattuck Avenue HRE Project Impacts Analysis,” June 21, 2024 (HRE Peer Review) and the “2274 Shattuck Avenue Project Impact Analysis,” dated August 2, 2024 (PIA Peer Review).¹ This letter responds to several points raised by the Peer Reviews.

The HRE and PIA evaluated the site as a historic resource.

The Peer Reviews repeatedly note that the UA is listed on the California Register and is therefore a historical resource under CEQA.² Left Coast’s HRE and PIA did not contest that the UA is currently listed on the California Register and is a historic resource under CEQA. The HRE and PIA identified the historic documentation of the UA to date:

- **California Register Listing.** The HRE states that “the California OHP (Office of Historic Preservation) formally designated the property to the California Register by a consensus through the Section 106 process, based on the National Register finding that was made by the 1978 evaluation and reiterated by the 2004-2005 documentation.”³ The PIA also indicates that the California Register listing (2006 Listing) “qualifies [the] UA as a mandatory historical resource...for purposes of CEQA.”⁴
- **Potential Historic District.** The HRE and PIA also discuss the UA’s identification as a contributor to the potential Shattuck Avenue Commercial Corridor Historic District, which was identified in a Context

¹ This memo refers collectively to Rincon’s HRE Peer Review and PIA Peer Review as the “Peer Reviews.”

² The Peer Reviews asserted that the HRE “recommended the property ineligible as a historical resource due, in part, to diminished integrity...” No such recommendation, however, was made. The Left Coast HRE concluded as follows: “Although the property is listed on the California Register, it would not qualify for listing had its loss of integrity been properly evaluated at the time of its designation (2006)....” The nuance here is that, while the property is still considered a historic resource, the site’s specific historic values or character-defining features have been greatly diminished, as documented in the HRE and PIA.

³ HRE at p. 2

⁴ p. 3; see also HRE at pp. 3, 22-23

Statement and Survey in 2015 (2015 Survey).⁵ The 2015 Survey did not make a formal determination of eligibility for the listing of the district on the California Register, and the City has not designated the Potential District.

- **City Landmark.** Shortly after the HRE was completed, the City’s Landmarks Preservation Commission (Berkeley LPC) designated the upper portion of the Shattuck façade as a Landmark. The landmark designation identified the upper portion of the Shattuck Avenue façade as the only “features to be preserved” for the site.⁶ Although the Project is vested from the landmark designation due to SB 330, the PIA analyzes the proposed project and finds the Project’s restoration of the upper portion of façade consistent with the designation.⁷

The HRE is consistent with explicit direction from the California Office of Historic Preservation.

The HRE Peer Review states that the HRE’s “effort to update the historical resource record with accurate information” as “generally consistent with OHP guidance,” but then goes on to criticize the HRE’s reevaluation as “not necessary because the property is already listed...and is considered a historic resource.”⁸

OHP calls for updates when:

A resource is reevaluated;

Changes occur to the resource and its setting;

Erroneous information needs correcting; and/or

Additional information is necessary for planning decisions.⁹

Here, all four criteria are met. Additional information was needed for purposes of evaluating the site under CEQA, for the City to make planning decisions on the mixed-use project proposed at the site, and for the Berkeley LPC to evaluate which, if any, character-defining features to landmark. The HRE also evaluated changes to the UA in light of extensive alterations not previously documented.¹⁰ In reviewing the prior surveys, the HRE corrected erroneous information in prior evaluations. Overall, the purpose of the HRE was to determine the remaining character-defining features of the site, and to resolve prior inconsistent findings; for example the differing treatment of the sheer concrete Bancroft façade in prior surveys.

Left Coast’s assessment of current site conditions does not remove (or recommend removal of) the site from the California Register or otherwise alter the building’s status as a mandatory historic resource under CEQA. Rather, a reevaluation of the building using current standards was needed to identify its remaining character-defining features, and to establish a baseline under which to evaluate potential impacts of the proposed mixed-use project for the purposes of CEQA.

The Peer Reviews’ identification of the auditorium as a character-defining feature conflicts with National Register Bulletin 15 and previous documentation of the UA.

The PIA Peer Review states that “one of the essential spaces that characterizes the property is its theater auditorium, and its proposed removal is not consistent with the guidance and Rehabilitation Standard No. 2 is not satisfied.”¹¹ Without first-hand observation of the theater building, or apparent consideration of Left Coast’s recent assessment of existing conditions, this statement fails to acknowledge loss of the auditorium’s integrity and its

⁵ HRE at p. 2, 6, 8-9; PIA at p. 2

⁶ PIA at p. 3

⁷ PIA at pp. 9-10

⁸ HRE Peer Review at p. 3

⁹ <https://ohp.parks.ca.gov/pages/1054/files/manual95.pdf>

¹⁰ Left Coast conducted a thorough review of permitted building modifications over the past 90 years at the site; this review was documented on page 14 of the HRE showing that most of the original features of the theater were modified or destroyed. The HRE is the only survey that thoroughly illustrated these changes and analyzed their effects on the site’s historic integrity.

¹¹ PIA Peer Review p. 7

subsequent inability to be a character defining feature (or “essential space”) of the property any longer. National Register Bulletin 15 supports the HRE’s conclusion that the interior of the theater does not qualify as a character-defining feature of the site – *particularly when taking into account its current condition*:

In some cases the loss of an interior will disqualify properties from listing in the National Register – a historic concert hall noted for the beauty of its auditorium and its fine acoustic qualities would be the type of property that if it were to lose its interior, it would lose its value as a historic resource.¹²

The same bulletin goes on to note that National Register-eligible properties “must not only retain their essential physical features, but the features must be visible enough to convey their significance. This means that even if a property is physically intact, its integrity is questionable if its significant features are concealed under modern construction.”¹³

The HRE cited numerous alterations, removal, and destruction of original features of the interior over the past 90 years, illustrating that a detrimental shift in integrity of the theater has occurred. Photographs of current and past conditions make clear that the significance of the auditorium has been lost through subdivision of the 1,800 seat single-theater auditorium into four separate theaters, and that numerous original features have been significantly altered, compromised or destroyed.¹⁴

Again, the purpose of the HRE is not to recommend that the theater be removed from the California Register. The HRE serves to identify what, if any, character-defining features of the site remain that should be protected. National Register Bulletin 15 supports the finding that the interior of the theater no longer conveys much of the original artistry, therefore the existing site condition does not support a finding that the interior auditorium is a character-defining historic feature of the site.

The PIA Peer Review recommends a period of significance ending in “1973, when the original single-screen theater was subdivided for multiple screens, resulting in several functional and aesthetic changes to the building.” (pg. 6) The PIA Peer Review therefore also acknowledges the loss of the auditorium’s original design and function, and consequently, its integrity. Thus, there appears to be no support for claiming that the auditorium space, in its subdivided state, remains or can currently serve as a character defining feature of the property. As such, removal of the theater auditorium is not inconsistent with Rehabilitation Standard 2.

The Left Coast HRE and PIA concluded that the Bancroft façade is not a character-defining feature of the building, based on the findings of the 1978 report, on which the 2006 California Register Listing was based.

The Peer Reviews’ approach to the Secretary of the Interior’s Standards (Standards) analysis varies significantly from the Left Coast Standards analysis in the PIA. The conclusions differ largely based on which portions of the property are considered to be significant.

The HRE Peer Review states “The building’s current status, however, and its reason for being a historical resource pursuant to CEQA, is tied to its listing in the CRHR, which extends to the whole building... The Standards analysis, therefore, cannot disqualify the proposed treatment of the rear portion of the building.”¹⁵ As noted above, however, the 1978 HRI, the 2006 Listing, the Left Coast HRE, and subsequently the Berkeley LPC, all made findings that the Bancroft façade is not a character defining feature of the site.

As noted above, the 2006 Listing was based almost entirely on the 1978 HRI, which described the Bancroft façade as the frontage of a “massive, irregularly shaped, concrete block... with service entrances and little else.” The 1978 HRI also found that “Plans at one time called for the Bancroft Way frontage – sheer concrete wall with just the least ridged pattern – to be decorated, but money was apparently not available.” It makes no obvious reference to that facade as a character defining or even important element of the building. The Finding of Effect for the 2006 Listing makes no mention of the Bancroft Way façade, but emphasizes that the Art Deco style of the UA is

¹² National Park Service, “National Register Bulletin (15): How to Apply the National Register Criteria for Evaluation,” 1995.

¹³ Id.

¹⁴ Photos from HRE at pp. 7-8

¹⁵ P. 4

“typified by its stepped pyramidal façade, which includes WPA-style sculpture representing Artistry United.”¹⁶ This approach to a value-engineered feature is consistent with National Register Bulletin 15, stating:

Art Deco detailing is not eligible...if the detailing was added merely as an afterthought, rather than fully integrated with the overall lines and massing typical of the Art Deco style.

A massive wall that was stripped of planned decoration to cut costs is not consistent with the original design of the rest of the UA, nor does it typify the Art Deco style.

Only the later 2015 Survey (post-dating the 2006 listing and never formally adopted) identified the “concrete wall structure and board-formed concrete rear wing with its vertical speed stripes” as a character-defining feature. The PIA Peer Review relies on this in their own interpretation, citing the “sheer form concrete wall with vertical speed stripes along Bancroft Way” and subsequently applies the Standards to the entire building.

Left Coast does not contest that the 2006 Listing applies to the entire property, but posits that its emphasis on the Shattuck facade, combined with the extensive loss of integrity to the remainder of the UA documented in the HRE, and the Berkeley LPC’s decision to landmark only the upper Shattuck facade, that the Bancroft Way façade is not significant or a character-defining feature of the site. Consequently, the PIA, addresses only the upper Shattuck Avenue facade as a significant or character-defining feature of the site. At best, the Standards analysis in the PIA Peer Review is based on a difference in professional opinion regarding perceived impacts to the Bancroft façade. Standards relating to effects on “distinctive” or “character-defining” features, however, cannot meaningfully apply to the “whole building” as asserted by the PIA Peer Review, or to other portions of the building, including the Bancroft façade, which have not formally been determined to be character-defining features of the site.

Left Coast’s HRE and PIA concluded that the proposed project will not impact the Potential District.

In 2015, the Shattuck Avenue Commercial Corridor Historic Context & Survey identified a potential historic district focused primarily on properties with frontage on six blocks of Shattuck Avenue between Durant and University Avenues.¹⁷ The 2015 Survey post-dates and was, thus, not a factor of the 2006 Listing, and has never been formally adopted by the City.

In an appendix, the 2015 Survey included a form (2015 Form) summarizing the UA but “did not perform any detailed or itemized analysis in regard to the theater’s significance or integrity in relation to a potential district, however; and never formally determined eligibility for, nor designated, a historic district in the area.”¹⁸ It reiterated and relied on “previous documentation” (i.e. the 2006 Listing and 1978 HRI) that “indicated that the interiors [of the UA] were also Art Deco from the 1930s.”¹⁹ It described the “strength of the second-floor façade design [as] continu[ing] to convey visual associations with Berkeley commercial/theater design in the early 20th century.”²⁰ In conflict with earlier documentation, it also characterized the blank wall on Bancroft as a character-defining feature, though the 1978 Form described it as a value-engineered feature.

The HRE Peer Review incorrectly states, “The [Left Coast] HRE does not make any conclusions regarding the property’s previously identified status as a contributor to a potential Shattuck Avenue Commercial Corridor Historic District.”²¹ To the contrary, the Left Coast HRE described the Potential District and related 2015 Survey, throughout the report. The Executive Summary specifically noted that the 2015 Survey, in evaluating the Potential District, “did not perform any detailed or itemized analysis in regard to the theater’s significance or integrity in relation to a potential district, however; and never formally determined eligibility for, nor designated, a historic district in the area.”²²

Moreover, the Left Coast HRE discussed the 2015 Survey for the Potential District at length, and concluded that some of its findings were inconsistent with earlier site evaluations. The 2015 survey’s lack of individualized

¹⁶ Id.

¹⁷ Archives & Architecture, LLC

¹⁸ HRE at p. 9

¹⁹ 2015 Form

²⁰ Id.

²¹ P. 2

²² P. 2

analysis, and findings that were inconsistent with earlier reports, are detailed at length in the HRE. Notably, the Bancroft Way facade was not identified by either the 1978 HRI or 2006 Listing as a character defining feature. The 2015 Survey – post-dating the site’s designation to the California Register of Historical Resources by ten years – is the only documentation that identifies it as such, in contradiction to its own description of the characteristics that typify Art Deco and theaters:

Typical character-defining features of Art Deco buildings are: overall vertical emphasis; angular geometric forms and lines; polychromatic decorative glass, glazed brick, or tile; chevron molding; decorative geometric panels and grills; stylized floral and animal patterns; decorative parapet; decorative cornice; ornamentation at windows and doors; and low-relief ornamentation.²³

A typical urban theater is notable for its recessed covered outdoor meeting space, marquee, blade sign(s), exterior box office, and bold façade ornamentation in place of fenestration.²⁴

As a result, findings regarding the Bancroft Way façade dating back to 1978 were re-evaluated by the Left Coast HRE. Ultimately, the HRE determined that the Bancroft façade was not a character-defining feature of the property. This finding agrees with the earlier documentation pertinent to the property’s designation, namely the 1978 HRI (upon which the 2006 Listing was primarily based).

The HRE concluded that only the upper portion of the Shattuck Avenue façade remained “intact and character defining” when evaluating the site in the context of Depression-era Art Deco movie theaters. (HRE, p. 21.) The Berkeley LPC ultimately concurred with those findings after substantial deliberation by landmarking only the upper portion of the Shattuck Avenue facade.

Given that the Shattuck Avenue District was never formally adopted, the PIA evaluates impacts to the Potential District, in accordance with section 15064.5 of the CEQA Guidelines. “By preserving the upper facade and instituting a neutral and compatible lower facade,” the PIA concluded, “the proposed project will preserve the historical, architectural, and aesthetic interest of the potential Shattuck Avenue Commercial Corridor district.” The replacement of the Bancroft façade, which is not typical of others in the Potential District, will not have an impact when considering it is essentially the rear frontage, on a secondary street in the six-block long Potential District.

The Left Coast PIA addressed CEQA’s “Adverse Impact” standard.

The PIA Peer Review report states, “Compliance with the Standards, however, is not the only way to demonstrate that a project would avoid causing a substantial adverse change in the significance of a historical resource.... The [Left Coast PIA] would benefit from being reframed to analyze if the proposed changes to 2274 Shattuck Avenue amount to substantial adverse change. The project impacts discussion is recommended to be revised and analyzed to consider if the changes proposed to the historical resource (the whole building) would result in material impairment as defined in Section 15064.5(b)(2)(A) of the CEQA Guidelines.”²⁵

The Left Coast PIA does address this issue where it concluded that “the project does not demolish any of the physical characteristics of the site that convey its historical significance, that justify its inclusion in the California Register of Historical Resources, that account for its inclusion in the City of Berkeley’s local register under the LPO [Landmark Preservation Ordinance], or any other features that would justify the site’s eligibility for inclusion in the California Register.”²⁶ This conclusion is directly related to section 15064.5 of the CEQA Guidelines, and is supported by the findings from the 1978 HRI, the 2006 Listing, Left Coast’s HRE, and subsequently the Berkeley LPC.

As has been stated above, the documentation that established the property’s CRHR designation, Left Coast’s own analysis, and the confirming decision of the Berkeley LPC to landmark only the upper Shattuck Avenue facade, culminate in an interpretation that the remaining character-defining features of the site are embodied in the upper Shattuck Avenue façade. The Left Coast PIA properly concluded that the proposed project complies with the

²³ Survey at p. 45

²⁴ Id. at p. 41

²⁵ HRE Review at p. 4

²⁶ P. 5 et seq

Standards. In relation to the character-defining upper Shattuck Avenue facade, it also naturally concluded that the “significance of the resource” (embodied in the upper Shattuck Avenue facade) will not suffer substantial adverse change and will not be materially impaired.

Thank you for your consideration of these responses.

Sincerely,

A handwritten signature in cursive script that reads "Caitlin Paige Hibma".

Caitlin Hibma
Principal/Architectural Historian
Left Coast Architectural History

ATTACHMENT 2

April 18, 2025
Project No. 22-2324

Mr. JP Walsh
2274 Shattuck QOZB LLC
100 Bush Street, Suite 1725
San Francisco, California 94104

Subject: Preliminary Geotechnical Investigation
Proposed Residential Building
2274 Shattuck Avenue
Berkeley, California

Dear Mr. Walsh:

As outlined in our preliminary geotechnical report dated April 17, 2025, viable foundation options for the proposed residential building at 2274 Shattuck Avenue include augered cast-in-place (ACIP) piles, torque-down piles, and deep soil mixing ground improvement. All of these methods are widely recognized for producing low levels of noise and vibration during installation and are routinely used in dense urban environments.

Driven piles were not included as a recommended foundation type in our report. The suggestion that pile driving is required for the project is incorrect.

Please contact us if you need any additional clarification.

Sincerely,
ROCKRIDGE GEOTECHNICAL, INC.



Clayton J. Proto, P.E., G.E.
Senior Engineer

ATTACHMENT 3



CB ENGINEERS
Building Experience

April 18, 2025

Mr. JP Walsh
2274 Shattuck QOZB LLC
100 Bush Street, Suite 1725
San Francisco, California 94104

Re: 2274 Shattuck Avenue

Dear Mr. Walsh:

I write to confirm certain aspects of the MEP space and HVAC operations for the proposed project at 2274 Shattuck Avenue. The Project plans accurately depict a mechanical room on the first floor, which will be appropriately sized for the domestic hot water generation system during the schematic phase of the project.

The Project plans also accurately depict a mechanical equipment space on the roof level with space for a cooling tower and heat generation systems, neither of which will be enclosed, and neither of which will create a noise condition for neighbors.

The Project will not utilize a large, air-cooled chiller located in an enclosed mechanical room. Furthermore, any street façade ventilation louvers will be designed with acoustic sound mitigation components such as a 'sound trap', thereby ensuring that the equipment will meet the City of Berkeley's property line noise ordinance.

Best regards,

Paul O' Neill, P.E., LEED AP
President

ATTACHMENT 4

Memorandum

Date: April 21, 2025

To: Project Applicant

From: Philip Ault, Director of Noise and Air Quality, FirstCarbon Solutions

Subject: Supplemental Noise Impacts Analysis for the 2274 Shattuck Avenue Mixed Use Project in Berkeley, California

At the request of the project applicant, FirstCarbon Solutions (FCS), prepared this memorandum to clarify certain aspects of the Noise Impact Analysis memorandum prepared for the proposed 2274 Shattuck Avenue Mixed Use Project (proposed project) dated May 22, 2024. In particular, we understand a comment has been raised questioning whether operation of the HVAC system of the proposed project would potentially exceed the City's applicable noise performance thresholds.

The noise impact analysis identified that worst-case noise levels would not exceed 52 dBA L_{eq} as measured at the nearest façade of the sensitive receptor (2030 Bancroft Way, 65 feet south of the project site). The analysis identified that reasonable worst case operational noise levels would not exceed the City's interior noise threshold of 40 dBA L_{eq} as measured at the interior of the nearest sensitive receptor land use. The analysis also identified that the exterior noise limits established by Municipal Code Section 13.40.050 are adjusted to reflect, at a minimum, the ambient noise level. Documented ambient noise levels in the project vicinity range between 70 and 75 dBA L_{dn} . Therefore, the analysis concluded that the proposed project's HVAC-related noise levels would not exceed ambient noise levels and therefore Municipal Code Section 13.40.050 exterior noise limits, as well.

The following points provide additional clarification to these findings and the supporting calculations.

1. This calculation provided the conservative reasonable worst-case of operation of the loudest type of equipment that could be used and assumed the equipment would operate continuously for an entire hour.
2. The calculation only accounted for distance attenuation (distance attenuation at 65-feet compared to the reference distance of 25-feet). It conservatively did not account for shielding that would be provided by the rooftop parapet. But the fact is there would be no direct line of sight from the proposed HVAC equipment on the rooftop of the proposed 22-story building to the rooftop of the 3-story residential receptor at 2030 Bancroft Way. Such shielding would provide a minimum of 5 dBA to 10 dBA reduction in the calculated operational noise level.

3. Given the yearly climate conditions of the City of Berkeley, HVAC equipment would clearly not operate continuously during nighttime hours, but at a maximum of only 50 percent of an hour. The calculated noise level from equipment rated at 60 dBA at a reference distance of 25 feet operating 50 percent of an hour would be 42 dBA L_{eq} hourly average as measured at 65 feet from the equipment during nighttime hours.
4. The project site is located in a very urban environment with known nighttime activity. As such, based on the documented 24-hour average noise levels of 70 and 75 dBA L_{dn} , it indicates that nighttime hourly average ambient noise levels would have to be 40 dBA or greater to result in these 24-hour average noise levels.

Therefore, assuming an hourly usage factor of 50 percent and a minimum reduction of 5 dBA for the rooftop parapet, nighttime operational noise levels would attenuate to below 37 dBA L_{eq} as measured at the edge of the rooftop of the residential land use at 2030 Bancroft Way. This would result in interior noise levels of 22 dBA L_{eq} as measured in the interior space of the nearest residential unit, even with windows open.

Thus, it can be confidently assured that operational noise levels of proposed HVAC equipment would not exceed the City's most conservative exterior noise performance threshold of 45 dBA L_{eq} , nor exceed the City's most conservative interior noise performance threshold of 40 dBA L_{eq} as measured at the nearest residential receptor located at 2030 Bancroft Way.

Thank you for the opportunity to conduct this noise impact analysis. Please feel free to contact Phil Ault (559.930.6191 or pault@fcs-intl.com) should you have any questions.

Sincerely,



Philip Ault, Director of Noise and Air Quality

FirstCarbon Solutions

2999 Oak Road, Suite 250

Walnut Creek, CA 94597

APR 22 2025

CITY OF BERKELEY
CITY CLERK DEPARTMENT

Item #1, City Council Special Meeting, April 22, 2025

**Protest and Comments on Use Permit
#ZP2023-0079**

2274 Shattuck Avenue

- I. The Project is not eligible for evaluation under the Infill Exemption criteria and the City failed to examine the “cumulative impacts” of the Project as required under the California Environmental Quality Act (CEQA)

Under CEQA Guidelines the ability of a project to use the infill exemption process;

Are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

In recently approving the 27-story (450 unit) project at 1950-1998 Shattuck Avenue (also known as University Corners or the current site of the downtown McDonald’s (Use Permit #ZP2023-0040) the Zoning Adjustment Board relied on, as it does in the current permit application, the applicant’s review of the environmental effect of the proposed project.

Both the analysis for the McDonald’s project, and the pending 2274 Shattuck project, were both prepared by the applicant’s legal consultants, Hanson, Bridgett LLP.¹

In their environmental review of the McDonald’s project, Hanson Bridgett’s analysis appears to recognize the cumulative effect of development in the Downtown Area stating;

We understand that with approval of the [McDonald’s] Project, the City will have exceeded the number of residential units that the Downtown Area Plan EIR assumed for the area.

With the approval by ZAB of the McDonald’s project at its February 27, 2025 meeting, the Downtown Area will have exceeded the limits modeled in its Downtown Area EIR.

¹ Agenda Item, p. 6.

Approval of the proposed 2274 Shattuck project will only further exceed the Downtown Area EIR. To this increased development, the City must add the planned expansion of U.C. (including a multi-story residential unit adjacent to its swim center, a multi-story project being proposed adjacent to the McDonald's site, as well as numerous other projects for which either permits have been filed for or the University of California has identified in its long-term plan.

The existing Downtown Area Plan was developed in coordination with U.C.'s 2005 LDRP, and the current U.C. LDRP (approved in 2024) extensively affects the Downtown area.² In its LRDP U.C. estimates it will need new housing for over 7,000 students in addition to increased housing for faculty and additional office/research/teaching space. Much of this new construction is likely to occur in the Downtown area and will be exempt from the City's environmental review.

A project's environmental impacts are "cumulatively considerable" if the "incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects" (CEQA Guidelines Section 15065[a][3]).

The Downtown Area has reached a tipping point at which any additional marginal environmental effect could have significant implications. It is precisely this marginal effect that CEQA is supposed to examine. A roadway that runs at normal speed with 100 cars on it can become gridlocked with the addition of a 101st car. The incremental pollution from this 101st car in turn could push an area to exceed its regulatory pollution limits, thus triggering additional compliance measures.

The proposed project, combined with known changes from the U.C. LDRP thus creates a cumulative effect and thus is ineligible to use the Infill Categorical Exemption process.

II. The Relation of the Downtown Area Plan EIR to the Proposed Project

The Downtown Area Plan, approved in 2012 (although in some cases it used Census data as far back as 1990 for its analysis) is the "Program EIR" that applies to the Project. Since 2012 (or 1990) significant changes have occurred in Berkeley and worldwide that are not examined within the Downtown Area Plan EIR. This includes the effects of global warming, the effect of Uber/Lyft and door-to-door delivery services on transportation, and an increased attention to the effect of projects on indigenous peoples.

The goal of a Program EIR is to examine at a broad level the environmental effects of a major program (such as the Downtown Plan). Closely related to the Program EIR is the Project EIR,

² Comments of Jordan Klein, Planning Director for the City of Berkeley --: Draft Environmental Impact Report Comments: 2021 Long Range Development Plan and Housing Projects #1 and #2 submitted to Raphael Breines, Senior Planner, U.C. Berkeley (April 21, 2021). P. 13.

which examines in closer detail specific projects that comprise parts of the larger program. In this case 2274 Shattuck.

Given the inapplicability of the Downtown Area EIR, its outdated review that does not remotely address current conditions, and the significant exceedance of the number of residential units assumed for the Downtown Area, a Project EIR for 2274 Shattuck should be the minimum standard of review to meet CEQA requirements.

Instead, much of the current environmental review used for claiming a categorical exemption appears to be largely a recitation of existing environmental policies. This alone is not substantial enough to meet CEQA requirements. As the City itself recognizes;

[An] EIR cannot simply assume that applying laws and regulations to future projects obviates the potential for cumulative impacts. *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 15-17 (compliance with an environmental regulatory program cannot displace an agency's separate obligation to consider whether a project's environmental impacts are significant).³

III. The Effect on Public Services was not examined

The need for additional fire service in the Downtown Area was recognized by the City itself in its comments on the University of California at Berkeley's Long Range Development Plan EIR. (U.C. Berkeley EIR).⁴ Growth in the Downtown area (combined with growth in the student population envisioned by the University would put a significant strain on the ability and capacity of the Berkeley Fire Department to meet its obligations.

As the City noted;

The increase in building height and densities, such as is found with higher density apartment buildings to accommodate students, also present unique challenges for fire fighters and medical personnel. Responding to calls for service in these housing environments requires twice the staff on fire engines and trucks because these calls require evacuation and management of hundreds of people.⁵

³ Comments of Jordan Klein, Planning Director for the City of Berkeley --: Draft Environmental Impact Report Comments: 2021 Long Range Development Plan and Housing Projects #1 and #2 submitted to Raphael Breines, Senior Planner, U.C. Berkeley (April 21, 2021), p. 16.

⁴ Comments of Jordan Klein, Planning Director for the City of Berkeley --: Draft Environmental Impact Report Comments: 2021 Long Range Development Plan and Housing Projects #1 and #2 submitted to Raphael Breines, Senior Planner, U.C. Berkeley (April 21, 2021).

⁵ *Ibid.*, p. 27-28

To “accommodate the increased density and height of projects”, the City would need additional;

...Resources [that] would include an aerial ladder truck, type 1 fire engine, ambulance, mobile air supply truck, and a battalion chief ... [as well as requiring]

...

A new facility close to the Campus Park to house these additional resources.⁶

None of these additional resource needs, not to mention any specialized equipment or facilities needed to fight fires above the 18th floor are even examined in the Project’s environmental review.

Conclusion

As noted in the above comments, the proposed project must be denied for its failure to comply with CEQA requirements. .

Thank you for your consideration.

James Hendry
policyexcellence@gmail.com

⁶ Ibid.

Durr, Jasmine

From: Annie Wormhoudt <abdubb@gmail.com>
Sent: Wednesday, April 23, 2025 6:02 PM
To: All Council
Subject: Appeal of Use Permit ZP2023-0079, 2274 Shattuck Ave.

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Berkeley Council Members et al,

I am writing to demand the Mayor and City Council follow the law and due process and not let a developer tear down the magnificent United Artists theater in downtown Berkeley, a paragon of Art Deco architecture built by Hollywood icons Mary Pickford and Charlie Chaplin. The palatial four-story theater is a "historical resource" under state law—as well as a local landmark and National Register-eligible—meaning city leaders cannot let a developer demolish it without extensive review.

Operating from 1932 until February 2023, the UA Berkeley is one of the finest Art Deco theaters in the Bay Area and is still resplendent with irreplaceable architectural and decorative features throughout. It was built as an opulent vaudeville theater with a stage, dressing rooms, green room, and orchestra pit—features that were retained behind the multiplex's partitions.

The question before the Mayor and City Council is not whether to build housing on the UA site. The question is whether the law and due process were followed by the staff and zoning board leading to the approval of the development project. The answer is a resounding NO. There's no escaping this fundamental fact: the UA is on the California Register of Historical Resources, which means it has protections under the California Environmental Quality Act (CEQA).

The Mayor and City Council must examine—and act to rectify—the legally dubious and nontransparent planning process that led to the project's approval. After months of keeping the public in the dark, in October city staff handed the developer a full end-run around CEQA under a new, broadly written law, AB 1633—despite having obtained two peer-review reports from experts that show the ENTIRE theater is a historical resource under the law and should be shielded from swift destruction.

Not only were these crucial evaluations — paid for by taxpayers — not made public until after the fateful exemption was granted; they were not even given to the zoning board for the December meeting, nor were they referenced in the huge staff report meant to help board members make informed decisions. Usually the zoning board considers and votes on a project's eligibility for a CEQA exemption; this time, the city staff granted it preemptively and essentially told the zoning board it had no choice but to approve the project.

The city appears to be ignoring the fact that the CEQA statute contains EXCEPTIONS to categorical exemptions, including when a proposed project will result in a "substantial adverse change" in the significance of the historical resource, as is the case with the UA. (This is true despite the raft of new pro-housing laws designed to cradle a project to quick approval without interference from pesky citizens or their leaders.)

The CEQA review process, which the city initially outlined for the project in January 2024, would allow for more public input on the project as well as analysis of ways to mitigate the impact on the theater. There could be ways to balance the interests of the developer against preserving a landmark building protected by state law—but they were never explored. The city robbed the theater—and the public—of this process when it granted the CEQA exemption.

What should have been an informed deliberation turned out to be a sham.

In the big picture, the citizens of Berkeley and the surrounding region are alarmed to see complacent city leaders give up control over planning of the downtown, which is now a wasteland of shuttered or leveled cinemas. City leaders should remember that the Downtown Area Plan is still in effect and calls for the support and retention of downtown movie theaters. Many other city records, including a 2015 historical survey of the downtown, show the UA to be listed as historically significant.

Save the UA Berkeley recognizes that housing construction is important and that the state Housing Element requires municipalities to turn goals into action. However, please note that when the city took an inventory of hundreds of properties on which to build to meet this requirement, it did not put the UA theater site on the list.

City officials should also remember that developers have a record of demolishing buildings only to abandon their plans for one reason or another. This is particularly salient at a time of economic uncertainty under Trump. The apparently defunct development project that leveled the beloved Shattuck Cinemas, leaving a city block looking like a war zone, is a cautionary example. Leaders should also dismiss the developer's bad-faith gripes about structural issues with the building. Such concerns are minor, easily surmountable and most importantly: they are not of concern to the council in considering this appeal.

Some say letting the UA live on for future generations is too costly. But the truth is, it would be far too expensive to build a theater of this size, quality, and incomparable detail today. Cities around the country that have restored their historic theaters—including Oakland—have never regretted their decisions. Berkeley's own studies show that cultural and artistic offerings are key to economic vitality.

The UA Berkeley could be renewed as a glorious live performance venue on par with the Paramount in Oakland. Or it could continue as a movie house or something in between. **The possibilities are plentiful, but not if this historic landmark is destroyed.**

City leaders, the fate the UA rests in your hands. Please do the right thing. Don't cave in to legal threats from a developer that does not have the law on its side. **Follow the law and due process** and stop the developer from rushing to destroy this invaluable landmark building.

Sincerely,
Annie Wormhoudt

From: Kate Cullen <kate_cullen@berkeley.edu>
Sent: Monday, April 21, 2025 12:51 PM
To: All Council
Subject: Please reject the appeal of the use permit for 2274 Shattuck

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Berkeley City Council Berkeley City Council,

Honorable Mayor and City Council,

I'm writing to express my strong support for the proposed housing project at 2274 Shattuck Avenue, the former UA Regal Theater site. I urge you to uphold the Zoning Adjustments Board's decision to issue a use permit for this project when you consider the appeal on Tuesday, April 22nd.

This project represents exactly the kind of housing Berkeley desperately needs:

- 227 affordable-by-design units plus 23 subsidized units for very low-income residents
- Transit-oriented development just a block from Downtown Berkeley BART
- Thoughtful preservation of the art deco lobby, the only original part of the theater
- Shoring up what is currently a structurally-unsound edifice that would be dangerous in an earthquake, not just for those inside the building but for neighboring buildings as well

I understand some community members want to block the project in order to preserve the theater, but the original theater is long gone, replaced by a 1970s multiplex that's now crumbling and unsafe. It strains the imagination to think of ways to finance the crucial structural and safety work that don't repurpose the site. People just aren't going to movie theaters as often anymore -- the theater operators were given the opportunity to keep running the theater rent-free, but even with zero rent they chose to cease operations.

The developers' plan to preserve the art deco lobby while creating much-needed housing represents a balanced approach that honors Berkeley's history while addressing our current housing crisis. It frankly seems like the best way to preserve the components of the theater worth saving. But we need to keep in mind the bigger picture: We face paired housing and

climate crises, and this project would provide 250 homes in an ideal location near transit, jobs, and services.

For all these reasons, please reject the appeal and allow this valuable housing project to move forward.

Sincerely,

Kate Cullen

North Berkeley Resident

Kate Cullen

kate_cullen@berkeley.edu

1300 Martin Luther King Junior Way

Berkeley, California 94709

Durr, Jasmine

From: Kate Cullen <kate_cullen@berkeley.edu>
Sent: Monday, April 21, 2025 12:51 PM
To: City Clerk
Subject: Please reject the appeal of the use permit for 2274 Shattuck

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Berkeley Clerk Berkeley Clerk,

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Sincerely,

Kate Cullen

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kate_cullen@berkeley.edu

1300 Martin Luther King Junior Way

Berkeley, California 94709

Durr, Jasmine

From: Rowyn McDonald <noreply@adv.actionnetwork.org>
Sent: Monday, April 21, 2025 3:52 PM
To: City Clerk
Subject: Please reject the appeal of the use permit for 2274 Shattuck

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Berkeley Clerk Berkeley Clerk,

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Sincerely,
Rowyn McDonald

Rowyn McDonald
rowynm@gmail.com
1024 TALBOT AVE
ALBANY, California 94706

Durr, Jasmine

From: Rowyn McDonald <noreply@adv.actionnetwork.org>
Sent: Monday, April 21, 2025 3:52 PM
To: All Council
Subject: Please reject the appeal of the use permit for 2274 Shattuck

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rowynm@gmail.com
1024 TALBOT AVE
ALBANY, California 94706

Durr, Jasmine

From: Lily Berticevich <noreply@adv.actionnetwork.org>
Sent: Monday, April 21, 2025 7:34 PM
To: All Council
Subject: Please reject the appeal of the use permit for 2274 Shattuck

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Berkeley City Council Berkeley City Council,

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Sincerely,
Lily Berticevich
Council District 4

Lily Berticevich
lmberticevich@gmail.com
2718 Harrison St
Oakland, California 94612

Durr, Jasmine

From: Lily Berticevich <noreply@adv.actionnetwork.org>
Sent: Monday, April 21, 2025 7:34 PM
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Sincerely,
Lily Berticevich
Council District 4

Lily Berticevich
lmberticevich@gmail.com
2718 Harrison St
Oakland, California 94612

Durr, Jasmine

From: Stu Fram <noreply@adv.actionnetwork.org>
Sent: Wednesday, April 23, 2025 11:33 AM
To: All Council
Subject: Please reject the appeal of the use permit for 2274 Shattuck

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Berkeley City Council Berkeley City Council,

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Sincerely,
Stu Fram

Stu Fram
stu.fram@gmail.com
2509 Woolsey Street
Berkeley, 94705

Durr, Jasmine

From: Stu Fram <noreply@adv.actionnetwork.org>
Sent: Wednesday, April 23, 2025 11:33 AM
To: City Clerk
Subject: Please reject the appeal of the use permit for 2274 Shattuck

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Berkeley Clerk Berkeley Clerk,

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Sincerely,
Stu Fram

Stu Fram
stu.fram@gmail.com
2509 Woolsey Street
Berkeley, 94705

From: DP Neyhart <genetic@igc.org>
Sent: Monday, April 21, 2025 1:27 PM
To: Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark; City Attorney's Office; All Council
Cc: savetheuaberkeley@gmail.com
Subject: Stop the demolition of the historic UA theater

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Berkeley Mayor and City Council:

Re: Appeal of Use Permit ZP2023-0079, 2274 Shattuck Ave. I am writing to demand the Mayor and City Council follow the law and due process and not let a developer tear down the magnificent United Artists theater in downtown Berkeley, a paragon of Art Deco architecture built by Hollywood icons Mary Pickford and Charlie Chaplin. The palatial four-story theater is a "historical resource" under state law—as well as a local landmark and National Register-eligible—meaning city leaders cannot let a developer demolish it without extensive review. Operating from 1932 until February 2023, the UA Berkeley is one of the finest Art Deco theaters in the Bay Area and is still resplendent with irreplaceable architectural and decorative features throughout. It was built as an opulent vaudeville theater with a stage, dressing rooms, green room, and orchestra pit—features that were retained behind the multiplex's partitions. The question before the Mayor and City Council is not whether to build housing on the UA site. The question is whether the law and due process were followed by the staff and zoning board leading to the approval of the development project. The answer is a resounding NO. There's no escaping this fundamental fact: the UA is on the California Register of Historical Resources, which means it has protections under the California Environmental Quality Act (CEQA). The Mayor and City Council must examine—and act to rectify—the legally dubious and nontransparent planning process that led to the project's approval. After months of keeping the public in the dark, in October city staff handed the developer a full end-run around CEQA under a new, broadly written law, AB 1633—despite having obtained two peer-review reports from experts that show the ENTIRE theater is a historical resource under the law and should be shielded from swift destruction. Not only were these crucial evaluations — paid for by taxpayers —not made public until after the fateful exemption was granted; they were not even given to the zoning board for the December meeting, nor were they referenced in the huge staff report meant to help board members make informed decisions. Usually the zoning board considers and votes on a project's eligibility for a CEQA exemption; this time, the city staff granted it preemptively and essentially told the zoning board it had no choice but to approve the project. The city appears to be ignoring the fact that the CEQA statute contains EXCEPTIONS to categorical exemptions, including when a proposed project will result in a "substantial adverse change" in the significance of the historical resource, as is the case with the UA. (This is true despite the raft of new pro-housing laws designed to cradle a project to quick approval without interference from pesky citizens or their leaders.) The CEQA review process, which the city initially outlined for the project in January 2024, would allow for more public input on the project as well as analysis of ways to mitigate the impact on the theater. There could be ways to balance the interests of the developer against preserving a landmark building protected by state law—but they were never explored. The city robbed the theater—and the public—of this process when it granted the CEQA exemption. What should have been an informed deliberation turned out to be a sham. In the big picture, the citizens of Berkeley and the surrounding region are alarmed to see complacent city leaders give up control over planning of the downtown, which is now a wasteland of shuttered or leveled cinemas. City leaders should remember that the Downtown Area Plan is still in effect and calls for the support and retention of downtown movie theaters. Many other city records, including a 2015 historical survey of the downtown, show the UA to be listed as historically significant. Save the UA Berkeley recognizes that housing construction is important and that the state Housing Element requires municipalities to turn goals into action. However, please note that when the city took an inventory of hundreds of properties on which to build to meet this requirement, it did not put the UA theater site on the list. City officials should also remember that developers have a record of demolishing buildings only to abandon their plans for one reason or

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genetic@igc.org

Durr, Jasmine

From: Arwen Curry <arwencurry@gmail.com>
Sent: Monday, April 21, 2025 3:25 PM
To: Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark; City Attorney's Office; All Council
Cc: savetheuaberkeley@gmail.com
Subject: Stop the demolition of the historic UA theater

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- Arwen Curry

arwencurry@gmail.com

Durr, Jasmine

From: Sofia Lopez <blacksheep1486@gmail.com>
Sent: Tuesday, April 22, 2025 12:09 PM
To: Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark; City Attorney's Office; All Council
Cc: savetheuaberkeley@gmail.com
Subject: Stop the demolition of the historic UA theater

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- Sofia Lopez

blacksheep1486@gmail.com

Durr, Jasmine

From: Aileen Frankel <msfrankel009@gmail.com>
Sent: Tuesday, April 22, 2025 10:27 AM
To: Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark; City Attorney's Office; All Council
Cc: savetheuaberkeley@gmail.com
Subject: Stop the demolition of the historic UA theater

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Dear Berkeley Mayor and City Council:

Re: Appeal of Use Permit ZP2023-0079, 2274 Shattuck Ave. Please, please save the distinguish United Artists theater. The best cities are those that preserve their quality historic buildings and allow the neighborhoods to grow AROUND them. What make's the corridor to Oakland's downtown interesting are the restored Paramount and Fox theaters. Please do not allow a developer to tear down the magnificent United Artists theater in downtown Berkeley, a paragon of Art Deco architecture built by Hollywood icons Mary Pickford and Charlie Chaplin. The palatial four-story theater is a "historical resource" under state law—as well as a local landmark and National Register-eligible—meaning city leaders should not allow its demolition. Operating from 1932 until February 2023, the UA Berkeley is one of the finest Art Deco theaters in the Bay Area and is still endowed twith irreplaceable architectural and decorative features throughout. It was built as an opulent vaudeville theater with a stage, dressing rooms, green room, and orchestra pit—features that were retained behind the multiplex's partitions. Please let me know the outcome of your consideration. The question before the Mayor and City Council is not whether to build housing on the UA site. The question is whether the law and due process were followed by the staff and zoning board leading to the approval of the development project. The answer is a resounding NO. There's no escaping this fundamental fact: the UA is on the California Register of Historical Resources, which means it has protections under the California Environmental Quality Act (CEQA). The Mayor and City Council must examine—and act to rectify—the legally dubious and nontransparent planning process that led to the project's approval. After months of keeping the public in the dark, in October city staff handed the developer a full end-run around CEQA under a new, broadly written law, AB 1633—despite having obtained two peer-review reports from experts that show the ENTIRE theater is a historical resource under the law and should be shielded from swift destruction. Not only were these crucial evaluations — paid for by taxpayers —not made public until after the fateful exemption was granted; they were not even given to the zoning board for the December meeting, nor were they referenced in the huge staff report meant to help board members make informed decisions. Usually the zoning board considers and votes on a project's eligibility for a CEQA exemption; this time, the city staff granted it preemptively and essentially told the zoning board it had no choice but to approve the project. The city appears to be ignoring the fact that the CEQA statute contains EXCEPTIONS to categorical exemptions, including when a proposed project will result in a "substantial adverse change" in the significance of the historical resource, as is the case with the UA. (This is true despite the raft of new pro-housing laws designed to cradle a project to quick approval without interference from pesky citizens or their leaders.) The CEQA review process, which the city initially outlined for the project in January 2024, would allow for more public input on the project as well as analysis of ways to mitigate the impact on the theater. There could be ways to balance the interests of the developer against preserving a landmark building protected by state law—but they were never explored. The city robbed the theater—and the public—of this process when it granted the CEQA exemption. What should have been an informed deliberation turned out to be a sham. In the big picture, the citizens of Berkeley and the surrounding region are alarmed to see complacent city leaders give up control over planning of the downtown, which is now a wasteland of shuttered or leveled cinemas. City leaders should remember that the Downtown Area Plan is still in effect and calls for the support and retention of downtown movie theaters. Many other city records, including a 2015 historical survey of the downtown, show the UA to be listed as historically significant. Save the UA Berkeley recognizes that housing construction is important and that the state Housing Element requires municipalities to turn goals into action. However, please note that when the city took an inventory of hundreds of properties on which to build to meet this requirement,

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msfrankel009@gmail.com

Durr, Jasmine

From: Mark Gutierrez <gumabiz1@gmail.com>
Sent: Tuesday, April 22, 2025 9:13 AM
To: Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark; City Attorney's Office; All Council
Cc: savetheuaberkeley@gmail.com
Subject: Stop the demolition of the historic UA theater

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From: Jacob Judd <ninjamasterjudd@gmail.com>
Sent: Tuesday, April 22, 2025 3:47 PM
To: Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark; City Attorney's Office; All Council
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ninjamasterjudd@gmail.com

Durr, Jasmine

From: Anya Fuchs <anyafuchs@gmail.com>
Sent: Tuesday, April 22, 2025 12:11 AM
To: Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark; City Attorney's Office; All Council
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- Anya Fuchs

anyafuchs@gmail.com

Durr, Jasmine

From: Vincent Lipinski <vlipi10689@gmail.com>
Sent: Monday, April 21, 2025 6:11 PM
To: Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark; City Attorney's Office; All Council
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- Vincent Lipinski

vlipi10689@gmail.com

Durr, Jasmine

From: Annie Wormhoudt <abdubb@gmail.com>
Sent: Wednesday, April 23, 2025 5:55 PM
To: Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark; City Attorney's Office; All Council
Cc: savetheuaberkeley@gmail.com
Subject: Stop the demolition of the historic UA theater

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abdubb@gmail.com

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From: Deni Vidal <deniscvidal@gmail.com>
Sent: Wednesday, April 23, 2025 8:53 PM
To: Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Tregub, Igor; O'Keefe, Shoshana; Blackaby, Brent; Lunaparra, Cecilia; Humbert, Mark; City Attorney's Office; All Council
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The UNITED ARTISTS THEATRE
2274 SMATTUCK AVENUE, BERKELEY

United Artists Existing Proscenium

All this Exists Behind Multiplex Walls



Gold Leafed winged figurines above stage opening. Surrounding areas painted over black between 1969 - 1973
Visible wires are supporting ceiling of main floor multiplex

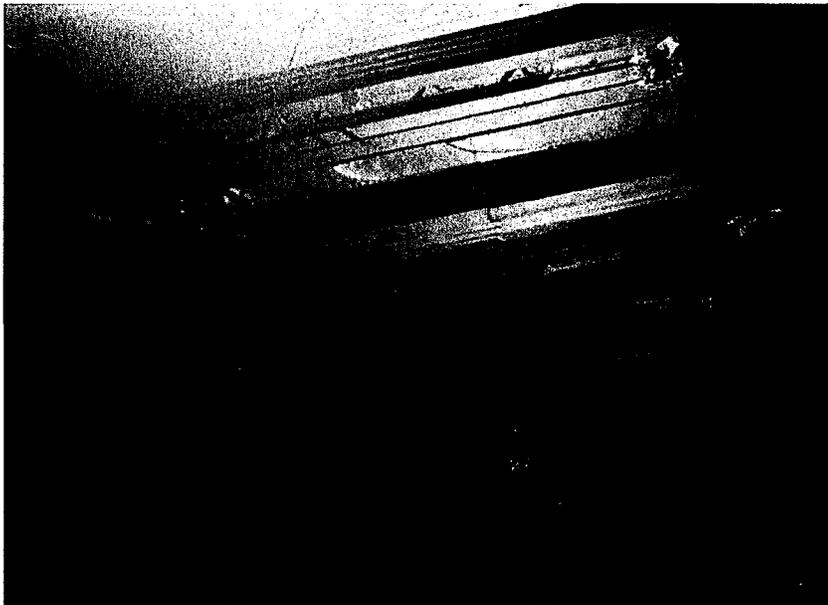


Same area above stage opening. Coral background and stenciling painted over.



Original coral and gold color palate of proscenium and 12 winged figures over stage

United Artists Existing Auditorium Ceiling Sunburst All this Exists Behind Suspended Ceilings and Multiplex Walls

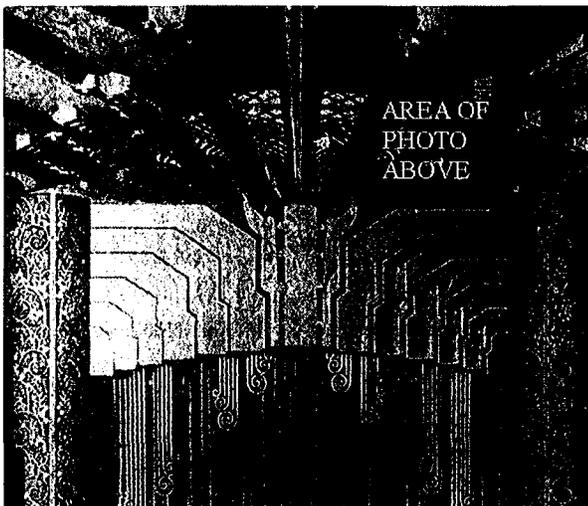


View from catwalk in void looking up at covered intact sunburst. Right side of photo is at proscenium winged figures.

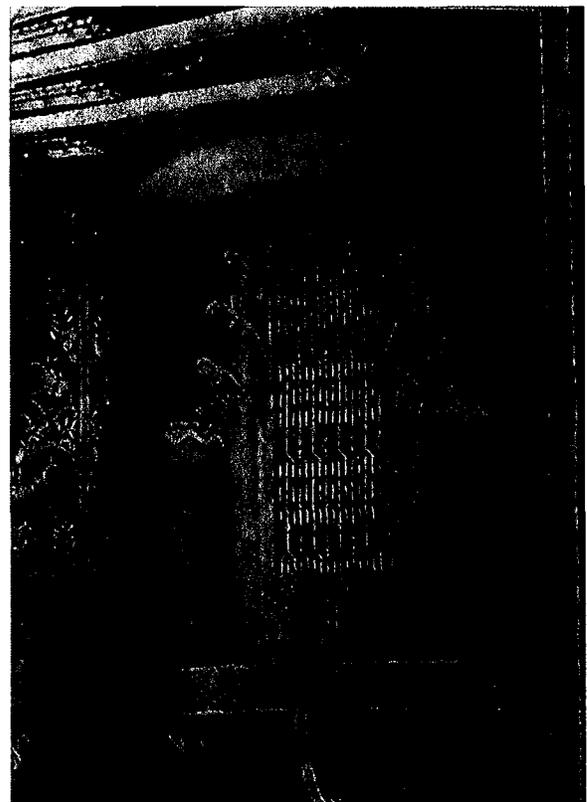
Left side of photo show silver leafed tips.

Minimal damage where suspended ceiling wires are punched through plaster ornament sunburst.

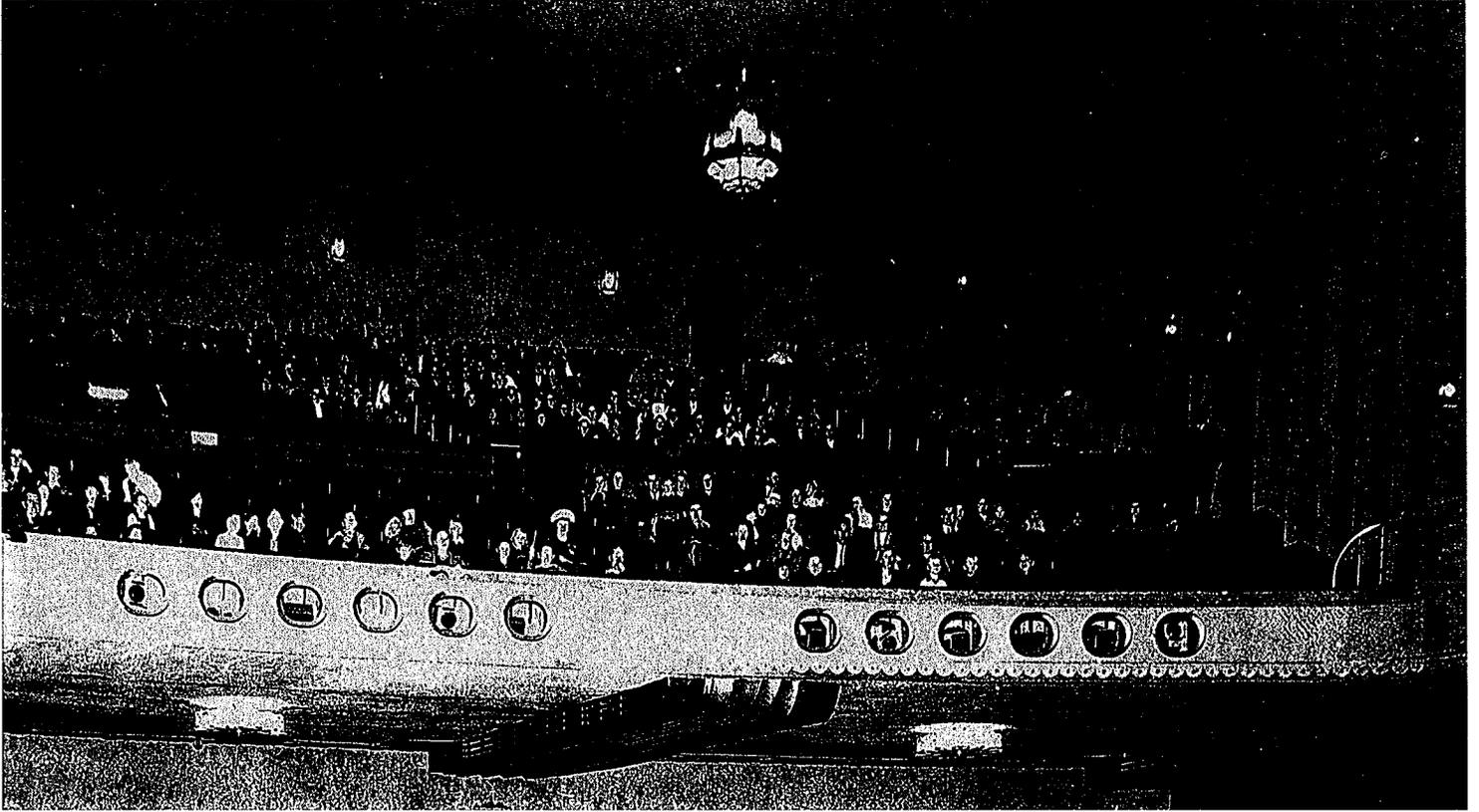
Covered Cast Plaster Gold Leafed Ceiling Sunburst Extends from Proscenium Over Orchestra.



(Above Photo) Yellow square denotes approximate area shown of existing ceiling plaster. (Top Photo) (Right Photo) West organ grille of same coral and metallic soft gold tone showing rays of sunburst.

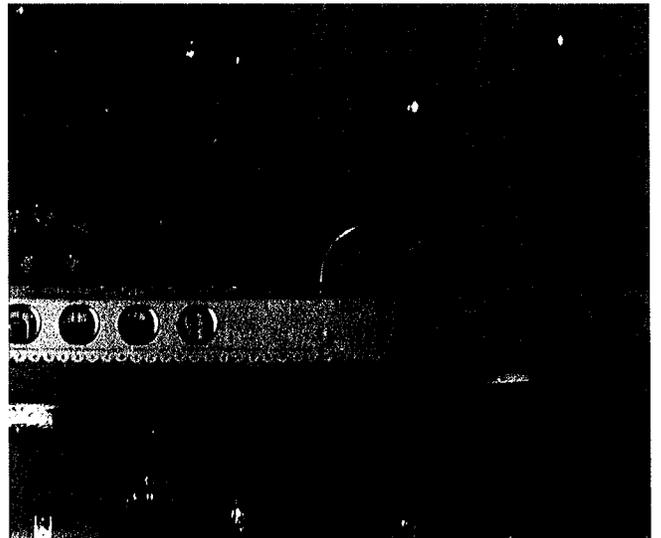


Rear of Balcony (below) Walls and ceilings decorated with painted leaves, vertical stripes. The effect of being under a trellis with foliage above reaching for the sun. The strip of white plaster on the ceiling joins other symmetrical strips to run towards the sunburst, becoming narrower the closer to the procenium they run. The seating upholstery is also mohair velvet with patterned leaves.



Front of Balcony and railing with walnut capping. Insulation (photo lower L) is ceiling of main floor multiplex. Mustard color is balcony front.

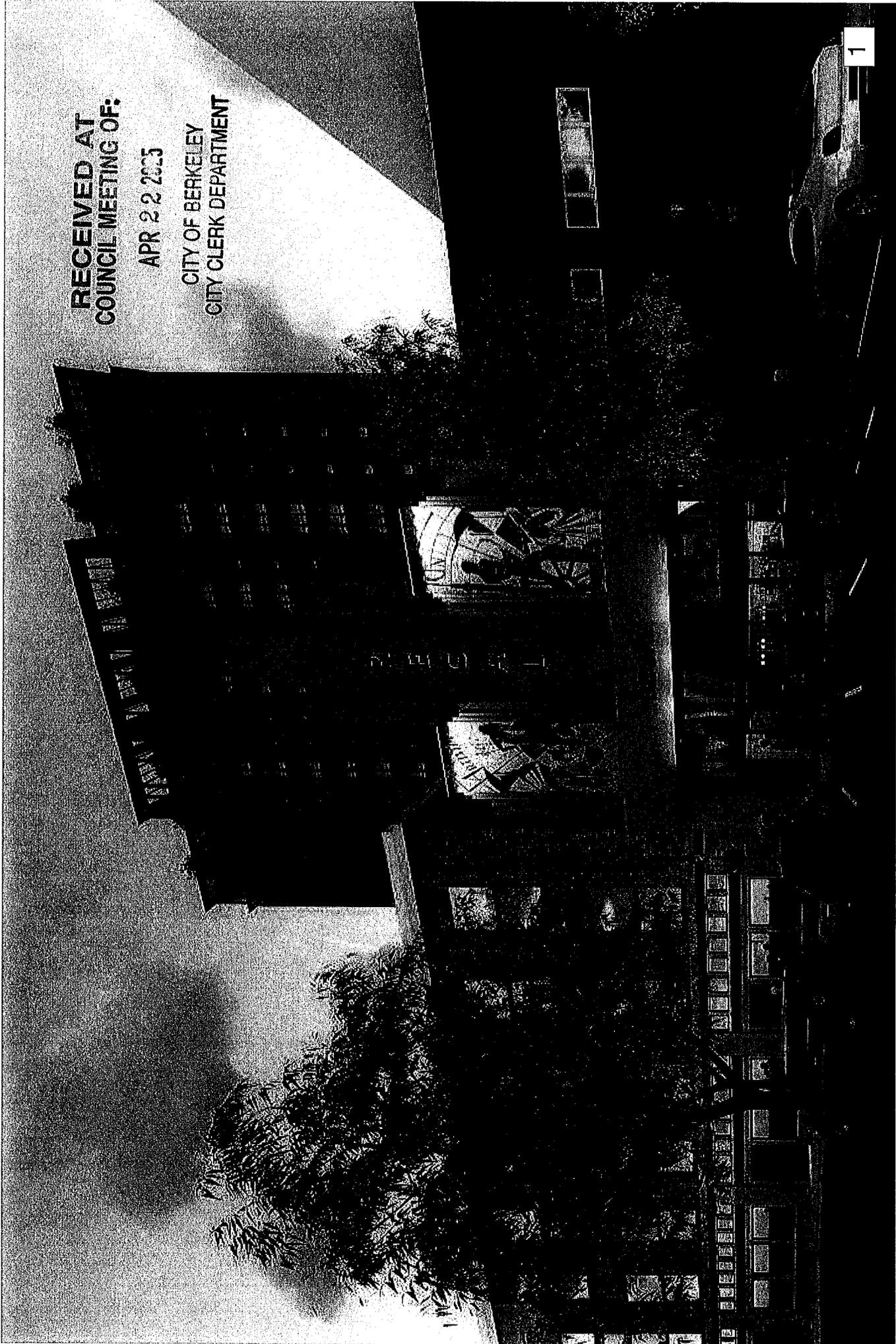
Front of Balcony with railing. (photo lower R) Showing original paint scheme and stenciled ornamental trim and borders.



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COUNCIL MEETING OF:

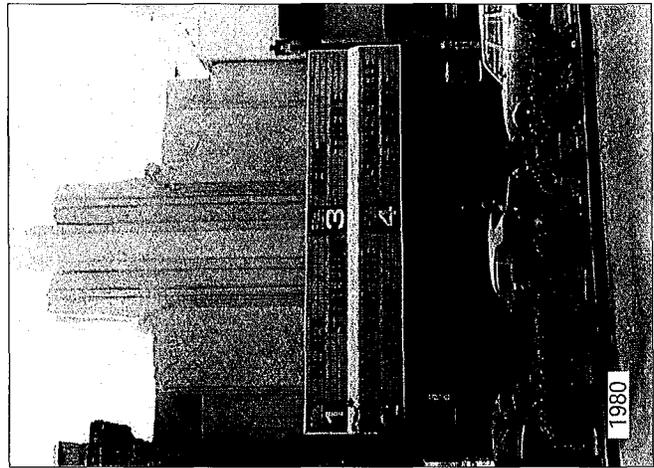
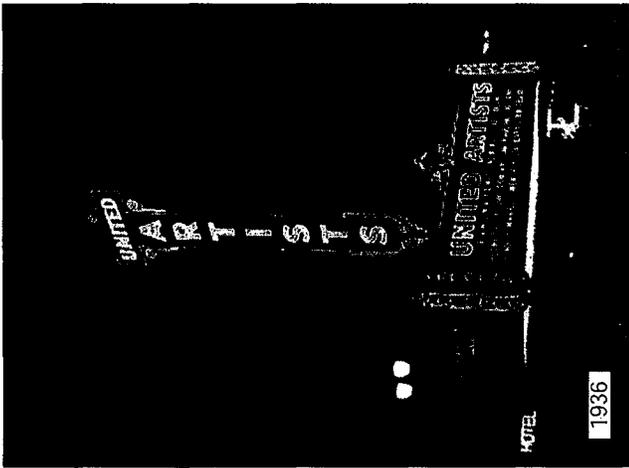
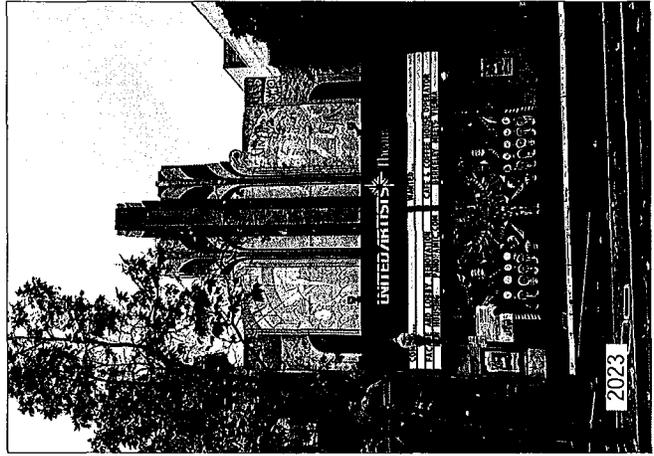
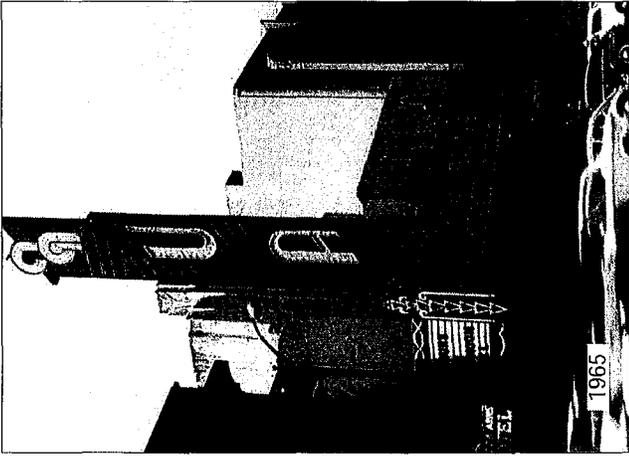
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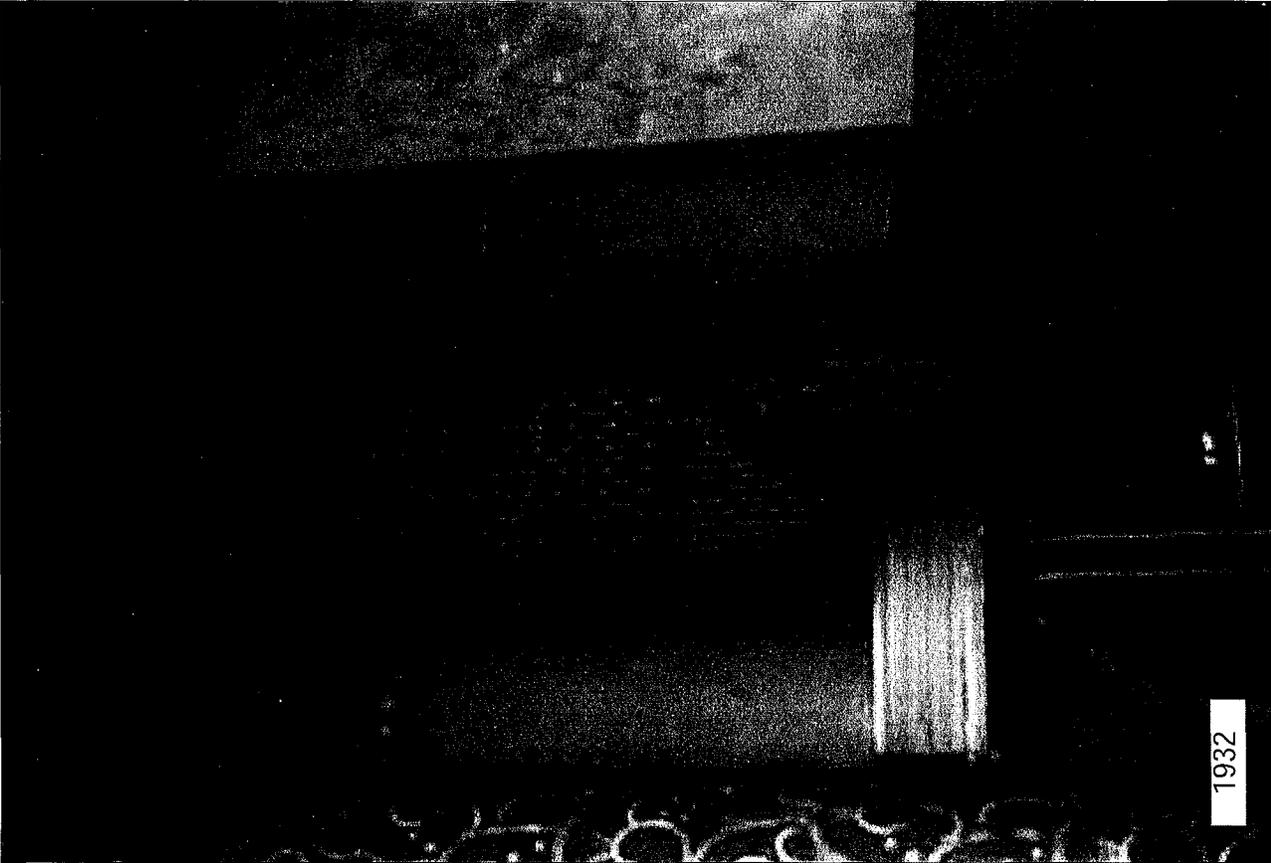
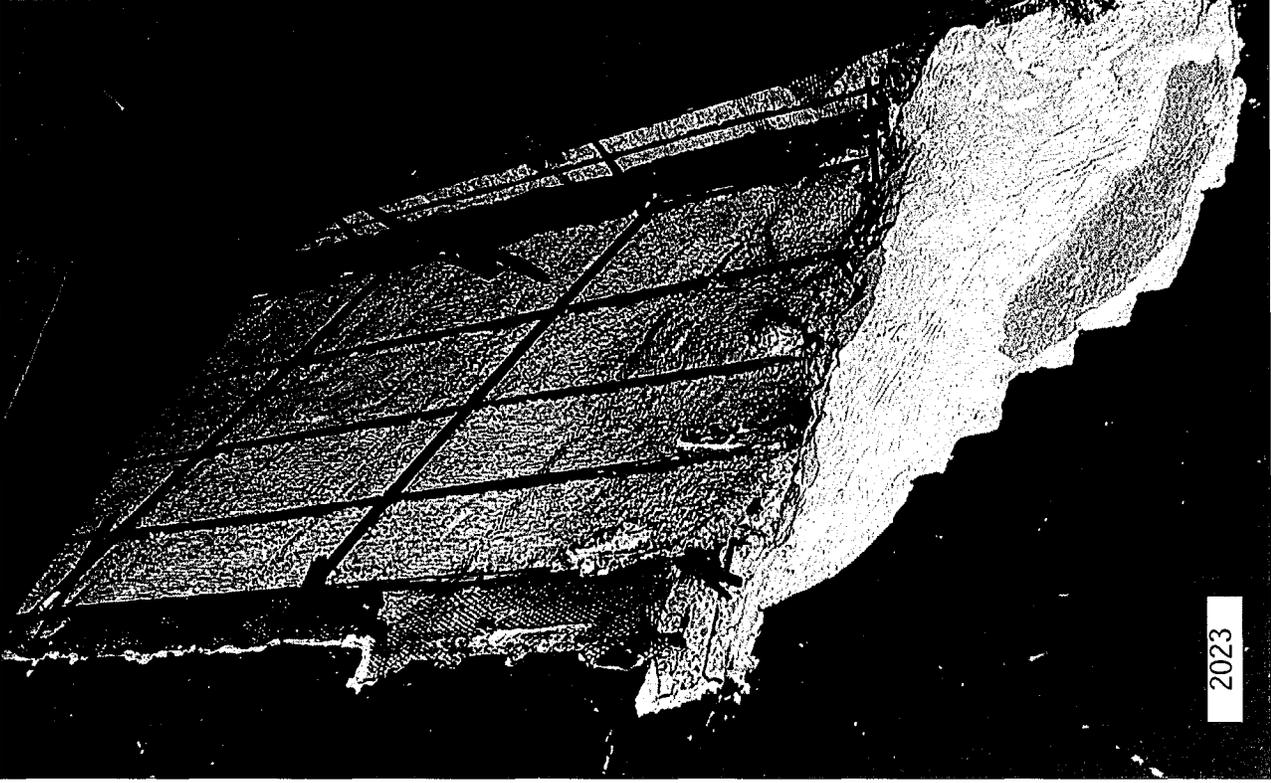
CITY OF BERKELEY
CITY CLERK DEPARTMENT



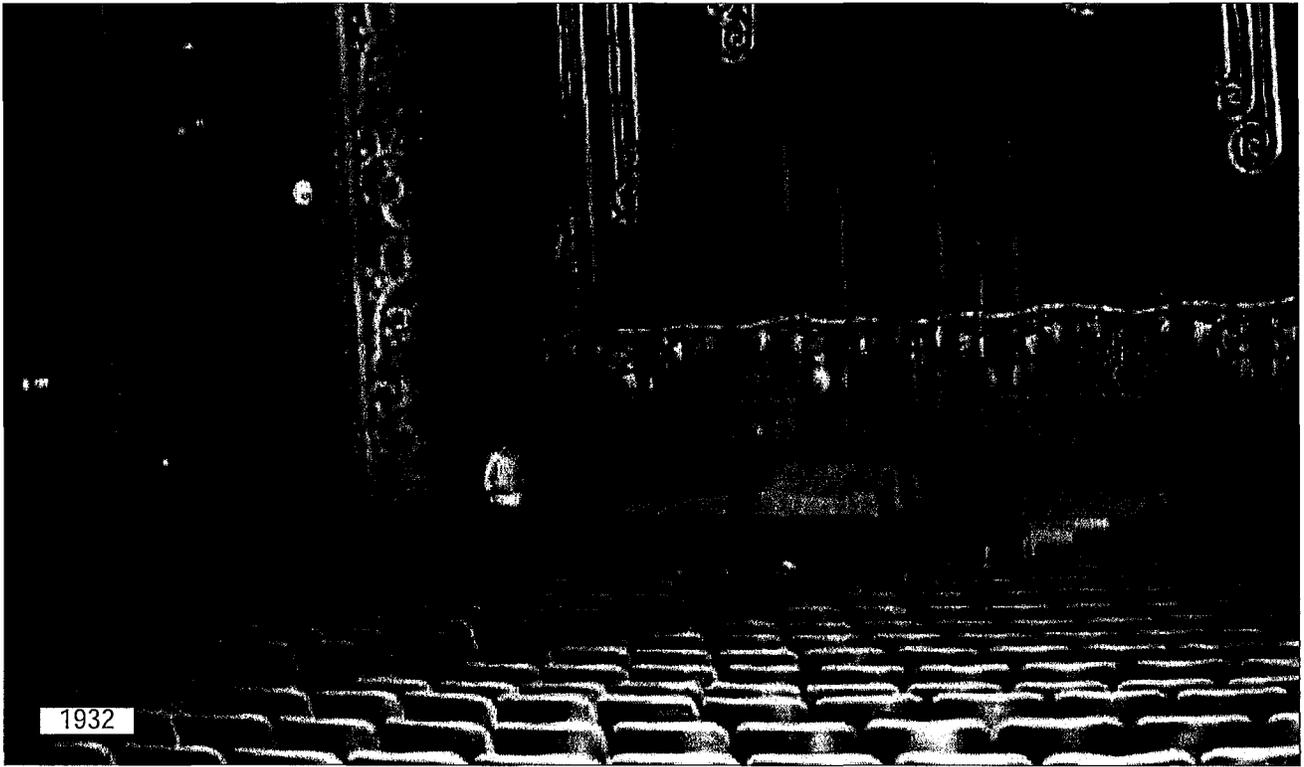
1







Organ grille



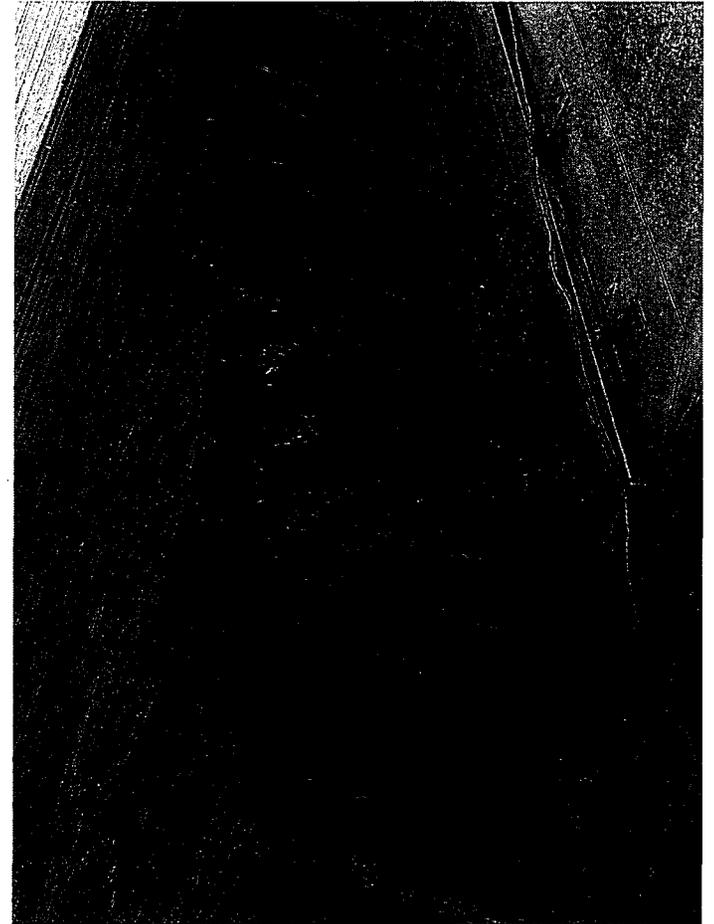
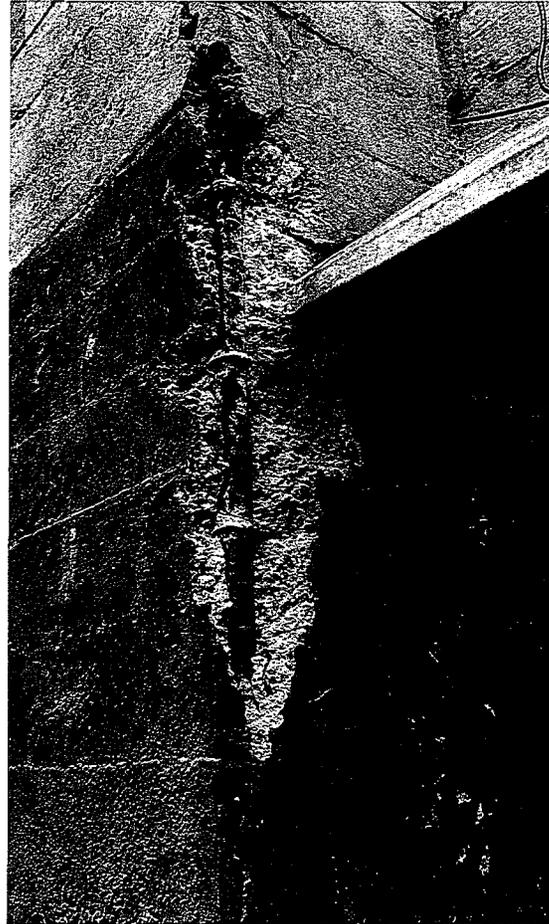
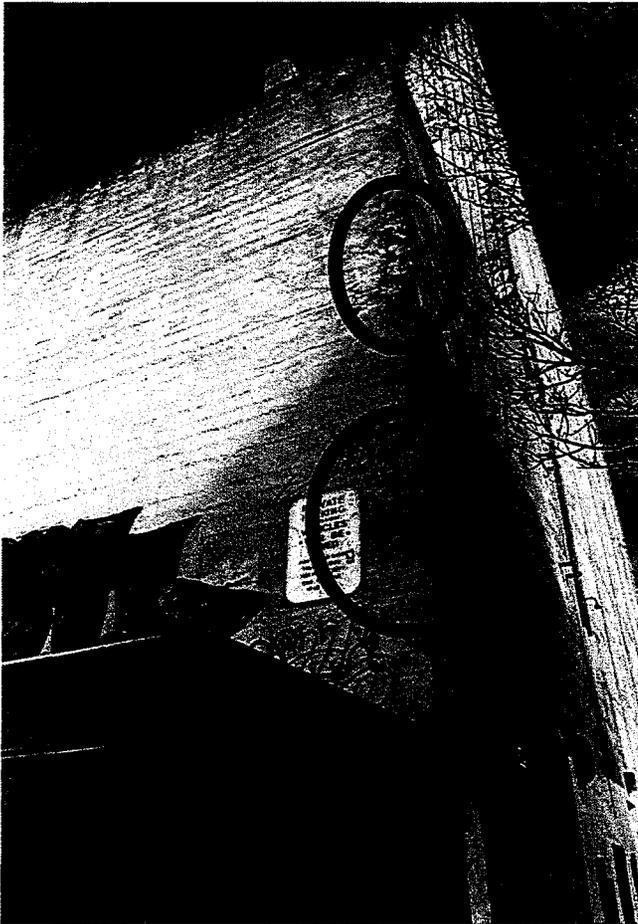


“Auditorium building faces Bancroft Way, a massive irregularly shaped concrete block with service entrances & little else.”*

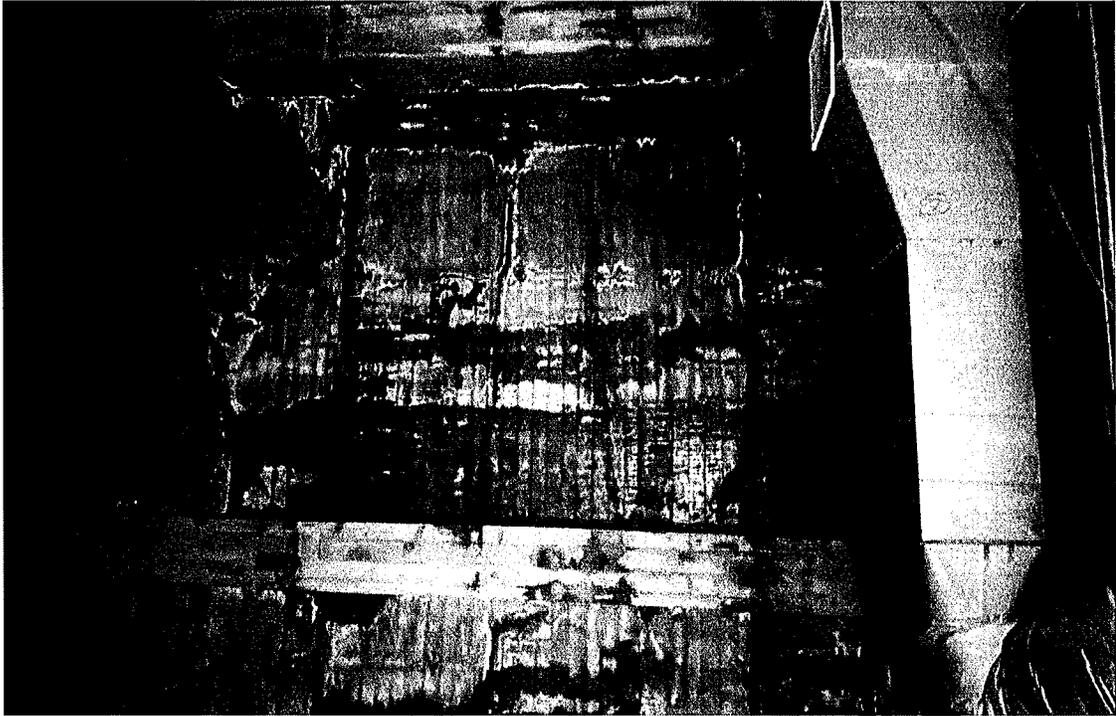
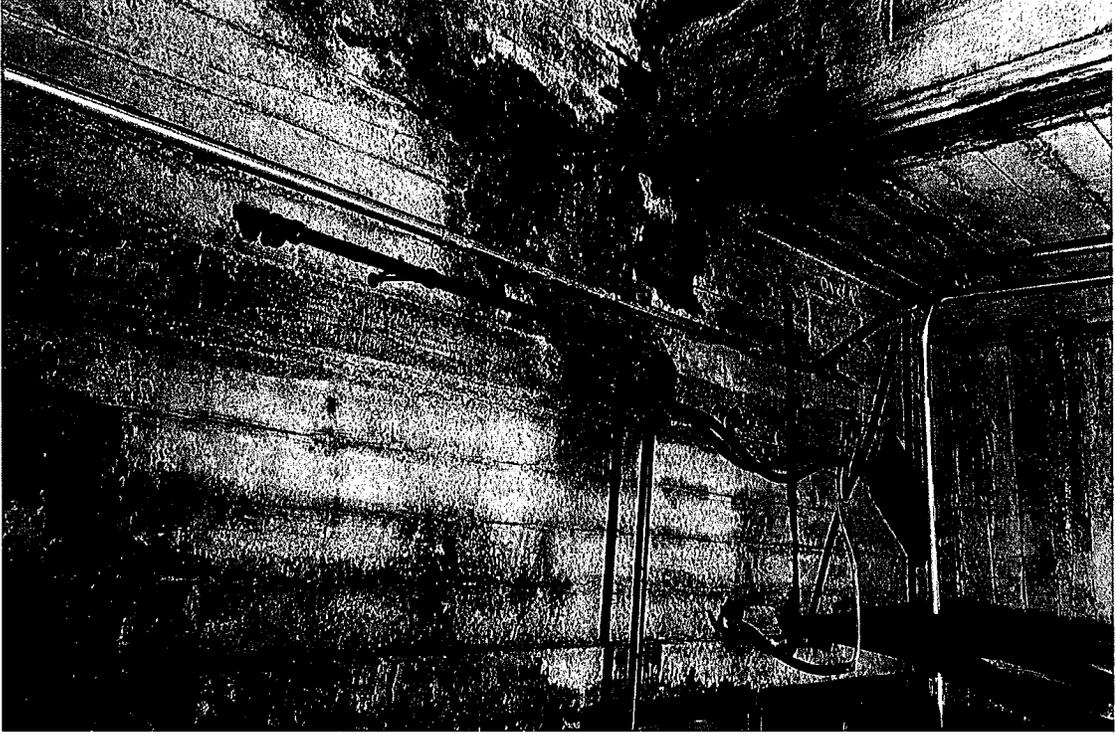
“Plans at one time called for the Bancroft Way frontage sheer concrete wall with just the least ridged pattern to be decorated, but money was apparently not available”*

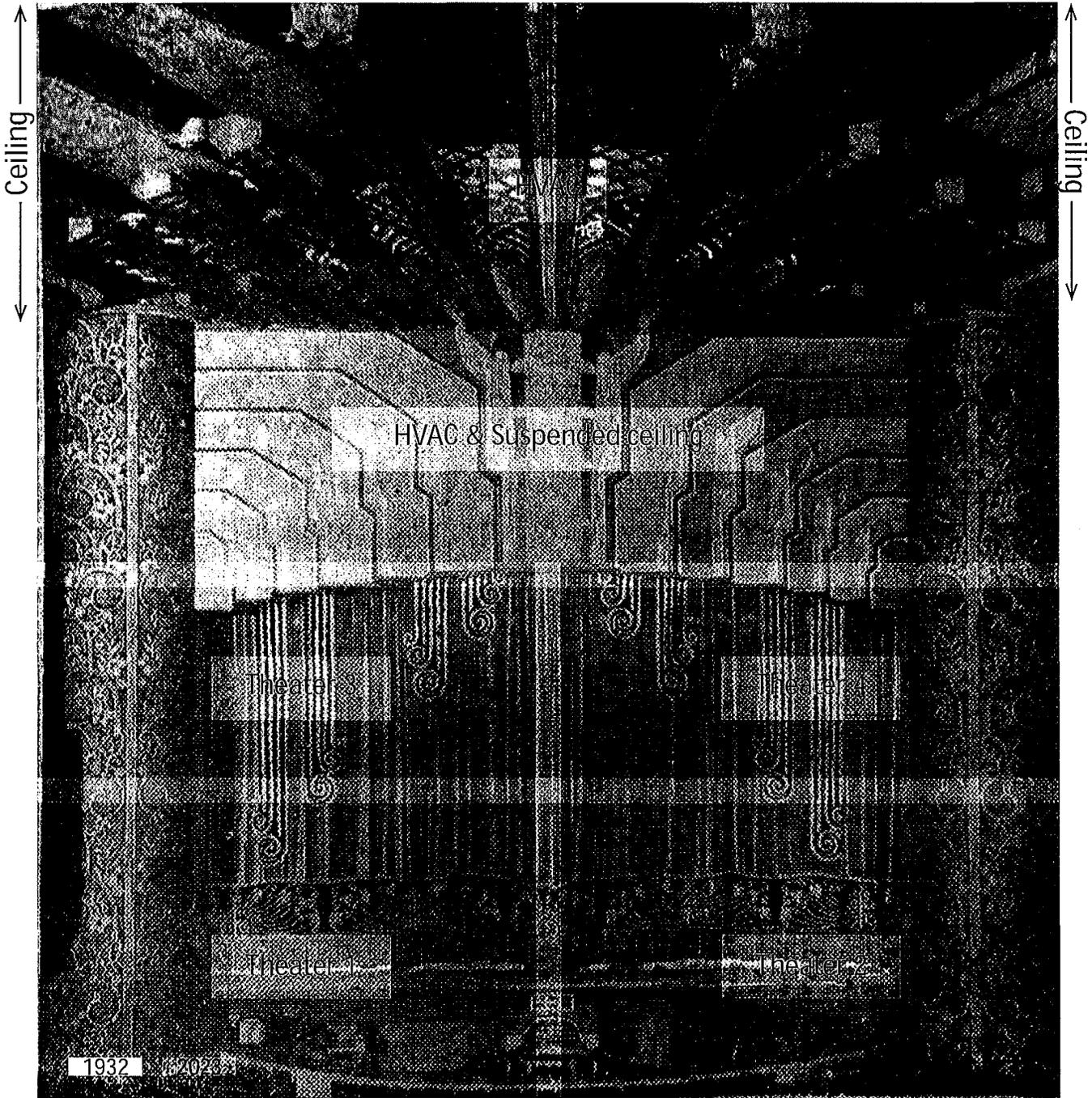
*1978 Historic Resources Inventory Forms for Berkeley Architectural Heritage Survey
By Betty Marvin

Deteriorating Non-Ductile Concrete & Rusting Rebar Steel



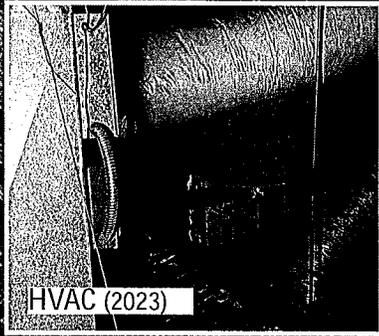
Water Damage Feb. 2025



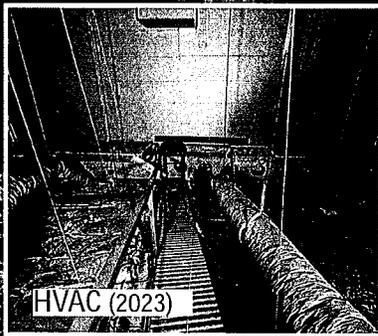


1932 1 single-screen theater (1,800 seats), 2 lounges.

2023 7 screens, multiplex theaters (4 theaters in original theater, 2 theaters in lounges, 1 in stage).



HVAC (2023)



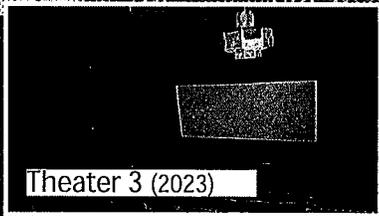
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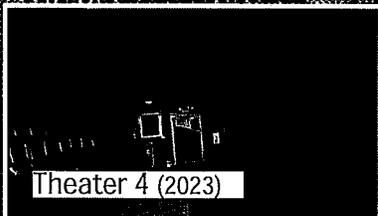
Suspended ceiling (2023)



Suspended ceiling (2023)



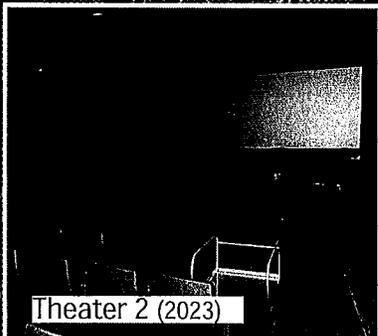
Theater 3 (2023)



Theater 4 (2023)



Theater 1 (2023)



Theater 2 (2023)

1932

“The following chart graphically illustrates the alteration/demolition/substantial damage or original features...”*

FEATURE	1930s	1940s	1950s	1960s	1970s	1980s	1990s	2000s	2010s	2020s
Lower primary facade configuration, materials						Alteration	Alteration	Alteration	Alteration	Alteration
Blade sign		Alteration	Alteration	Alteration	Demolition / removal / substantial damage					
Marquee					Demolition / removal / substantial damage					
Open atrium						Alteration	Alteration	Alteration	Alteration	Alteration
Atrium finishes & decorative features						Demolition / removal / substantial damage				
Box Office					Demolition / removal / substantial damage					
Lobby murals and painted décor		Alteration								
Concession stand		Demolition / removal / substantial damage	Alteration	Alteration	Alteration	Alteration	Alteration			
Single main auditorium					Alteration	Alteration	Alteration	Alteration	Alteration	Alteration
Stage and orchestra pit					Demolition / removal / substantial damage					
Proscenium and auditorium decor					Alteration	Alteration	Alteration	Alteration	Alteration	Alteration
Organ and grilles					Demolition / removal / substantial damage					
Original theater seats					Demolition / removal / substantial damage					
Lounges and backstage space						Alteration	Alteration	Alteration	Alteration	Alteration



Alteration



Demolition / removal / substantial damage

* Historic Resource Evaluation, December 7, 2023