



Folsom City Council Staff Report

MEETING DATE:	10/10/2023
AGENDA SECTION:	Public Hearing
SUBJECT:	Appeal by Bob Delp of a Historic District Commission Approval of a Design Review Application for the 603 Sutter Street Mixed-Use Building
FROM:	Community Development Department

RECOMMENDATION / CITY COUNCIL ACTION

For the reasons described in this report, staff recommends that the Council deny the appeal by Bob Delp of a Decision by the Historic District Commission Approving a Design Review Application for the 603 Sutter Street Mixed-Use project (PN 17-145) and Determination that the Project is Exempt from CEQA.

BACKGROUND

On February 23, 2023, the applicant (Cedrus Holdings Limited Partnership) submitted a Design Review Application for development of a three-story, 12,177-square-foot mixed-use building on a 0.17-acre site located at the southwest corner of the intersection of Sutter Street and Scott Street (603 Sutter Street). The proposed mixed-use building features 2,716 square feet of retail/restaurant space on the first floor, 5,246 square feet of office space on the second floor, and two, two-bedroom residential units totaling 3,630 square feet on the third floor. The proposed project also features various outdoor use areas including an outdoor patio adjacent to Sutter Street and balconies on the second and third floors respectively.

The proposed three-story building features a historic pre-1900 design concept that is intended to complement the design, colors, and materials of other commercial buildings found along Sutter Street. Significant design elements include covered entries along Sutter Street, large rectangular doors and windows, recessed windows, transom windows, balconies, wood and brick cornices, ornamental iron railing, and steel awning structures. Primary building materials include brick veneer, horizontal cement fiber siding, an aluminum storefront

system, metal clad wood-framed windows, concrete windowsills, iron railing, steel canopies, and rockery retaining walls. Primary building colors include red (brick veneer) and white (horizontal cement fiber siding), with black, grey, and bronze as the main accent and trim colors.

Primary vehicle access to the general project area is provided by Sutter Street and Scott Street. No on-site or off-site parking is being proposed with this project and the City cannot require parking under the terms of AB 2097 (2022) since the project is located within ½-mile of the Historic District light rail station. However, the applicant is proposing to replace one existing non-ADA parking space in front of the project site along Sutter Street with an ADA accessible parking space. As permitted by state law, the applicant is proposing to utilize the existing nearby on-street parking, public parking lots, and public parking garages to serve the parking needs of the proposed mixed-use building. Pedestrian access to the project site is provided by an existing sidewalk located on the south side of Sutter Street and a proposed sidewalk along the west side of Scott Street. The primary entrance into the building is located along Sutter Street for the retail/restaurant uses, with secondary pedestrian access to the office and residential uses located along Scott Street. Proposed site improvements include underground utilities, a sidewalk, curb, gutter, an outdoor patio, retaining/stem walls, landscaping, and fencing.

The Historic District Commission reviewed the 603 Sutter Street Mixed-Use project at its September 6, 2023 meeting. At this meeting, two residents spoke in favor of the proposed project and indicated that it would be a great addition to Sutter Street from an economic development perspective and from a visual perspective. Six individuals voiced opposition to the proposed project and expressed concern regarding issues including but not limited to:

- Building height, scale, massing, and footprint are too large
- Building design not consistent with Design and Development Guidelines
- Curved building design on corner not historically appropriate
- Parapet wall on top of building not an architectural feature
- Extensive number of windows on south building elevation facing residence
- Inappropriate building materials (corrugated metal roof and cement fiber siding)
- Overutilization of glass on the ground floor
- Photo simulations of proposed building not accurate
- Loss of oak trees
- Parking impact

In addition to the public comments made at the Historic District Commission meeting, the City received numerous comment letters from residents both in support of the proposed project and in opposition to the proposed project. All of the comment letters (Attachment 2 and Attachment 3) were provided to the Commissioners for their consideration at the September 6, 2023 Historic District Commission meeting.

Following extensive public comment, the Historic District Commission discussed issues related to building height, building design, privacy impacts, oak tree impacts, air quality

impacts, and cultural resources impacts. In relation to building height, City staff stated that the proposed project met the maximum building height requirement of 35 feet established for the Sutter Street Subarea (FMC Section 17.52.510(C)) as the proposed building ranges from 29 feet to 35 feet in height as measured from the sidewalk adjacent to Sutter Street. City staff also shared an exhibit of the North Building Elevation with the Commission that illustrated with a dashed red line that the proposed building met the maximum building height requirement of 35 feet. Based on the information presented, the Commission agreed with City staff that the proposed building met the maximum building height requirement for the Sutter Street Subarea.

As it relates to building height, City staff commented to the Commission that the four-foot-tall parapet wall located at the top of the building is considered an architectural feature and that architectural features may extend up to 15 feet above the maximum building height of 35 feet established for the Sutter Street Subarea by the Folsom Municipal Code. City staff also noted that the Historic District Commission had previously made the determination that parapet walls associated with development projects along Sutter Street (Sutter Court Mixed-Use Building, Fire and Rain Building, and Historic Folsom Station) are considered architectural features that can extend above the maximum building height. The Commission was in agreement that the parapet wall was an attractive architectural feature and improved the overall design of the building, although one Commissioner was not convinced that the parapet wall should be allowed to extend above the maximum building height.

With regard to building design, there were some comments raised by residents expressing concern regarding the overall building design and the appropriateness of some of the proposed building materials. In relation to building design, there were general concerns voiced by residents that the proposed building was too large in terms of height, massing, scale, and footprint. There were also specific concerns raised regarding the curved design of the corner of the building and its historic authenticity, and the appropriateness of a corrugated metal patio cover located on the third floor of the building. In response to these comments, City staff presented specific design details (building elevations, building renderings, color and material board, etc.) to the Commission and described how the proposed project was consistent with the Historic District Design and Development Guidelines (DDG's) with respect to building design, building placement, and building materials. City staff also commented that the local architectural and historic preservation firm of Page & Turnbull evaluated the proposed project and determined that the design of the proposed building was in fact compatible with the architecture and design of other commercial building located along Sutter Street. The Commission concurred with City staff and expressed their appreciation and support for the overall design of the proposed building.

In response to comments and concerns raised by residents and the Commission, the applicant stated that they would be willing to remove the corrugated metal patio cover located on the third floor of the building entirely. The Commission was supportive of the applicant's proposal to remove the third-floor patio cover to address design concerns raised by residents and added a new condition of approval (Condition No. 28-6) to the proposed project as follows:

- The corrugated metal patio cover/awning located on the third floor of the building shall be removed to the satisfaction of the Community Development Department.

With respect to privacy impacts, the property owner of a single-family residence located directly to the south of the project site (306 Scott Street) expressed concern regarding the number of windows on the south building elevation and how those windows might impact his privacy. In response to this comment, the applicant indicated that they would be willing to install treatments on the office windows located on the second floor of the building facing the single-family residence to minimize potential privacy impacts. The Commission was supportive of the applicant's proposal to add window treatments to the south building elevation to potential minimize potential privacy impacts and added the following condition of approval (Condition No. 28-7):

- The four windows located on the second floor of the south-facing building elevation shall include window glazing or a frosted glass treatment to ensure privacy between the subject property and the single-family residence located at 306 Scott Street to the satisfaction of the Community Development Department.

In relation to oak tree impacts, residents expressed concern regarding the loss of oak trees with development of the proposed project. In response to this comment, City staff responded that the applicant is developing the property consistent with what is allowed under the Zoning Code. In addition, City staff commented that the severe slope of the subject property requires that the project site be massed graded to install standard improvements (building foundation, underground utilities, retaining walls, sidewalks, etc.) and that it is not feasible or possible to save any of the 11 protected oak trees located on the project site. City staff also noted that the applicant is required to mitigate the loss of the 11 protected oak trees consistent with the requirements of the City's Tree Preservation Ordinance (FMC Chapter 12.16).

With regard to air quality, one of the Commissioners observed that one of the standard measures typically recommended by the Sacramento Air Quality Management District (SMAQMD) to control and minimize dust during grading and construction activities was omitted from the conditions of approval placed on the proposed project. To address this omission, the Commission recommended that the following language be added to Condition of Approval No. 42:

- Provide current certificate(s) of compliance for CARB's In-Use Off-Road Diesel-Fueled Fleets Regulation (California Code of Regulations, Title 13, S 2449 and 2449.1. For more information contact CARB at 877-593-6677, doors@arb.ca.gov, or www.arb.ca.gov/doors/compliance_cert1.html.

As it relates to cultural resources, the Commission inquired as to whether there were any historic or cultural resources located on the project site and if those resources would be impacted by development of the proposed project. City staff responded that a Cultural

Resource Study had been prepared for the proposed project and that no historic or cultural resources were identified on the project site, although staff noted there were numerous historic and cultural resources present in the surrounding historic district. Given the historic nature of the project area, the Commission requested that the following new language be added to the conditions of approval (Condition No. 38) requiring all construction personnel to go through cultural sensitivity training so as to be aware of what to do in the event an unknown historic or cultural resource is discovered during grading or construction activities.

- Prior to initiation of construction on the project site, all construction personnel that will work on the proposed project site shall be provided with Cultural Sensitivity Training taught by a professional archaeologist or historian meeting the Secretary of the Interior's standards. The training shall include information regarding cultural resources, their recognition, avoidance, and treatment in the event of fortuitous discovery. Project plans shall also contain a notation requiring that if any archaeological, cultural, historical resources, artifacts, or other features are discovered during the course of construction anywhere on the project site, work shall be immediately suspended in that location. Attendance at Cultural Sensitivity Training is mandatory for all construction personnel that would work on the site during grading and leveling.

At the conclusion of the September 6, 2023 Historic District Commission meeting, the Commission expressed their unanimous support for the proposed project with the previously described modifications to the conditions of approval and adopted a motion (5 votes in favor; 0 votes against with two commissioners absent) to approve a Design Review Application (PN 17-145) for the 603 Sutter Street Mixed-Use project.

POLICY / RULE

As set forth in Section 17.52.700 of the Folsom Municipal Code, if a permit applicant, permittee, or other person whose property rights may be affected is dissatisfied with any determination made by the Historic District Commission, which person may appeal to the City Council. The appeal shall be in writing, shall state the specific reason for the appeal and grounds asserted for relief, and shall be filed no later than 10 calendar days after the date of the action being appealed.

APPEAL/ANALYSIS

On September 11, 2023, Bob Delp submitted a timely appeal of the decision of the Historic District Commission approving the proposed project. Listed on the following pages are the reasons that Mr. Delp identified in his appeal letter for contesting the Historic District Commission's decision, and City staff's response to each item.

1. The Historic District Commission lacks the authority to make final approval decisions, as the City Charter limits the Historic District Commissions role to being advisory only to the City Council.

City Staff Response:

The appeal is limited to “any determination made by the Historic District Commission.” (FMC Section § 17.52.700(A)). This portion of the appeal is not directed toward any determination made by the Historic District Commission and, as such, it is not a proper subject for appeal. That being said, the Folsom Municipal Code (FMC Section 17.52.120 G) establishes the authority of the Historic District Commission to make decisions regarding the design and architecture of any structure, or alteration to any existing structure within the Historic District. Specifically, the Historic District Commission is authorized by FMC 17.52.340 to approve, conditionally approve, or deny design review applications based on the review criteria in FMC 17.52.330.

2. The applicant submitted substantially inaccurate and misleading project renderings to the City as part of the project application. City staff then presented these substantially inaccurate and misleading project renderings to the public and the Historic District Commission prior to and during the public hearing regarding the building’s scale and massing.

City Staff Response:

The applicant provided building elevations, building floor plans, building renderings, and a color and materials board to the City for review as part of the Design Review Application submittal package. The aforementioned documents accurately reflect the design of the proposed building. The renderings Mr. Delp is referring to in his appeal letter are two panoramic street view renderings that are intended to show the relationship between the proposed project and the surrounding properties. The applicant stated to the Historic District Commission at their September 6th meeting that the proportions on a panoramic street view rendering can become slightly distorted due to the wide angle of the photograph. The applicant also stated to the Historic District Commission that a number of existing trees were inadvertently not taken out of the two panoramic street view renderings. The applicant provided the Commission with an updated street view rendering at the meeting to better illustrate the relationship between the proposed project and the surrounding properties. The Commission was satisfied with the applicant’s response and voiced their unanimous support of the proposed building design, which is not impacted at all by the two renderings to which Mr. Delp referred.

3. The project would destroy 11 "protected" oak trees, two of which are on City property, with no showing that the destruction of even one of these trees cannot be avoided. The City's Tree Preservation Ordinance requires that a tree defined as "protected" under the Ordinance cannot be approved for removal unless a finding is made that, "there are no Reasonable Alternative Measures to allow for use of the property consistent with the Zoning Code." The HDC failed to make or otherwise address this finding or provide evidence that the City Arborist could make the findings for all of the 11 "protected" oak trees that would be destroyed by the project.

City Staff Response:

As stated previously within the Background section of this staff report, the applicant is developing the property consistent with what is allowed under the Zoning Code. During initial review of grading, drainage, and utility plans submitted for the proposed project, City staff determined that the severe slope of the subject property would require the project site to be massed graded to install standard improvements (building foundation, underground utilities, retaining walls, sidewalks, etc.), and that it is not feasible or possible to save any of the 11 protected oak trees located on the project site. The applicant will be required to plant street trees per FMC Section 12.16.190 and prior to construction the applicant will also be required to obtain a Tree Removal Permit for removal of the 11 protected oak trees. As part of review of the Tree Removal Permit application, the City Arborist will determine the type and amount of mitigation consistent with FMC Section 12.16.150. FMC Section 12.16.080(B) in combination with the definition of “Approving Authority” in FMC Section 12.16.020 gives approval authority to the City Arborist for the removal of trees, not the Historic District Commission. It is the City Arborist that will make the required findings prior to granting the Tree Removal Permit.

4. The HDC lacks authority not only to approve the project, but also lacks the authority to effectively authorize the grant of public resources (e.g., street encroachments, oak trees) to a private party (whom, in receiving the public resource of two oak trees, intends to cut them down).

City Staff Response:

The appeal is limited to “any determination made by the Historic District Commission.” (FMC Section 17.52.700(A)). This portion of the appeal is not directed toward any determination made by the Historic District Commission and, as such, it is not a proper subject for appeal.

5. The project exceeds the maximum height and deck/patio lengths allowed by the FMC, yet the project did not include applications for these height and deck/patio length exceedances, and the HDC did not make findings required to allow for the variances.

City Staff Response:

As discussed previously within the Background section of this staff report, the Historic District Commission determined that the proposed project meets the maximum building height requirement of 35 feet established for the Sutter Street Subarea (FMC Section 17.52.510(C)) as the proposed building ranges from 29 feet to 35 feet in height as measured from the sidewalk adjacent to Sutter Street. The Commission also determined that the four-foot-tall parapet wall at the top of the building is considered an architectural feature and that this architectural feature may extend up to 15 feet above the maximum building height of 35 feet established by the Folsom Municipal Code for the Sutter Street Subarea. No height variance is required for this project.

With respect to Mr. Delp's statement regarding deck and patio length exceedances, the Historic District Design and Development Guidelines (DDG's Section B.6 Walkway Coverings in the Sutter Street Subarea) state that the intent of walkway coverings (deck in this case) in the Sutter Street Subarea is to create a pleasing pedestrian environment and Subarea continuity. The DDG's state that walkway coverings are traditional to the Sutter Street Subarea and are intended to protect shoppers and window displays from sunlight and inclement weather. The DDG's also state that new construction on Sutter Street shall provide a walkway covering the sidewalk. Lastly, the DDG's state that with an encroachment permit, sidewalk canopies and awnings in the Sutter Street Subarea are allowed to project a maximum of 9 feet 6 inches beyond the property line with a minimum of eight feet of clearance to the sidewalk.

FMC Section 17.52.400 explains that while normally the standards in the FMC control when they conflict with the guidelines in the DDGs, exceptions to the FMC design standards may be permitted by the Historic District Commission when unique individual circumstances require the exception in order to comply with the purpose of this chapter. The exceptions to the design standards for the proposed project are allowing the proposed second story deck to encroach 5 feet 1 inch into the public right-of-way, and allowing the second story deck and third story patio to exceed 25 percent of the length of the wall surface on which the features are located. In this instance, the Historic District Commission determined that an exception to the design standards stated in FMC Section 17.52.420 would be appropriate in order to comply with the purpose of Chapter 17.52, as specifically expressed in DDGs Section B.6. The Commission also determined that the exceptions are also necessary to enhance the overall appearance of the proposed mixed-use building.

6. The project's mass and scale is too large for the property's location and setting at a key transition location between the Sutter Street and Figueroa subareas and adjacent historic buildings.

City Staff Response:

As mentioned earlier within the Background section of this staff report, the Historic District Commission determined that the proposed project is consistent with the Historic District Design and Development Guidelines (DDG's) with respect to building design, building placement, and building materials. The Commission also determined that the proposed project met the purpose and intent of FMC Chapter 17.52 (Sections 17.52.010(B)(1), (3), and (5)) with respect to the following subsections: (1) preserving and enhancing the historic, small town atmosphere of the historic district as it developed between the years 1850 and 1950; (3) encouraging an active business climate which promotes the development of a diverse range of business compatible with the historic district as it developed between the years 1850 and 1950; and (5) ensuring that new residential and commercial development is consistent with the historical character of the historic district as it developed between the years of 1850 and 1950. Lastly, the Commission agreed with the assessment of Page & Turnbull, a local architectural and

historic preservation firm, that the design of the proposed building is compatible with the architecture and design of other commercial building located along Sutter Street and that the proposed project would not impact existing historic resources (Cohn House and former library building) in the project area.

7. The proposed building and excavation required for its construction is too close (less than 5 feet) to the adjacent historic library building which will result in unnecessary diminution of the relative scale/mass of the historic library building and will create ground-borne vibration during construction having the potential to damage the historic structure.

City Staff Response:

The potential for noticeable or disruptive vibration is based on multiple factors: the distance from the source to the receiver; the nature or magnitude of the source; and the length of source operations. With regard to distance, project-related grading is located approximately 10 feet from the former library building to the west and more than 25 feet from the single-family residence located to the south at 306 Scott Street. Two types of operations could be expected to result in the potential for vibration at the project site. These are the removal of soil and the removal of bedrock from the property. The machinery and techniques used to remove bedrock would be more likely to have the potential for vibration than those used for the removal of soil. Removal of bedrock and soils would not be equal across the project site.

As illustrated in Figures 9 and 10 (Building Sections 1, 2, 3, and 4) of the submitted plans, the depth to bedrock is varied, as is the depth of the over-covering soil. Several features of the proposed building were designed to reduce the need to remove bedrock. These include limiting the depth into the hilly site of the first floor to approximately the front half of the site (See Building Sections 1 and 2); and designing the second floor to avoid or limit the amount of bedrock to be removed (See Building Sections 3 and 4). In the vicinity of the former library building, very little bedrock would be removed. The majority of the removal would occur near the Scott Street frontage (See Building Sections 1 and 3). Similarly, the amount of soil removal would be the least in the vicinity of the former library building (See Building Sections 1 and 3). This would result in the less frequent use of the largest or strongest equipment near the former library building, thereby limiting the magnitude of vibrations in that area.

As part of the project submittal, the applicant agreed that no blasting would be permitted to occur as part of the site improvement process to protect adjacent properties. Prior to the removal of any bedrock, the owner/applicant will be required to prepare a bedrock removal plan for review and approval by the Community Development Department (Condition No. 37). No removal activity will be allowed to occur prior to City approval. The bedrock removal plan is required to be prepared by a licensed geologist, engineer, or equivalent accredited professional, and must include at least the following components:

- The location, volume, and type of bedrock to be removed;
- Removal procedures to be used including both primary and optional procedures if necessary;
- The expected duration of removal activities;
- Type of equipment to be used;
- Any types of chemical or other materials to be used, including any storage and safety requirements;
- Requirements for personal safety and the protection of private and public property; and
- A program to notify all parcels within 250 feet of the project site.

As a result, both staff and its environmental consultant have determined that there would be no impact on the library building or adjacent single-family residence from the excavation and construction activity.

8. The project would induce both vehicle trips and pedestrian activity and no meaningful analysis of pedestrian safety has been prepared. At a minimum, to improve conditions for pedestrian safety, the project should be conditioned to fund installation of a crosswalk across Scott Street on the south side of the Scott/Sutter Street intersection, designed with exposed aggregate and granite pavers similar to the crosswalks on the other three legs of this intersection.

City Staff Response:

The potential traffic, access, and circulation related impacts of the proposed project were evaluated by Kimley Horn & Associates on July 30, 2019 and August 8, 2023 respectively. Based on the relatively low volume of project-related vehicle trips, the Traffic Study concluded that the proposed project would not have a significant impact on vehicle level of service (LOS) at any of the five study intersection under any of the four scenarios evaluated.

Pedestrian circulation at the project site will be provided by an existing sidewalk located along the south side of Sutter Street and construction of a new sidewalk along the east side of Scott Street. The existing sidewalks, existing crosswalks, and proposed sidewalks will allow pedestrians associated with the proposed project to move easily up and down Sutter Street and Scott Street. It is important to note that the existing sidewalks on Sutter Street terminate slightly east of Scott Street and the existing sidewalk on the east side of Scott Street terminates at Peddlers Lane to the south, thus there is no practical benefit to providing an additional crosswalk on the south side of the intersection of Sutter Street and Scott Street.

9. The project would provide one embarrassingly inadequate parking space for persons with disabilities by designating an insufficiently wide on-street parking space for disabled parking (using City property which would apparently be gifted to the applicant to ostensibly meet his handicapped parking obligation).

City Staff Response:

As described in the Project Narrative and as shown on the updated Preliminary Grading and Drainage Plan and the Preliminary Utility Plan, the applicant is proposing to provide one handicapped parking space on Sutter Street in front of the proposed building. The proposed handicapped parking space is in substantial compliance with the City's requirement for handicapped parking spaces, particularly given the fact that the City cannot require the applicant to construct new parking facilities pursuant to AB 2097. The proposed handicapped parking space would also be located closer to the proposed building than any potential off-site handicapped parking space. It is important to note that the parking space is not being gifted to the applicant as it will remain a public parking space, but would provide the most directly accessible parking space to the building since the City under AB 2097 cannot require the developer to construct parking facilities on site.

The Folsom Municipal Code does not currently have any on-street parking standards for handicapped accessible parking spaces. As a result, the City follows best practices when allocating available right of way for the intended purpose of parking or shared parking facilities with cyclists, that guidance includes the federal Public Right-Of-Way Accessibility Guidelines (PROWAG) for Pedestrian Facilities. Those guidelines say that the parking space *"shall be 24 feet (7.3 m) long minimum and 13 feet (4.0 m) wide minimum."* However, one exception of Section R310.2.1 of the PROWAG states that the City may use *"the same dimensions as the adjacent parallel on-street parking spaces if they are provided nearest the crosswalk at the end of the block face or nearest a midblock crosswalk, and a curb ramp or blended transition is provided serving the crosswalk."*

10. The project would include rooftop utilities that were not described or illustrated in the project design drawings and these project elements must be described and illustrated for an accurate evaluation of the project.

City Staff Response:

As shown on the submitted development plans, the proposed project includes the placement of mechanical equipment in a mechanical equipment well located at the southwest corner of the building on the rooftop and also behind the parapet wall located at the northeastern corner of the building on the rooftop. Two Conditions of Approval (Conditions No. 28-4 and 28-5) are included with the project that require all roof-mounted mechanical equipment and other utility equipment to be screened by walls or landscaping to the satisfaction of the Community Development Department.

11. The project retaining wall design was altered during discussions after the close of public comments, with the architect and HDC discussing the use of cobbles (potentially faux cobbles) instead of the stacked rock described and presented in the project design package.

City Staff Response:

As shown on the preliminary grading plan and the preliminary retaining wall exhibit, the applicant is proposing to utilize river rock stone retaining walls at various locations on the project site to retain soil. The applicant selected the river rock stone style of retaining wall due to the fact that it has a historic appearance, while also being similar to other existing retaining walls in the project area including commercial properties located at 605 Sutter Street and 614 Sutter Street. The Historic District Commission did not recommend any changes to the design or materials of the proposed retaining walls at its September 6, 2023 meeting. It is also important to acknowledge that there is a Condition of Approval (Condition No. 31) on the project which requires the final location, design, height, materials, and colors of the retaining and stem walls to be reviewed and approved by the Community Development Department.

12. The project was described and evaluated as consisting solely of residential use on the third floor, but the potential use of the third floor for commercial use was introduced as a potential use during the HDC meeting, but only after the close of the public comment period.

City Staff Response:

As shown on the submitted plans and described in the project narrative, the proposed project includes development of two, two-bedroom units on the third floor of the building. The applicant is not proposing any commercial uses on the third floor of the building at this time. That suggestion was brought up by a member of the Heritage Preservation League during the Commission meeting. Furthermore, as noted in the Historic District Commission staff report (Attachment 2), staff determined that the proposed project is consistent with both the General Plan land use designation and the zoning designation for the site as retail, office, and residential uses are permitted pursuant to FMC Section 17.52.510.

13. The City's consultant provided inaccurate and unqualified opinions to the HDC regarding CEQA exemptions and Swainson's hawk habitat quality.

City Staff Response:

A Categorical Exemption Supplemental Analysis (Attachment 2) was prepared by Environmental Planning Partners, Inc. in August of 2023 to evaluate whether the proposed project is eligible for a categorical exemption under Section 15332 (In-Fill Development Projects). The analysis determined that the project meets all of the criteria to be eligible for a categorical exemption under Section 15332 (In-Fill Development Projects) of the California Environmental Quality Act Guidelines. City staff reviewed the Categorical Exemption Analysis provided by Environmental Planning Partners, Inc. and made the determination that the proposed project satisfies the statutory criteria referenced above and therefore it is exempt from environmental review pursuant to the Infill Exemption.

With respect to the project site providing potential Swainson's Hawk habitat, the vegetation community present on the project site is a mix of ruderal (weedy) grassland, mainly consisting of nonnative annual grasses, and woodland that is a mixture of native and horticultural trees. The nearest undeveloped biological habitat is located within the American River Parkway, approximately 425 feet west/northwest of the project site, separated from the project by buildings, parking lots, and roadways. The nearest point on the American River (Lake Natoma) is approximately 1,000 feet northwest of the site, also separated by intervening urban development. Wildlife use of the site is limited to species that are adapted to dense urban environments.

Research conducted for the proposed project determined that there are no sensitive habitats identified by the California Natural Diversity Database (CNDDDB) and the California Native Plant Society (NCPS) on the project site nor in the immediate project area. The CNDDDB notes that the last documented sighting of a Swainson's Hawk in the project area was in 1962 near the intersection of Market Street and East Bidwell Street, approximately 0.6 miles southeast from the project site. In addition, there are no wetland features on the project site or in the immediate project area as shown on the United States Fish and Wildlife Service National Wetland Inventory Map. Based on this information, City staff, in conjunction with Environmental Planning Partners' Categorical Exemption Analysis, made the determination that the project site has no value as habitat for endangered, rare, or threatened species including the Swainson's Hawk. It is important to note that the applicant also voluntarily agreed to comply with the Migratory Bird Treaty Act and California Fish and Game Code provisions by implementing the following measure (Condition No. 40):

- Avoid construction or tree removal during the nesting season (from March through September). If construction activities will occur during the nesting season and trees on the site have not been removed, no more than 30 days prior to the initiation of construction, preconstruction surveys for the presence of special-status bird species or any nesting bird species shall be conducted by a qualified biologist within a 500-foot radius of the proposed construction area. If active nests are identified in these areas, construction should be delayed until the young have fledged, or the CDFW should be consulted to develop measures to avoid the take of active nests prior to the initiation of any construction activities. Avoidance measures may include establishment of a buffer zone using construction fencing, or the postponement of vegetation removal until after the nesting season, or until after a qualified biologist has determined the young have fledged and are independent of the nest site.

14. The project does not qualify for the HDC-claimed CEQA Guidelines section 15332 exemption for reasons including, but not limited to, the following:

- a. The project is inconsistent with applicable zoning regulations and, therefore, the project does not qualify for the 15332 CEQA exemption which cannot be used for

projects that are not consistent with applicable zoning regulations. (The HDC's apparent decision that it could waive compliance with certain zoning regulations, does not excuse the project from this CEQA exemption provision.)

- b. The project site contains suitable nesting trees for the state-listed Threatened Swainson's Hawk and, therefore, the project does not qualify for the 15332 CEQA exemption which requires that a project site must have no habitat value for endangered, rare, or threatened species.
- c. The project may cause a substantial adverse change in the significance of historical resources through the introduction of a new building with incompatible mass, scale, and design adjacent to the locally important historic library building adjacent to the west of the project and to the National Register of Historic Places (NRHP) -listed Cohn House and, therefore, the project is disqualified from use of the 15332 CEQA exemption due to the CEQA Guidelines section 15300.2(f) exception to the exemption which disallows use of an exemption for a project which may cause a substantial adverse change in the significance of a historical resource.
- d. The project's location in the Historic District and the two adjacent historic properties, the project's incompatible mass and scale, and the project's destruction of oak trees (in particular, Tree 1347 on City property along Scott Street) would adversely affect the historic character and setting of adjacent historic properties and creates the reasonable possibility that the project would result in significant aesthetic impacts in the unique area in which the project is located, and, therefore, the project is disqualified from use of the CEQA 15332 exemption due to the 15300.2(c) exception to the exemption which disallows use of an exemption for a project where there is a reasonable possibility that the project will have a significant impact on the environment due to unusual circumstances. (Furthermore, I and other members of the public were provided substantially incorrect and misleading photographic simulation renderings prior to and during the HDC hearing which substantially affected our ability to understand and comment on the impacts of the project on aesthetics and scale/massing incompatibilities with adjacent historic properties.) Project construction activities within 5 feet of the adjacent historic library building would have the potential to produce ground-borne vibration levels well above vibration levels identified as having the potential for structural damage which creates the reasonable possibility that the project would result in structural damage associated with ground-borne vibration, and, therefore, the project is disqualified from use of the CEQA 15332 exemption due to the 15300.2(c) exception to the exemption which disallows use of an exemption for a project where there is a reasonable possibility that the project will have a significant impact on the environment due to unusual circumstances.

City Staff Response:

In reviewing the submitted Design Review Application, City staff determined that the proposed project was potentially eligible for a categorical exemption from

environmental review under Section 15332 (In-Fill Development Projects) of the California Environmental Quality Act (CEQA) Guidelines. To be considered eligible for this particular exemption, the proposed project must meet the following criteria:

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

A Categorical Exemption Supplemental Analysis (Attachment 2) was prepared by Environmental Planning Partners, Inc. in August of 2023 to evaluate whether the proposed project is eligible for a categorical exemption under Section 15332 (In-Fill Development Projects). The analysis determined that the proposed project meets all of the criteria referenced above to be eligible for a categorical exemption under Section 15332 (In-Fill Development Projects) of the California Environmental Quality Act Guidelines. City staff reviewed the Categorical Exemption Analysis provided by Environmental Planning Partners, Inc. and made the determination that the proposed project satisfies the statutory criteria referenced above and therefore it is exempt from environmental review pursuant to the Infill Exemption.

- a. As stated in the Historic District Commission Staff Report (Attachment 2), City staff determined that the proposed project is consistent with both the General Plan land use designation and the zoning designation for the site as retail, office, and residential uses are permitted pursuant to Section 17.52.510 of the Folsom Municipal Code. City staff also determined that the proposed project is consistent with all applicable General Plan goals and polices. In addition, City staff determined that the proposed project meets all development standards established by the Sutter Street Subarea Special Use and Design Standards (FMC Section 17.52.210(C)) with respect to building setbacks, building height, and other requirements. Additional discussion of the building height and deck/patio length issues is contained in City Staff's Response to Comment No. 5, above. That analysis is equally relevant here regarding the project's compliance with applicable zoning regulations. In FMC Section 17.52.400(D), the Zoning Code grants the HDC the authority to permit exceptions to design standards in limited circumstances like those present here. The project is not inconsistent with applicable zoning regulations because the HDC properly exercised its authority to permit exceptions to certain standards in this case.

Based on the aforementioned evaluation, City staff determined that the proposed project is consistent with applicable zoning regulations and therefore is eligible to utilize the CEQA Infill Exemption (CEQA Guidelines Section 15332 In-Fill Development Projects).

- b. As stated previously in City Staff's response to Comment No. 13, research conducted for the proposed project determined that there are no sensitive habitats identified by the California Natural Diversity Database (CNDDDB) and the California Native Plant Society (NCPS) on the project site nor in immediate project area. In addition, there are no wetland features on the project site or in the immediate project area as shown on the United States Fish and Wildlife Service National Wetland Inventory Map. Based on this information, City staff, in conjunction with Environmental Planning Partners Categorical Exemption Analysis, made the determination that the project site has no value as habitat for endangered, rare, or threatened species including the Swainson's Hawk. As a result, City staff determined that the proposed project is eligible to utilize the CEQA Infill Exemption.
- c. The CEQA Guidelines include a number of potential exceptions to the applicability of categorical exemptions. The Categorical Exemption Supplemental Analysis prepared by Environmental Planning Partners, Inc. determined that none of the exceptions to use of the categorical exemption for Infill Projects are applicable to the proposed project. City staff agreed with Environmental Planning Partners' analysis and determined that none of the potential exceptions to the use of the Infill exemption are applicable in this case.

City staff closely considered the potential applicability of the exception for historical resources in association with this project because of the proximity to the project site of the Cohn House and the historic library building. On March 24, 2021, Page & Turnbull prepared a Project Analysis Memorandum for the purpose of evaluating the architecture and design compatibility of an earlier iteration of the proposed project with a nearly identical design relative to historic resources in the immediate project area using Standard 9 of the *Secretary of the Interior's Standards for Rehabilitation* as a guiding principle, which reads: "New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The design changes between an earlier iteration and the current building design include minor alterations to window and door arrangements on the building, shifting the third-floor wall plane further back away from Sutter Street, and enlarging a canopy on the third floor of the building.

The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment." On August 25, 2023, Page & Turnbull prepared a supplemental Project Analysis Memorandum which confirmed

that subsequent minor modifications made to the proposed building would not alter their original conclusions.

Historic resources in the immediate project area include the Cohn House which was originally constructed in the 1860's and was listed on the National Register of Historic Places in 1982. The Cohn House, which is located directly to the east of the project site across Scott Street, is considered a particularly good local representation of late 19th century residential architecture. The Cohn House features a great variety of architectural form and details typical of the Queen Anne style of design. The large size and impressive siting of the Cohn House on a hill overlooking the Historic District also add to its visual importance.

The other historic resource in the immediate project area is a former library building located directly to the west of the project site. The former library building, which was constructed around 1915, is listed on the City's Cultural Resource Inventory. The former library building consists of a one-story wood frame building with a simple rectangular floor plan and a front-facing gable roof with wide overhanging eaves and exposed rafter tails. The front, northwest façade of the former library building has a full-width porch; both the building and porch supports are clad with painted wood shingles. Non-original windows and doors at the front facade of the former library building are surrounded by molded wood trim, and modern concrete stairs extend up the steep sloping grade of the site to the front porch from Sutter Street.

The Page & Turnbull analysis concluded that while the proposed project is larger in scale than the Cohn House and the former library building and differs in its use, massing, materials, and design, these differences reflect the mixed commercial and residential character and variety of historic and non-historic buildings of the immediately surrounding blocks of the Sutter Street Subarea. As result, Page & Turnbull determined that the proposed building would not affect the ability of the two individual historic resources to continue to convey their historic significance and that the project is compatible with the character-defining features of the Sutter Street Subarea. Therefore, it was determined that the proposed project would not cause a substantial adverse change in the significance of a historical resource and the potential exception in CEQA Guidelines Section 15300.2(f) does not apply in this case.

- d. The California Supreme Court has explained that “listing a class of projects as exempt, the Secretary has determined that the environmental changes typically associated with projects in that class are not significant effects within the meaning of CEQA, even though an argument might be made that they are potentially significant.” (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1104-1105.). The potential exception for unusual circumstances, found in CEQA Guidelines Section 15300.2(c) applies only when both (1) unusual circumstances exist to distinguish the proposed project from others in the exempt

class and (2) there is a reasonable possibility that the project will have a significant effect on the environment due to those unusual circumstances.

In analyzing this potential exception, lead agencies consider whether the proposed project's circumstances differ significantly from the circumstances typical of the type of projects covered by the exemption. In determining whether the environmental effects of a proposed project are unusual or typical, local agencies consider conditions in the vicinity of the proposed project but may also look to other projects in the exempt class within their jurisdiction.

In this case, City staff analyzed whether the circumstances of the proposed project are unusual or typical by considering conditions on Sutter Street and also considering other similarly sized infill projects in Folsom meeting the exemption criteria. Ultimately, relying on the Environmental Planning Partners' analysis, staff found no unusual circumstances present that would distinguish the proposed project from other infill projects. In addition, staff found that the proposed project does not present a reasonable possibility of having a significant effect on the environment.

The various potentially unusual circumstances alleged in the appeal are addressed as follows:

Oak Trees: As discussed previously within the Background section of this staff report, City staff determined that the severe slope of the subject property would require the project site to be massed graded to install standard improvements (building foundation, underground utilities, retaining walls, sidewalks, etc.), and that it is not feasible or possible to save any of the 11 protected oak trees located on the project site. As a result, the applicant will be required to plant street trees per FMC Section 12.16.190 and prior to construction the applicant will also be required to obtain a Tree Removal Permit. As part of review of the Tree Removal Permit application, the City Arborist will determine the type and amount of mitigation consistent with FMC Section 12.16.150.

Tree removal in general, and the removal of oak trees in particular, is not unusual in Folsom. Compliance with the City's Tree Preservation Ordinance is mandatory for any project that involves tree removal, including this one. Projects throughout the City are able to remove protected trees in compliance with the criteria for removal contained in the Tree Preservation Ordinance and removal of protected trees for any project requires planting of replacement trees or payment of an in-lieu fee. As a result, removal of protected trees consistent with City regulations and requirements would not cause a significant effect on the environment due to unusual circumstances.

Project Mass/Scale and Location: The scale and massing of the proposed project is consistent with recent mixed use infill buildings located at 604/602 Sutter Street (the Folsom Electric Building, also known as the Steakhouse Building) and at 607 Sutter Street (the Fire and Rain Building). As described in City staff's response to Comment No. 14-c, the Page & Turnbull analysis concluded that the scale, massing and overall

design of the proposed project reflect the mixed commercial and residential character and variety of historic and non-historic buildings of the immediately surrounding blocks of the Sutter Street Subarea. As result, Page & Turnbull determined that the proposed building design, including the scale and massing, would not have a significant effect on the environment by detracting from the Sutter Street Subarea's ability to convey its historical significance or by inhibiting the ability of the two individual historic resources in the immediate vicinity to continue to convey their historic significance. With respect to alleged aesthetic impacts, Environmental Planning Partners found that the proposed project qualifies as an Employment Center Project for purposes of Public Resources Code Section 21099 and, as a result, any potential aesthetic impacts are statutorily excluded from being considered significant impacts on the environment. Staff determined that the proposed project's massing, scale, and location would not cause a significant effect on the environment due to unusual circumstances.

Construction and Vibration: Construction related vibration is not unusual in Folsom, as evidenced by the existence of General Plan Policy SN 6.1.8 related to that subject. Regarding the potential effects of vibration in this case, as described in City staff's response to Comment No. 7, a bedrock removal plan must be prepared and approved by the City before any such work occurs on the project site. Blasting is not required for this project, but even so, this plan must include requirements for the protection of private property, including nearby structures. Environmental Planning Partners also analyzed the potential for structural damage to be caused by construction-related vibrations as a part of its work on this project and determined that no damage to nearby buildings is anticipated in this case. The vibration levels generated by the type of construction equipment required for this project are not anticipated to meet the vibration level threshold where the onset of damage to buildings extremely susceptible to vibration is expected to occur. Staff determined that construction activities and vibration caused by the proposed project would not cause a significant effect on the environment due to unusual circumstances.

Applicant Response:

The applicant submitted a detailed response letter (Attachment 5) to the appeal on the 603 Sutter Street Mixed-Use Building project on September 29, 2023. In the response letter, the applicant indicates that they believe the Historic District Commission's authority regarding the 603 Sutter Street Mixed-Use Building project is clear as referenced in multiple section of the Folsom Municipal Code (FMC Sections 17.52.120, 17.52.300, and 17.52.700(A)). In addition, the applicant states that the Historic District Commissions findings regarding the architecture and design of the 603 Sutter Street Mixed-Use Building project are fully supported by the factual evidence in the record and presented to the Commission at their September 6, 2023 meeting. Lastly, the applicant contends that the 603 Sutter Street Mixed-Use Building project clearly qualifies for the Class 32 CEQA In-Fill Exemption and that Mr. Delp has not presented sufficient evidence to demonstrate that the project will have a significant impact on the environment due to unusual circumstances, including significant aesthetic impacts and vibrational impacts. In their conclusion, the applicant states that the Historic District Commission thoroughly evaluated the 603 Sutter Street Mixed-Use Building

project and requests that the City Council affirm the Commission's approval of the project and deny the Appeal by Bob Delp.

CONCLUSION

Based on the forgoing, staff respectfully requests that the City Council **DENY** the appeal by Bob Delp of the Decision by the Historic District Commission Approving a Design Review Application and determining that the proposed 603 Sutter Street Mixed-Use project (PN 17-145) is exempt from CEQA.

ATTACHMENTS

1. Letter of Appeal from Bob Delp, dated September 11, 2023
2. Historic District Commission Staff Report, dated September 6, 2023
3. Historic District Commission Additional Information
4. Minutes from September 6, 2023 Historic District Commission Meeting
5. Applicant Response Letter, dated September 29, 2023

Submitted,

A handwritten signature in blue ink, appearing to read "Pam Johns", with a long horizontal flourish extending to the right.

PAM JOHNS
Community Development Director