



Zoning Adjustments Board Staff Report

APP #ZP2026-0039

August 13, 2026

Use Permit for a Project at 2298 Durant Avenue



Quick Facts	Project Description:
Applicant: Austin Springer, Studio KDA	The applicant is seeking approval to demolish a commercial building and construct a seven-story, 85-foot, 49,970-square-foot, multifamily building containing 45 dwelling units, including 2 Very-Low Income units, utilizing a State Density Bonus.
Project Address: 2298 Durant Avenue	
Site Size: 8,471 sq. ft.	Zoning Permits Requested:
GP Land Use: Residential Mixed Use (RMU)	Demolition. BMC Section 23.326.070(A) “Main Non-Residential Building” to demolish a non-residential building. * (UPPH) New Construction. BMC Section 23.202.020 (A) “Allowed Land Uses” to construct a multi-family use. (UPPH) Height Projection BMC Section 23.304.050 (A) “Projections Above Height Limits” to exceed the height limit with a rooftop projection. (AUP) Density Bonus: Waivers - Provide a 3-ft. 6 in. rear setback where 4 ft. is required. - Provide 1,569 sq. ft. of Useable Open Space where 1,955 sq. ft. is required. - Provide 28 sq. ft. of landscaped Useable Open Space where 782 sq. ft. is required. - Provide no long-term bicycle parking, where 61 spaces are required. - Remove the camphor tree on Durant Avenue. Concessions - Exemption from BMC § 23.304.150 for Bird Safe Building requirements. *Denotes required findings.
Zoning: Residential Southside Mixed Use (R-SMU)	
CEQA: Exempt pursuant to Public Resources Code Section 21080.66	
Date Submitted: April 3, 2026	
Vesting Date: March 9, 2026	
Date Deemed Complete: May 6, 2026	
Project Planner: Allison Riemer	Staff Recommendation:
	Staff recommends that ZAB determine the project is exempt from CEQA pursuant to Public Resources Code Section 21080.66 and approve ZP2026-0039 pursuant to Section 23.406.040(E) “Findings for Approval” and subject to the attached Findings and Conditions of Approval.

ZONING MAP

Figure 1: Vicinity and Zoning Districts Map



Comparison of Adjacent Properties			
Vicinity	GP Land Use	Zoning	Current Use
North	Residential Mixed Use (RMU)	Residential Southside Mixed Use (R-SMU)	Multi-family residential
South			Multi-family residential
East			Medical office
West			Multi-family residential

AERIAL



STREET ELEVATION (Ellsworth Street)



BACKGROUND

Subject Site

The project site is a parcel on the southwest corner of Durant Avenue and Ellsworth Street. The surrounding area consists of a mix of both commercial and residential uses ranging from one-story commercial buildings to five-story residential buildings. The UC Berkeley campus is one block to the north, and downtown Berkeley is one block to the west. The Downtown Berkeley BART station is 0.4 miles to the northwest. In addition, bus service is available via AC Transit routes 6, 7, 18, 22, 27, 36 and 51B at stops along Durant Avenue, Bancroft Way, and Shattuck Avenue.

The parcel is 8,471 square feet in area, and relatively flat. The site is currently a commercial office, and a surface parking lot is located along the western portion of the lot.

Site History

2298 Durant Avenue was originally built as a single-family home in 1903 and was converted to offices in 1946.

ANALYSIS

Project Scope

The proposed project would:

1. Demolish the commercial building.
2. Remove the street tree (camphor) on Durant Avenue.
3. Construct a seven-story, 85-foot, 49,967 square-foot multifamily building containing 45 dwellings, including 2 Very-Low Income (VLI) units, utilizing a State Density Bonus.
4. No secure bicycle parking, or car parking would be provided.

Findings

Draft findings for approval can be found in Attachment 2 to the staff report.

Base Project and Density Bonus

The applicant has requested a Density Bonus under the State Density Bonus Law (Govt. Code Section 65915). Under the City’s Density Bonus procedures, the “base project¹” is 38 units, as the maximum allowable density for the site. The base project and the resulting seven-story proposed project both have an average unit size of 1,086 square feet. By providing 2 Very Low-Income (VLI) units on site (5 percent of the 38-unit base density), the project is eligible for a 20 percent density bonus, or 8 additional units. The applicant proposes 7 additional units above the base density for a total of 45 dwelling units.

Base Project Units ^a	Qualifying Units	Percent Density Bonus	Number of Density Bonus Units ^a	Proposed Project Units ^a
38	2 VLI (5% of 38)	20	8 (20% of 38)	45 (46 max.)
Notes: a. Pursuant to Government Code 65915(q), all unit calculations are rounded up to the next whole number.				

Concession and Waivers Pursuant to State Density Bonus Law (CA Govt. Code Section 65915)

A **concession** is a modification of a development standard that reduces the cost of providing affordable housing. The City may only deny the concession if it finds that the concession would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact² without rendering the development unaffordable to low-income, very-low income, and moderate-income households, or if the concession would be contrary to State or Federal law.

The project is entitled to one concession (or incentives) under Government Code Section 65915(d), and an unlimited number of waivers under Section 65915(e). The applicant is requesting a concession from the bird safe building requirements (BMC Section 23.304.150).

A **waiver** is a modification of a development standard that would otherwise physically preclude the construction of the project with the permitted density bonus and concessions. Waivers for a reduced rear setback, reduced Useable Open Space, no long-term bicycle parking, and the

¹ Per the [City’s Density Bonus Procedures \(DBP\)](#), the base project is the largest project allowed on the site that is fully compliant with district development standards (i.e. height, setbacks, usable open space, parking, etc.), or, the *maximum allowable density* for the site. The City uses the DBP to calculate the maximum allowable density for a site where there is no density standard in the zoning district, and to determine the number of units in the proposed project, which is the number of base project units plus the number of density bonus units that can be added according to the percentage of BMR units proposed, per Government Code, Section 65915(f).

² A “specific, adverse impact” means “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”

removal of a street tree are requested because they are necessary to physically accommodate the additional 7³ units as allowed under the density bonus project on the site.

The City may only deny the waivers if it finds that the waivers would have a specific adverse impact⁴ upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low-income, very-low income, and moderate-income households, or if the waiver would be contrary to State or Federal law. Staff believes such a finding cannot be made.

Environmental Review

Assembly Bill 130 (AB 130) is a new law under the California Environmental Quality Act Guidelines (CEQA) that provides a complete statutory exemption for qualifying urban infill housing development projects⁵. The Bill was signed into law and effective on June 30, 2025, and is codified in Public Resources Code (PRC) Section 21080.66.

The applicant has requested that the housing development project be reviewed in accordance with AB 130 (see Attachment 4). Staff evaluated the request and determined that the proposed project meets the requirements of PRC Section 21080.66.

- **Infill Criteria.** The project's consistency with the allowed housing development type defined in PRC Section 21080.66(a), subdivisions (1) through (5) and (8).
- **Environmental Criteria.** The project's consistency with the individual environmental requirements pursuant to PRC Section 21080.66(a), subdivisions (6) and (7).
- **Tribal Cultural Resources.** The project's consistency with the tribal notification and outreach requirements pursuant to PRC Section 21080.66(b).
- **Hazardous Materials.** The project's consistency with the requirements for the identification and treatment of hazardous materials pursuant to PRC Section 21080.66(c).
- **Other Requirements.** The project's consistency with the Labor Code requirements and eligibility of a housing development project for a density bonus, incentives or concessions, waivers or reductions of development standards, and reduced parking ratios pursuant to PRC Sections 21080.66(d) and (e), respectively.

The City conducted tribal consultation as required by PRC Section 21080.66(b) with the Confederated Villages of Lisjan and Muwekma Ohlone Tribe Incorporated. Under PRC Section 21080.66(b)(4), the project is subject to any enforceable agreements reached during consultation and to the standard conditions, unless the Tribe and the project proponent mutually agree not to include certain measures as binding conditions. Consultation concluded with the applicant and each Tribe reaching agreement on the conditions for project approval. In accordance with PRC Section 21080.66(b)(4), the City has included the Conditions of Approval (see Attachment 3, Conditions of Approval)

³ 8 maximum density bonus units allowed.

⁴ See footnote 2.

⁵ As defined in Government Code Section 65589.5(h)(2).

Public Resources Code Section 21080.66(d)(2) and (d)(4) establish specific labor requirements for projects that include buildings over 85 feet in height. The proposed project is 85 feet in height based on the definition of maximum height in BMC Section 23.106.090(B). Therefore, the project does not meet the threshold for these provisions, and PRC Sections 21080.66(d)(2) and (d)(4) do not apply. To verify that the building height does not exceed 85 feet, height surveys will be required after foundation forms are placed, after fourth floor framing is installed, and after final floor framing is installed. See Condition of Approval V.A. 5.

Per the project processing deadlines created by AB 130, the City must approve or disapprove the project within 30 days from the later of:

- (1) the conclusion of tribal consultation and
- (2) the date on which the project was deemed consistent with applicable objective standards (Gov. Code Section 65950).

The project was deemed consistent with all applicable objective standards on May 6, 2026, and tribal consultation concluded on July 12, 2026.

ADVISORY BODY REVIEW

Landmarks Preservation Commission Review

The project involves demolition of one commercial building over 40 years in age. Pursuant to BMC Section 23.326.070(C)(1) “Demolition of Nonresidential Buildings”, the proposed demolition was brought before the Landmarks Preservation Commission (LPC) for review. A historic resources evaluation for the property was completed by Preservation Architecture on August 22, 2023 and found that the original building was constructed in 1903. The LPC reviewed the demolition referral on July 7, 2025 for a project previously proposed for the site, and took no action.

Design Review Committee Review

This project is all residential and is located in the R-SMU District, and is not subject to Design Review pursuant to BMC Section 23.406.070(B)(1) “When Required.”

Community Meeting

Prior to submitting this application to the city, the applicant invited interested neighborhood organizations as well as owners and occupants located within 300 feet of the project site to a project preview meeting. The meeting was held virtually on March 26, 2026, and attended by two members of the public (meeting notes are included as Attachment 5). Their concerns included the disabled access to the bus center across the street, and the construction timeline. On July 30, 2026, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations. The City also posted notices within the neighborhood at three nearby locations.

At the time of writing this report, staff has not received letters in opposition to the project.

POLICY CONSISTENCY

Housing Accountability Act

Pursuant to the Housing Accountability Act (HAA), California Government Code Section 65589.5(j), when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety⁶ unless disapproved, or approved at a lower density; and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The project is a “housing development project” consisting of an all-residential building. The Base Project includes Use Permits and/or Administrative Use Permits to allow demolition and new construction, and complies with applicable, objective general plan and zoning standards. Government Code Section 65589.5(j)(3) provides that a request for a density bonus “shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.” Therefore, the City may not deny the Base Project or density bonus request or reduce the density with respect to those units without basing its decision on the written findings under Section 65589.5(j), above.

While the project may include other Use Permits or Administrative Use Permits to modify standards not associated with the base project, there are no objective criteria in the findings. Therefore, the project still complies with the HAA. The ZAB has the discretion to approve, deny, or modify the request according to the zoning findings, provided the action does not reduce the project density or effectively deny the project by making it infeasible, unless the ZAB is also able to make the required findings for denial set forth under Section 65589.5(j), above.

Staff have not identified any significant, quantifiable, direct, and unavoidable impacts upon public health and safety based on objective, written standards that would result from development of the project.

Housing Crisis Act of 2019 – Senate Bill (SB) 330

The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development. A “housing development project” can include any of the following: residential units only; mixed use consisting of residential and nonresidential uses in which at least two-thirds of the square-footage is designated residential, and transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

Government Code Section 65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in affect

⁶ A “specific, adverse impact” means “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”

at the time an application is deemed complete, then the city shall not conduct more than five hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

Evidence: The August 13, 2026, ZAB hearing represents the first public hearing on the proposed project and, under AB 130, the first possible ZAB hearing date after the conclusion of tribal consultation. Per AB 130, the City must approve or disapprove the project by the August 13, 2026, ZAB meeting.

Government Code Section 65913.10(a) requires that the City determine whether the proposed development project site is a historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is a historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

Evidence: A historic resource evaluation prepared for the project in August 2023 determined that the property does not appear to be historically significant and therefore is not eligible for listing on the California Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit.

General Plan Consistency

The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-3-Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7-Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy H-12 – Transit-Oriented New Construction: Encourage construction of new medium- and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.
4. Policy H-33 – Regional Housing Needs: Encourage housing production adequate to meet City needs and the City's share of regional housing needs.
5. Policy T-16 – Access by Proximity, Action B: Encourage higher density housing and commercial infill development that is consistent with General Plan and zoning standards in areas adjacent to existing public transportation services.

Staff Analysis: The project would add density to a lot developed with a two-story commercial building. In addition, the project would be consistent with R-SMU District zoning standards, such as lot coverage and Floor Area Ratio, and would modify the required rear setback and

useable open space with waivers that are allowed with a State Density Bonus. The project would be consistent with the Residential Mixed Use General Plan designation because it would add a seven-story residential building with a Floor Area Ratio less than 7. The project site is served by multiple bus lines that operate along Durant Avenue, Bancroft Way, and Shattuck Avenue, and a nearby BART Station. The project would help Berkeley meet its regional housing needs by adding 45 new units, including 2 Very Low-Income units.

Attachments

1. Table 1-3: Project Chronology, Special Characteristics, Development Standards
2. Draft Findings
3. Conditions of Approval
4. AB 130 Letter, received March 9, 2026
5. Neighborhood Meeting Notes, dated March 26, 2026
6. SB 1214 Site and Massing Plan, received April 3, 2026
7. Notice of Public Hearing

Attachment 1

Table 1-3: Project Chronology, Special Characteristics, Development Standards

Table 1: Project Chronology

Date	Action
March 9, 2026 (vesting date)	SB 330 complete Preliminary Housing Development Project Application submitted
April 3, 2026	SB 330 Use Permit Application submitted
April 21, 2026	Application deemed incomplete
May 4, 2026	Application resubmitted
May 6, 2026	Application deemed complete
June 20, 2026	Conclusion of tribal consultation with the Muwekma Ohlone Tribe Incorporated
July 12, 2026	Conclusion of tribal consultation with the Confederated Villages of Lisjan
July 30, 2026	Public hearing notices mailed/posted
August 13, 2026	ZAB hearing

Table 2: Special Characteristics

Characteristic	Applicability	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	These fees apply to net newly constructed nonresidential gross floor area over 7,500 square feet. The proposed net new non-residential floor area is less than 7,500 square feet; therefore, the fees do not apply to the project.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable / Inclusionary Housing Requirements (BMC Chapter 23.328)	Yes	The project is a housing development project, as defined in BMC 23.328.020 ^a , and would provide at least 20 percent of residential units, pay an in-lieu fee based on the residential unit floor area of the project, or a combination. The project would provide 2 VLI units and would be required to pay an in-lieu fee to satisfy the remainder of the requirement.
Bird Safe Buildings (BMC Section 23.304.150)	Yes	The project is subject to these requirements. However, the project is requesting a concession from these requirements.
Coast Live Oak Trees (BMC Chapter 6.52)	No	There are no Coast Live Oak (<i>Quercus agrifolia</i>) trees on the project site.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30 feet of the project site.
Density Bonus	Yes	The project would provide 2 Very Low-Income units, or 5 percent of the Base Project units, and qualifies for a 20 percent density bonus, or 8 bonus units, of which 7 are added to the Base Project, for a 45-unit Proposed Project.
Hard Hats (BMC Chapter 13.107)	No	The project is less than 50,000 sq. ft. in area and therefore this ordinance does not apply.
Historic Resources	No	The existing building is more than 40 years old and was forwarded to the Landmarks Preservation Commission (LPC) for review on July 7, 2025. The LPC took no action to initiate a Landmark or Structure of Merit designation.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	Yes	The project meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2)b. The project complies with applicable, objective general plan and zoning standards, and thus section (j) of the Housing Accountability Act does apply, and the project cannot be denied at the density proposed unless the findings for denial can be made.
Housing Crisis Act of 2019 (SB 330)	Yes	The project meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) ^b .
Opportunity Sites	No	The subject site is not identified as an opportunity site in the South Side Plan.
Rent Controlled Units	No	The project would involve the demolition of a non-residential building; no rent-controlled units would be demolished.
Residential Preferred Parking (RPP)	No	The site is not located in an RPP zone. The project is not eligible for RPP permits per BMC Section 14.72.080(C)(1)

Characteristic	Applicability	Explanation
		as no permits shall be issued to residents in newly constructed residential units.
Seismic Hazards (SHMA)	No	The project site is not located within an area susceptible to landslide/liquefaction/fault rupture as shown on the State Seismic Hazard Zones map. ^c
Soil/Groundwater Contamination	No	The project site is not on the Cortese List ^d . The project site is within the City's Environmental Management Area. The applicant has submitted a Phase I report. No further investigation is recommended for the project. Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The project area is served by AC Transit lines that operate along Durant Avenue, Bancroft Way, and Shattuck Avenue, and is 0.4 miles southeast from the Downtown Berkley BART Station.
Notes: a. BMC 23.328.020(E) defines a "Housing Development Project" for purposes of inclusionary housing requirements as "a development project, including a Mixed-Use Residential project involving the new construction of at least one Residential Unit. Projects with one or more buildings or projects including multiple contiguous parcels under common ownership or control shall be considered as a sole Housing Development Project and not as individual projects. b. Government Code Section 65589.5(h)(2) "Housing development project" means a use consisting of any of the following: (A) residential units only, (B) mixed-use developments consisting of residential and nonresidential uses in which at least two-thirds of the square footage is designated for residential use, and (C) transitional or supportive housing. c. California Department of Conservation. DOC Maps: Geologic Hazards. Available: https://maps.conservation.ca.gov/geologic Hazards/ d. Cortese List is an annually updated list of hazardous materials sites compiled pursuant Government Code Section 65962.5.		

**Table 3: R-SMU Residential Southside Mixed Use District Development Standards BMC
Sections 23.202.140 and 23.322 Parking and Loading**

Standards		Existing	Proposed	Permitted/ Required
Lot Area (sq. ft.)		8,471	No change	No min.
Gross Floor Area (sq. ft.)		5,760	49,967	N/A
Floor Area Ratio		0.68	5.9	7.0 max.
Dwelling Units	Total	0	45	N/A
	Affordable	0	2 VLI	20% of on-site units, or pay a full or partial in-lieu fee
Building Height	Maximum (ft.)	40'	85'	85' max., plus a 5' parapet
	Stories	2	7	No max.
Building Setbacks (ft.)	Front (Ellsworth St., east)	7'-6"	0'	No min.
	Interior Side (south)	11'	5'	No min.
	Street Side (Durant Ave., north)	8'-5"	0'	No min.
	Rear (west)	45'-9"	3'-6"	4' min.
Lot Coverage (%)		28.1	87.8	100 max.
Usable Open Space (sq. ft.) per Dwelling Unit		0	1,569	40 sq. ft. per 1,000 sq. ft. of gross residential floor area (1,955 min.)
Automobile Parking		12	0	No min.
Bicycle Parking	Residential (long-term)	0	0	61 (1 space/3 bedrooms min.)
	Residential (short-term)	0	8	5 (1 space/40 bedrooms min.)
	Total	0	8	66
* Waiver, pursuant to State Density Bonus Law, requested to modify the district standard.				



Zoning Adjustments Board Findings

App #ZP2026-0039

August 13, 2026

Use Permit for a Project at 2298 Durant Avenue

Project Facts	Project Description:
Applicant: Austin Springer, Studio KDA Property Owner: 2298 Durant LP Project Address: 2298 Durant Avenue Site Size: 8,471 sq. ft. GP Land Use: Residential Mixed Use (RMU) Zoning: Adeline Corridor Commercial District (C-AC) CEQA: Exempt pursuant to Public Resources Code Section 21080.66 Vesting Date: March 9, 2026 Date Submitted: April 3, 2026 Date Deemed Complete: May 6, 2026 Project Planner: Allison Riemer	The applicant is seeking approval to demolish a commercial building and construct a seven-story, 85-foot, 49,970 square-foot multifamily building containing 45 dwelling units, including 2 Very-Low Income units, utilizing a State Density Bonus.
	Zoning Permits Requested:
	Demolition. BMC Section 23.326.070(A) “Main Non-Residential Building” to demolish a non-residential building. * (UPPH) New Construction. BMC Section 23.202.020 (A) “Allowed Land Uses” to construct a multi-family use. (UPPH) Height Projection BMC Section 23.304.050 (A) “Projections Above Height Limits” to exceed the height limit with a rooftop projection. (AUP) Density Bonus: Waivers - Provide a 3-ft. 6 in. rear setback where 4 ft. is required. - Provide 1,569 sq. ft. of Useable Open Space where 1,955 sq. ft. is required. - Provide 28 sq. ft. of landscaped Useable Open Space where 782 sq. ft. is required. - Provide no long-term bicycle parking, where 61 spaces are required. - Remove the camphor tree on Durant Avenue. Concessions - Exemption from BMC § 23.304.150 for Bird Safe Building requirements. *Denotes required findings.
	Staff Recommendation:
	Staff recommends that ZAB determine the project is exempt from CEQA pursuant to Public Resources Code Section 21080.66 and approve ZP2026-0039 pursuant to BMC Section 23.406.040 (E) “Findings for Approval” and subject to the attached Findings and Conditions of Approval.

I. CEQA

- A. The project is statutorily exempt from the requirements of CEQA pursuant to Public Resources Code Section 21080.66 (Assembly Bill 130).

Evidence: The project is an infill housing development and meets the specified criteria in Public Resources Code Section 21080.66(a). The City conducted tribal consultation with the Confederated Villages of Lisjan and Muwekma Ohlone Tribe Incorporated and has included Conditions of Approval pursuant to Public Resources Code Section 21080.66(b).

II. FINDINGS FOR APPROVAL

As required by BMC Section 23.406.040 (E) (1-4) "Findings for Approval," the following findings shall be made:

1. To approve a Use Permit, the ZAB shall find that the proposed project or use:

- (a) Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use; and

Evidence: The project will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood because the project will replace a commercial building with a new residential building with 45 units, which is an allowed use that already exists in the area. The proposed Floor Area Ratio (FAR) is 5.9 where 7 is the maximum, and the proposed lot coverage is 87.8 percent, where 100 percent is allowed. Waivers for reduced useable open space, a reduced rear setback, and no interior (long-term) bike parking are permissible pursuant to State Density Bonus Law, Government Code Section 65915.

- b) Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.

Evidence: The project will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because the proposed seven-story residential building provides housing, including below market rate units, which would complement existing land uses in the surrounding area. In addition, the findings for required discretionary permits are satisfied per the Evidence in 2 and 3 below.

2. As required by BMC Section 23.406.040(E)(2) “Findings for Approval”, to approve the Use Permit, the ZAB must also make any other Use Permit findings specifically required by the Zoning Ordinance for the proposed project.

Demolition

Pursuant to BMC Section 23.326.070(D) “Demolitions of Non-Residential Buildings,” a Use Permit for demolition of a main building used for non-residential purposes may be approved only if the ZAB finds that:

- a) The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
- b) The demolition:
 - 1) Is required to allow a proposed new building or other proposed new use;
 - 2) Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
 - 3) Will remove a structure which represents an uninhabitable attractive nuisance to the public; or
 - 4) Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration by the applicant that it would be infeasible to obtain prior or concurrent approval for the new construction or new use.

Evidence: The proposed project includes the demolition of an existing commercial building to construct a 49,967 square-foot residential building. The demolition will not be materially detrimental to the commercial needs and public interest because the demolition will replace a two-story commercial building with a seven-story residential building. The demolition is required to allow a proposed new building.

Density Bonus

- A. Pursuant to Government Code Section 65915, the Zoning Adjustments Board finds that:
 1. Under the City’s methodology for implementing density bonuses, the base project consists of 38 units;
 2. The project will provide at least 2 Very Low-Income qualifying units in the 38-unit base project, as more fully set forth in Condition “Below Market Rate Units”;
 3. The project is entitled to a density increase of 20 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, under the requirements of Government Code Section 65915(b) and (f), plus one concession or incentive. This equates to a density bonus of up to 8 units above the base project, for a total of up to 46 units. The project is utilizing 7 bonus units, for a total of 45 units in the proposed project.

B. In accordance with Government Code Section 65915(d) and (k), the Zoning Adjustments Board hereby grants the following concession in order to provide for affordable housing costs:

- 1.** Exemption from the requirement of BMC Section 23.304.150 “Bird Safe Building.”

In accordance with Government Code Section 65915(d), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds that the approval of the concession is required to provide for affordable housing costs, as provided in Government Code Section 65915(d)(1)(A) because 1) approval of the concession would result in identifiable and actual cost reduction; 2) approval of the concession would not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) would not be contrary to State or Federal law.

C. In accordance with Government Code Section 65915(e) the Zoning Adjustments Board hereby grants the following waivers to modify development standards as necessary to accommodate these density bonus units.

- a. Provide a 3-foot 6-inch rear setback where 4 feet is required (BMC Section 23.202.140(E)(1)(a)).
- b. Provide 1,569 square feet of Useable Open Space where 1,955 square feet is required (BMC Section 23.304.090(A)).
- c. Provide 28 square feet of landscaped Useable Open Space, where 782 square feet is required (BMC Section 23.304.090(B)(7)).
- d. Provide no long-term bicycle parking, where 61 long-term spaces are required (BMC Section 23.322.0690(A)(2)).
- e. Remove the camphor street tree on Durant Avenue; where street tree removal requires the City Arborist’s approval (BMC Section 12.44.020).

In accordance with Government Code Section 65915(e), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds that the approval of waivers is required 1) to construct the proposed project at the density permitted under State law; 2) approval of requested waivers will not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) approval of the requested waivers will not be contrary to State or Federal law.

Housing Accountability Act

The Housing Accountability Act, Government Code Section 65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and

zoning standards, a local agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that: (1) the development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density; and (2) there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.

Evidence: The project is a “housing development project” with at least two-thirds of the floor area in residential use. Because the project complies with applicable objective general plan and zoning standards, as modified by density bonus, concessions, and waivers under State Density Bonus Law, Section 65589.5(j) does apply to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, policies, or conditions, have been identified.

3. As required by BMC Section 23.406.040(E)(3) “Findings for Approval”, when taking action on a Use Permit, the ZAB shall consider in its findings:

- a) The proposed land use; and

Evidence: The proposed land use meets the findings for approval because the proposed multi-family residential use is consistent with the R-SMU District purposes. One of the purposes of the R-SMU District is to “implement General Plan and Southside Plan policy by encouraging high-density, multi-story residential development close to major shopping, transportation, and employment centers.” The project provides a high-density multi-story residential development near the UC Berkeley campus, Downtown Berkeley, and the Downtown Berkeley BART station.

Another purpose of the R-SMU District is to “make housing available for persons who desire a convenient location, but who require relatively small amounts of usable open space, yet assure adequate light, air, privacy and usable open space to promote and protect their physical and mental health.” The proposed residential building will provide housing close to Downtown Berkeley and the UC Berkeley campus, and will provide useable open space at the seventh-floor roof deck.

- b) The structure or addition that accommodates the use.

Evidence: The proposed seven-story residential building meets the findings for approval because it meets the R-SMU District development standards, with waivers to allow for a State Density Bonus.

4. As required by BMC Section 23.406.040(E)(4) “Findings for Approval”, required findings shall be made based on the circumstances existing at the time a decision is made on the application.

Evidence: The required findings are satisfied because the project has been determined to be fully compliant with all applicable regulations based on the project plans submitted on May 4, 2026, included as analysis in this report, and evaluated based on the existing conditions of the subject site and surrounding neighborhood at the time of decision.



**STANDARD CONDITIONS OF APPROVAL
APPLICABILITY**

Development projects approved through the City of Berkeley are subject to Standard Conditions of Approval (Standard COAs). The City of Berkeley has established Standard COAs that identify requirements for the construction and operation of the approved project. This includes general administrative conditions, permitting requirements, project construction and the regulation of on-going, on-site uses. Compliance requirements with the Berkeley Municipal Code, building permit review and issuance process, construction, final inspection requirements, certificate of occupancy, and on-going operations of the approved use are included in this document.

The Standard COAs may vary based on site size, location, environmental settings, topography, historic alteration or approved uses. Variations in the application of the Standard COAs may occur based on the project scope and site-specific characteristics including but not limited to parcel size, location, topography, and use.

Conditions which have specified thresholds due to size, uses, and other characteristics are identified.

Part I. Administrative Conditions

- A. General Project Conditions
- B. Project Specific Conditions
- C. Final Approval Conditions – Not Applicable
- D. On-Going Operational Conditions

Part II. Prior to Issuance of Demolition Permit

Part III. At the Time of Building Permit Submittal

Part IV. Prior to Issuance of Building Permit

- A. Building & Safety/Land Use Planning
- B. Public Works
- C. Toxics
- D. Health Housing Community Services
- E. Rent Stabilization Board – Not Applicable

Part V. During Demolition/Construction

- A. Building & Safety
- B. Land Use Planning
- C. Public Works
- D. Toxics
- E. Health Housing Community Services

Part VI. Prior to Final Inspection

Part VII. Prior to Certificate of Occupancy

Part. VIII. Fees

Part IX. Operational Conditions – Not Applicable

- A. Alcoholic Beverage Service
- B. Hot Tubs

Part X. HARD HATS – Not Applicable

Part XI. Assembly Bill 130



Site Address: 2298 Durant Avenue
Application Number: ZP2026-0039

Project Description: The applicant is seeking approval to demolish a commercial building and construct a seven-story, 85-foot, 49,970 sq. ft. multifamily building containing 45 dwellings, including 2 Very-Low Income (VLI) units, utilizing a State Density Bonus.

The approved project at 2298 Durant Avenue includes the following distribution of Below Market Rate (BMR) units.

Required Minimum BMR Units Per Code					BMR Proposal per Affordability Level
Code Section	BMC Chapter 23.328 (Inclusionary Housing) ^a	State Density Bonus Law (Gov. Code Section 65915) ^b	State Replacement SB330/DBL ^b	BMC Chapter 23.326 (Demolition Ordinance) Replacement ^a	
Extremely-Low Income (= <30% AMI)	-	-	-	-	-
Very-Low Income (31%-50% AMI)	4	2	-	-	2
Low-Income (51%-80% AMI)	4 ^c	-	-	-	-
Moderate-Income (81%-100% AMI)	-	-	-	-	-
Total BMRs in Project					2
Notes: ^a These units shall satisfy requirements for equivalency, even unit distribution and a term of affordability in perpetuity per the Inclusionary Ordinance (BMC Chapter 23.328) and Demolition Ordinance (BMC Chapter 23.326). ^b These units shall satisfy requirements for equivalency and a term of affordability for at least 55 years per State Density Bonus law (Government Code Section 65915). ^c The Inclusionary Housing Low-Income unit requirement will be paid with an in-lieu fee. See the project Affordable Housing Compliance Plan for details.					



CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

I. Administrative Conditions A. General Project Conditions		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Project Approval. This Project approval is for 2298 Durant Avenue, as substantially shown and described on the Project plans dated April 30, 2026, except as required to be modified by Conditions of Approval herein and plans as presented to the Zoning Adjustments Board on August 13, 2026 (“Approval Date.”). This Project vested on March 9, 2026 through PLN2026-0074. For any Condition herein that requires preparation of a Final Plan where the project applicant has submitted a conceptual plan, the Project applicant shall submit final plan(s) in substantial conformance with the conceptual plan and incorporate any required modifications.	City of Berkeley	On-Going	Land Use Planning
2.	Approval Limited to Proposed Project and Replacement of Existing Uses. This Use Permit authorizes only the Proposed Project described in the application. This project approval does not authorize other uses, structures or activities not included in the Project Description. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant shall obtain all permits required by the Zoning Ordinance for the use. (BMC Sections 23.404.060.B.1 and 2)	City of Berkeley BMC Sections 23.404.060	On-Going	Land Use Planning
3.	Compliance Required. All land uses and structures in the City of Berkeley shall comply with the Zoning Ordinance and all applicable City ordinances and regulations.	City of Berkeley BMC Section 23.102.050(B)	On-Going	Land Use Planning
4.	Other Regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.	City of Berkeley BMC Section 23.102.050 (E)	On-Going	Land Use Planning
5.	Conformance with Approved Plans. All work performed under an approved Use Permit shall follow the approved plans as presented to ZAB on August 13, 2026 and pursuant to the Conditions of Approval.	City of Berkeley BMC Section 23.404.060 (B)(4)	On-Going	Land Use Planning



CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

I. Administrative Conditions A. General Project Conditions		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
6.	Permit Modifications. No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Adjustments Board. The Zoning Officer may approve changes to plans approved by the Board which reduce the size of the Project, consistent with the Board’s policy adopted on May 24, 1978.	City of Berkeley BMC Section 23.404.070	On-Going	Land Use Planning
7.	Permit Revocation. The City may revoke or modify a discretionary permit for completed projects due to: 1) Violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. No lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board, or City Council referral.	City of Berkeley BMC Section 23.404.080	On-Going	Land Use Planning
8.	Permit Remains Effective for Vacant Property. Once a permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard COA #6 above.	City of Berkeley BMC Section 23.404.060	On-Going	Land Use Planning



CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

I. Administrative Conditions A. General Project Conditions		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
9.	Exercise and Expiration of Permits A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property. A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property. B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun. C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the Zoning Adjustments Board in accordance with Chapter 23.410 (Appeals and Certification). D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant shall apply for and receive City approval of a new permit.	City of Berkeley BMC Section 23.404.060 (C)	On-Going	Land Use Planning



CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

I. Administrative Conditions A. General Project Conditions		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
10.	Hold Harmless. The permittee agrees as a Condition of Approval of this application to indemnify, protect, defend with counsel selected by the City, and hold harmless, the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorney’s fees and disbursements (collectively, “Claims”) arising out of or in any way relating to the approval of this application, any actions taken by the City related to this entitlement, or any environmental review conducted under the California Environmental Quality Act, Public Resources Code Section 210000 et seq., for this entitlement and related actions. The indemnification shall include any Claims that may be asserted by any person or entity, including the permittee, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents. The permittee’s duty to defend the City shall not apply in those instances when the permittee has asserted the Claims, although the permittee shall still have a duty to indemnify, protect and hold harmless the City.	City of Berkeley	On-Going	Land Use Planning
11.	Compliance with Conditions of Approval and Environmental Mitigations. The Building Permit application is subject to verification of compliance of these Conditions of Approval and any applicable Mitigation Measures. The applicant shall be responsible for demonstrating compliance with all Conditions of Approval per the timeline set forth by this Permit.	City of Berkeley	On-Going	Land Use Planning



CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

I. Administrative Conditions A. General Project Conditions		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
12.	Demolition. Demolition of the existing building and structures cannot commence until a complete building permit application is submitted for the replacement building. All plans presented to the City to obtain a building permit to allow the demolition are subject to these Conditions of Approval.	City of Berkeley	On-Going	Building & Safety/Land Use Planning

I. Administrative Conditions B. Project Specific Conditions		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Pursuant to BMC 23.404.050(H), the Zoning Adjustments Board attaches the following additional Conditions of Approval to this Permit: N/A	City of Berkeley BMC Section 23.040.050 (H)	N/A	N/A



CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

I. Administrative Conditions D. On-Going Operational Conditions		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The Finance Department, Customer Service Center shall add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts.	City of Berkeley BMC Section 14.72.080 (C) (1)	On-Going	Land Use Planning
2.	Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.	City of Berkeley	On-Going	Land Use Planning

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

II. Prior to Issuance of Demolition Permit		<u>Regulation Source</u>	<u>Timing/Implementation</u>	<u>Enforcement/ Monitoring</u>
1.	Conditions of Approval Included in Building Permit Plan Submittal A. Use Permit. The Conditions of Approval for this Permit shall be printed on the <i>second</i> sheet of each plan set submitted for a building permit pursuant to this Permit, under the title ‘Use Permit Conditions.’ <i>Additional sheets may also be used if the second sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; (8-1/2” by 11” sheets are not acceptable)</i>	City of Berkeley	Prior to Demolition Permit Issuance	Building & Safety/Land Use Planning
2.	Project Liaison. The applicant shall include in all building permit plans and post onsite the name, e-mail address, and telephone number of an individual empowered to manage construction-related complaints generated from the Project. The individual’s name, telephone number, and responsibility for the Project shall be posted at the project site for the duration of the Project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response and submit written reports of such complaints and actions to the project planner on a weekly basis. Please designate the name of this individual below: ☐ Project Liaison _____ Name Phone #	City of Berkeley	Prior to Demolition Permit Issuance	Building & Safety/Land Use Planning



CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue

Application Number: ZP2026-0039

3.	Construction Noise Management - Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within 500 feet of the project site. This notice shall at a minimum provide the following: (1) Project Description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name, e-mail, and phone number of the Project Liaison for the Project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.	City of Berkeley	Prior to Demolition Permit Issuance (At least Two Weeks Prior to Construction Commencement)	Building & Safety Division
4.	Construction Phases. The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or their designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these Conditions of Approval. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.	City of Berkeley	Prior to Demolition Permit Issuance	Building & Safety/Land Use Planning
5.	HVAC Noise Reduction. Prior to the issuance of building permits, the Project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.	City of Berkeley BMC Section 13.40.050	Prior to Demolition Permit Issuance	Building & Safety/Land Use Planning



CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

6.	Condition and Compliance Monitoring. The applicant shall pay a \$22,000 deposit for the cost of monitoring compliance with the Conditions of Approval and other applicable conditions and regulations prior to issuance of building permit. <u>City staff shall obtain a scope and cost from a pre-approved consultant to conduct required monitoring compliance.</u> If compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses <u>prior to the initiation of monitoring compliance.</u> <u>The City shall not issue a notice-to-proceed until all funds are deposited.</u> Any unused deposit will be refunded to the applicant.	City of Berkeley	Prior to Demolition Permit Issuance	Land Use Planning
7.	Erosion Prevention Plan. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season, the applicant shall obtain approval of an erosion prevention plan from the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.	City of Berkeley	Prior to Demolition Permit Issuance	Building & Safety/Public Works
8.	Construction and Demolition Diversion. The applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 “Berkeley Green Code” including 100 percent diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65 percent diversion of other nonhazardous construction and demolition waste.	City of Berkeley BMC Chapter 19.37	Prior to Demolition Permit Issuance	Building & Safety/Public Works
9.	Phase I Environmental Site Assessment (ESA) (per ASTM 1527). A recent Phase I ESA (less than 2 years old) shall be submitted to the Toxics Management Division for all new commercial, industrial and mixed-use developments, all improvement projects that require work 5 or more feet below grade , and all new residential buildings with more than four dwelling units located in the Environmental Management Area (or EMA). The EMA can be viewed at: City of Berkeley Community GIS Portal (arcgis.com)	City of Berkeley	Prior to Demolition Permit Issuance	Toxics Management Division



CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
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10.	Construction Noise Reduction Program. The applicant shall develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits compliance with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical: A. Construction equipment should be well maintained and used judiciously to be as quiet as practical. B. Equip with all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment. C. Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible. D. Locate stationary noise-generating equipment as far as possible from sensitive receptors. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible. E. Prohibit unnecessary idling of internal combustion engines. F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile. G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise. H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.	City of Berkeley BMC Section 13.40.070	Prior to Demolition Permit Issuance	Zoning Officer
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CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

11.	Damage Due to Construction Vibration. The Project applicant shall submit screening level analysis prior to demolition permit issuance. The analysis shall account for project specific information including the composition of the structures, location of the various types of equipment used during each phase of the Project, as well as the soil characteristics in the Project area, in order to determine whether Project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. • If a screening level analysis shows that the Project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). • If the assessment finds that the Project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake an existing conditions study (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage. This study shall include: - o Establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and - o include written descriptions and photographs.	City of Berkeley	Prior to Demolition Permit Issuance	Building & Safety Division/Zoning Officer
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CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

III. At the Time of Building Permit Submittal		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Height Survey Required. The applicant shall provide a letter from a licensed surveyor or licensed civil engineer at the time of building permit submittal verifying compliance with the maximum building height of 85 feet pursuant to BMC 23.106.090 (B) “Maximum Building Height.” Per Public Resources Code Section 21080.66(d)(2), the labor standards of paragraph (8) of subdivision (a) of Section 65913.4 of the Government Code shall apply to buildings over 85 feet in height above grade.	Public Resources Code Section 21080.66(d)(2)	At Building Permit Submittal	Land Use Planning Staff
2.	Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.	City of Berkeley	At Building Permit Submittal	Public Works
3.	National Pollution Discharge Elimination System (NPDES). The applicant shall demonstrate compliance with the City’s National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply: A. The Project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions. B. Trash enclosures and/or recycling areas shall be covered, and no other areas shall drain onto these areas. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and the East Bay Municipal Utility District (EBMUD) for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.	City of Berkeley BMC Section 17.20	At Building Permit Submittal	Public Works



CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
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	C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans. D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a building permit. E. All paved outdoor storage areas shall be designed to reduce/limit the potential for runoff to contact pollutants. F. All on-site storm drain inlets/catch basins shall be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the Project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Department. G. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City. H. Washing and/or steam cleaning shall be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing shall be managed in such a way that there is no discharge of soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the East Bay Municipal Utility District.			
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CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

	I. All loading areas shall be designated to minimize run-on or run-off from the area. Accumulated wastewater that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup. J. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge. K. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.			
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CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

IV. Prior to Issuance Building Permit: A. Building & Safety/Land Use Planning		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Acoustic Report. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the Project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.	City of Berkeley	Prior to Building Permit Issuance	Building & Safety/Land Use Planning
2.	Pay Transparency Acknowledgement. Prior to the issuance of a building permit for any Project subject to this Chapter: A. A Responsible Representative of the permittee shall certify under penalty of perjury that: (1) the Permittee has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (2) the Permittee will be responsible for demonstrating compliance with this Chapter. B. The Permittee shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. A Responsible Representative of the permittee shall certify under penalty of perjury that the contractor and all Qualifying Subcontractors performing work on the Project will comply with Chapter 13.104 of the Berkeley Municipal Code and with Labor Code sections 226(a) and 2810.5 for each employee who works on the Project.	City of Berkeley BMC Section 13.104.030	Prior to Building Permit Issuance	Building & Safety
3.	Air Quality - Diesel Particulate Matter Controls during Construction. All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with either A or B, and C: A. The Project applicant shall prepare a health risk assessment that demonstrates the Project’s on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from the Bay Area Air District and the California Office of Environmental Health Hazard Assessment. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or	City of Berkeley	Prior to Building Permit Issuance	Land Use Planning/ Public Works



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	B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications. C. In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following: i. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date. ii. A Certification Statement that the contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.			
4.	Construction Emissions Reduction Measures. Development projects shall comply with the current Bay Area Air District’s basic control measures for reducing construction emissions of PM10 (Table 8-2, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the May 2017 Air District CEQA Guidelines), outlined below. 1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times a day. 2. All haul trucks transporting soil, sand, or other loose material offsite shall be covered. 3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. 4. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour. 5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building	Air Quality District	Prior to Building Permit Issuance	Land Use Planning/ Building and Safety/Air Quality District



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	pads shall be laid as soon as possible after grading unless seeding or soil binders are used. 6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California Airborne Toxics Control Measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points. 7. All construction equipment shall be maintained and properly tuned in accordance with manufacture’s specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper conditions prior to operation. 8. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District’s number shall also be visible to ensure compliance with applicable regulations.			
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IV. Prior to Issuance of Building Permit: B. Public Works		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Transportation Construction Plan. The applicant and all persons associated with the Project are hereby notified that a Transportation Construction Plan (TCP) may be required, particularly for the following activities: A. Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes); B. Storage of building materials, equipment, dumpsters, debris anywhere in the public right of way; C. Provision of exclusive contractor parking on-street; or D. Significant truck activity. Please contact the Department of Public Works Transportation Division at (510) 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be stamped and signed by a registered engineer prior to submittal. The TCP shall be consistent with any other requirements of the construction phase. A current copy of the TCP shall be available at all times at the construction site for review by City Staff.	City of Berkeley	Prior to Building Permit Issuance	Public Works



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IV. Prior to Issuance of Building Permit: C. Toxics		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Demolitions & Renovations – Building Materials Survey. A hazardous materials survey shall be prepared by qualified professionals and submitted to the Toxics Management Division (TMD) prior to issuance of the building permit. The survey shall identify building materials, plans for hazardous materials, hazardous waste removal and disposal, the identification of all materials to be disturbed for lead-based paints, PCB containing equipment and caulking, hydraulic fluids, refrigerants, treated wood, and mercury containing devices (including fluorescent light bulbs and mercury switches), asbestos and other hazardous materials and chemicals. The report to the TMD shall include, in addition to the survey, plans on hazardous materials and hazardous waste removal and disposal that comply with State and Federal codes including California Code of Regulations (CCR) 66260 et seq.	City of Berkeley	Prior to Issuance of Building Permit	Toxics Management Division
2.	Asbestos Identified. Pursuant to Bay Area Air District Regulation 11-2-401.3, if asbestos is identified a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center. Contractors shall follow state regulations where there is asbestos-related work involving 100 square feet or more of asbestos containing material (8 Cal. Code Regs. §1529, §341.6 et seq.)	Bay Area Air District	Prior to Issuance of Building Permit	Bay Area Air District
3.	Environmental Site Clearance. Prior to issuance of any building permits, the applicant shall submit to the Toxics Management Division (TMD) an environmental screening clearance to ensure that the property meets development investigation and cleanup standards for the specific use proposed on the property. Documentation in the form of a letter shall be provided from one of the following external agencies: • San Francisco Bay Regional Water Quality Control Board (RWQCB); • California Department of Toxic Substances Control (DTSC); or • The Alameda County Department of Environmental Health’s Local Oversight Program (LOP).	City of Berkeley	Prior to Issuance of Building Permit	Toxics Management Division



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IV. Prior to Issuance of Building Permit: D. Health, Housing & Community Services (HHCS)		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Final Affordable Housing Compliance Plan. The final Affordable Housing Compliance Plan (“AHCP”) shall be submitted to the Zoning Officer and the Department of Health, Housing, and Community Services prior to the issuance of Building Permit. Projects that receive approval from the Building Official for multiple phase construction permits shall have the final AHCP certified prior to the issuance of the phase one building permit.	City of Berkeley BMC Section 23.328.050 (A)	Prior to Issuance of Building Permit	Land Use Planning/ Health, Housing and Community Services
2.	Regulatory Agreement: Inclusionary Housing. The Applicant shall execute a Regulatory Agreement and Declaration of Restrictive Covenants to regulate all Affordable Units provided in a Housing Development Project. No building permit shall be issued for the project until the Regulatory Agreement and Declaration of Restrictive Covenants are executed.	City of Berkeley BMC Section 23.328.050 (B)	Prior to Issuance of Building Permit	Health, Housing and Community Services
3.	Below Market Rate Units. The Project shall provide below market rate rental dwelling units (BMR Units), which are required to comply with the State Density Bonus Law (Government Code Section 65915). by BMC Chapter 23.328 “Inclusionary Housing” and BMC Chapter 23.326 “Demolition and Dwelling Unit Controls.” The total number of BMR Units shall be designated in the Regulatory Agreement. All BMR units are required to comply with the stricter of State Density Bonus Law (Government Code Section 65915), BMC Section 23.328, or BMC Section 23.326.	State of California/ City of Berkeley	Prior to Issuance of Building Permit	Health, Housing and Community Services



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4.	Pay Transparency Acknowledgement. Prior to the issuance of a building permit for any Project subject to this Chapter: 1. A. A Responsible Representative of the Permittee shall certify under penalty of perjury that: (1) the Permittee has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (2) the Permittee will be responsible for demonstrating compliance with this Chapter. 2. B. The Permittee shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. A Responsible Representative of the Permittee shall certify under penalty of perjury that the Contractor and all Qualifying Subcontractors performing work on the Project will comply with Chapter 13.104 of the Berkeley Municipal Code and with Labor Code sections 226(a) and 2810.5 for each employee who works on the Project.	City of Berkeley BMC Section 13.104.030	Prior to Building Permit Issuance	Health, Housing & Community Services
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V. During Demolition/Construction A. Building & Safety		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Construction Hours. Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal holiday.	City of Berkeley BMC 13.40.070 (B) (7)	During Demolition/Construction	Building & Safety
2.	Construction Hours Exceptions. Prior to initiating any activity that might require a longer period, the applicant shall notify the Zoning Officer in writing and request an exception for a specific period of time. If an exception is approved, then the applicant shall notify businesses and residents within 500 feet of the Project site describing the expanded construction hours two weeks prior to the expanded schedule start. The Project shall only be allowed 15 extended working days.	City of Berkeley	During Demolition/Construction	Environmental Health/ Land Use Planning
3.	Project Construction Website. The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant: • Contact information (i.e. “hotline” phone number, and email address) for the Project construction manager • Calendar and schedule of daily/weekly/monthly construction activities • The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.	City of Berkeley	During Demolition/Construction	Building & Safety
4.	Construction / No Parking Permits. If “Construction/No Parking Permits” are required, the applicant shall contact the Permit Service Center for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). The Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health or safety of the surrounding neighborhood.	City of Berkeley	During Demolition/Construction	Building & Safety



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V. During Demolition/Construction: B. Land Use Planning		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Avoid Disturbance of Nesting Birds. Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the Project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the Migratory Bird Treaty Act and the California Fish & Game Code, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.	California Department of Fish & Wildlife (CDFW)/ City of Berkeley	During Demolition/Construction	Land Use Planning
2.	Pre-Construction Meeting. The applicant shall request a virtual meeting with Land Use Planning (the Project Planner and Construction Monitoring Consultant, if applicable) and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review the project's Conditions of Approval (and Mitigation Measures, if applicable) and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction are aware of the Conditions of Approval prior to ground disturbance on the site.	City of Berkeley	Prior to issuance of demolition/construction permit as applicable	Land Use Planning



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3.	Unanticipated Discovery of Paleontological Resources. In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified archeologist (per Secretary of Professional Qualification Standards National Park Service 1983). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The archeologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the archeologist shall prepare an excavation plan for mitigating the effect of the Project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.	City of Berkeley	During Demolition/Construction	Land Use Planning
4.	Unanticipated Discovery of Tribal Cultural Resources. In the event that Tribal Cultural Resources are identified during construction, all work within 50 feet of the discovery shall be redirected. The Project applicant and Project construction contractor shall notify the Land Use Planning Division within 24 hours. The City will contact any tribes who have requested consultation under AB 130 , as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a Tribal Cultural Resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.	City of Berkeley	During Demolition/Construction	Land Use Planning
5.	Unanticipated Discovery of Archeological Resources. Pursuant to CEQA Guidelines section 15064.5(f), “provisions for historical or unique paleontological resources accidentally discovered during construction” should be instituted. Therefore:	City of Berkeley	During Demolition/Construction	Land Use Planning



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	A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within a minimum of 50 feet of the resources shall be halted and the Project applicant and/or lead agency shall consult with a Registered Professional Archeologist or paleontologist, and the culturally-affiliated California Native American Tribe (“Tribe”) to assess the significance of the find. B. If any find is determined to be significant, representatives of the Project proponent and/or the lead agency and the Tribe shall meet to determine the appropriate avoidance measures or other appropriate measures to mitigate impacts to the Tribal Cultural Resource., C. In considering any suggested measure proposed by the Registered Professional Archeologist, the Tribe and the lead agency shall confer and such consultation will be considered concluded when either of the following occurs: (1) the parties agree to mitigation measures to mitigate or avoid a significant effect, if a significant effect exists, on a Tribal Cultural Resource or (2) A party, acting in good faith after reasonable effort, concludes that mutual agreement cannot be reached. D. If avoidance is unnecessary or infeasible, other appropriate measures such as removal and reburial of the Tribal Cultural Resource in an alternate location with tribal cultural monitor such as removal and reburial of the Tribal Cultural Resource in an alternate location with tribal cultural monitors may be instituted. Work may proceed on other parts of the Project site while mitigation measures for cultural resources is carried out. E. If significant materials are recovered, the Registered Professional Archeologist shall prepare a report on the findings for submittal to the Northwest Information Center.			
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6.	Discovery of Human Remains. In the event that human skeletal remains are uncovered at the Project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines Upon the discovery of the Native American remains, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in this section, with the most likely descendants regarding their recommendations, if applicable, taking into account the possibility of multiple human remains. The landowner shall discuss and confer with the descendants all reasonable options regarding the descendants’ preferences for treatment. A. The descendants’ preferences for treatment may include the following: i. The nondestructive removal and analysis of human remains and items associated with Native American human remains. ii. Preservation of Native American human remains and associated items in place. iii. Relinquishment of Native American human remains and associated items to the descendants for treatment. iv. Other culturally appropriate treatment. B. The parties may also mutually agree to extend discussions, taking into account the possibility that additional or multiple Native American human remains, as defined in this section, are located in the Project area providing a basis for additional treatment measures. C. For the purposes of this section, “conferral” or “discuss and confer” means the meaningful and timely discussion and careful consideration of the views of each party, in a manner that is cognizant of all parties’ cultural values, and where feasible, seeking agreement. Each party shall recognize the other’s needs and concerns for confidentiality of information provided to the other.	City of Berkeley	During Demolition/Construction	Land Use Planning
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	i. Human remains of a Native American may be an inhumation or cremation, and in any state of decomposition or skeletal completeness. ii. Any items associated with human remains that are placed or buried with Native American human remains are to be treated in the same manner as the remains, but do not by themselves constitute human remains. D. Whenever the commission is unable to identify a descendant, or the descendants identified fail to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the descendants and the mediation provided for in subdivision (k) of Public Resources Code Section 5097.94. if invoked, fails to provide measures acceptable to the landowner, the landowner or his or her authorized representative shall inter the human remains and items associated with Native American human remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance. To protect these sites, that landowner shall do one or more of the following: i. Record the site with the commission or the appropriate Information Center. ii. Utilize an open-space or conservation zoning designation or easement. iii. Record a document with the county in which the property is located. F. Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to subdivision (e). G. Pursuant to State law, any action taken to implement an agreement developed pursuant to this Condition of Approval shall be exempt from the CEQA.			
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V. During Demolition/Construction: C. Public Works		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Debris. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.	City of Berkeley	During Construction	Public Works
2.	Excavation. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.	City of Berkeley	During Construction	Public Works
3.	Sandbags. The Project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The Project sponsor shall comply with all City ordinances regarding construction and grading.	City of Berkeley	During Construction	Public Works
4.	Fire Hydrant. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City’s Public Works Department for the relocation of the fire hydrant during construction.	City of Berkeley	During Construction	Public Works
5.	Underground Utilities. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.	City of Berkeley	During Construction	Public Works



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6.	Public Works - Implement Bay Area Air District Recommended Measures during Construction. For all proposed projects, the Bay Area Air District recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust: A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered. C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. D. All vehicle speeds on unpaved roads shall be limited to 15 mph. E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer specifications. All equipment shall be checked by a certified visible emissions evaluator. H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Bay Area Air District’s phone number shall also be visible to ensure compliance with applicable regulations.	City of Berkeley/ Bay Area Air District	During Construction	Public Works
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V. During Demolition/Construction: E. Health Housing Community Services		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Posting of Wage Theft Ordinance. Each day work is performed on the Project , each permittee shall post, and keep posted in a conspicuous location where it may be easily read by employees during the hours of the workday, a notice that: (A) contains the text of Chapter 13.104 of the BMC; (B) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (C) provides current contact information, including office address, telephone number, and email address of the Labor Commissioner of the State of California.	City of Berkeley BMC Section 13.104.050 BMC Section 13.104.020 (F)	During Demolition/Construction	Health, Housing Community Services
2.	Wage Theft Prevention. For Projects without a Labor Agreement, the requirements of Sections 13.104.030 through 13.104.050 shall be included as Conditions of Approval of any Use Permit or Zoning Certificate for any project that is subject to this Chapter. Failure to comply with the requirements of any provision of this Chapter shall be grounds for issuance of an administrative citation under Chapter 1.28 and/or the revocation or modification of any permit issued for the Project under BMC Chapter 23.404.	City of Berkeley BMC Section 13.104.060 BMC Section 13.104.020 (F)	During Demolition/Construction	Health, Housing Community Services

VI. Prior to Final Inspection		Regulation Source	Timing/Implementation	Enforcement/Monitoring
1.	Address Assignment. The applicant shall file an “Address Assignment Request Application” with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and entered into the City’s database after the building permit is issued but prior to final inspection.	City of Berkeley BMC 16.28.030	Prior to Final Inspection	Building & Safety/Land Use Planning



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2.	Pay Transparency Attestations following Project Completion. Within 10 days of the approved final inspection of any project subject to this Chapter, each permittee shall provide to the City for each Contractor and Qualifying Subcontractor a Pay Transparency Attestation on a form approved by the City. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor shall attest under penalty of perjury that the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code and Labor Code sections 226(a) and 2810.5 for each employee who performed work on the Project. The City will maintain Pay Transparency Attestation forms for period of at least three years after their date of receipt by the City. (BMC Section 13.104.040).	City of Berkeley BMC 13.104 BMC Section 13.104.020 (F)	Within 10 Days of Approved Final Inspection	Health, Housing & Community Services
3.	Construction and Demolition Diversion Receipt Reporting. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using Green Halo and submit online for City review and approval prior to final inspection. Alternatively, complete the Construction Waste Management Plan and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.	City of Berkeley	Prior to Final Inspection	Building & Safety

VII. Prior to Certificate of Occupancy		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Planning Inspection. Planning staff shall conduct a site visit to review exterior building elevations for architectural consistency with the approved plans and landscape installation (if required). All exterior finishing details including window trim, paint, gutters, downspouts, decking, guardrails, and driveway installation shall be in place prior to scheduling the final inspection.	City of Berkeley	Prior to Certificate of Occupancy	Land Use Planning
2.	Post Construction Review. Upon completion of the Project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to	City of Berkeley	Prior to Certificate of Occupancy	Building & Safety/Land Use Planning



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	whether the proposed Project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that Project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the Project sponsor, provided that the property owner approves of the repair.			
3.	Inclusionary Housing. Dwellings that are approved as rental units, but in which a condo map is approved prior to issuance of an occupancy permit, shall be subject to the affordability requirements within BMC 23.328 in effect on March 31, 2023.	City of Berkeley BMC Section 23.328	Prior to Certificate of Occupancy	Land Use Planning
4.	Transportation Demand Management. Prior to issuance of a Certificate of Occupancy, the property owner shall schedule a site inspection with Land Use Planning staff to confirm that the physical improvements required in BMC Section 23.334.030 (C) “Real-Time Transportation Information” and BMC 23.322.090 (A)(2) “Residential Bike Parking” have been installed. A Parking and Transportation Demand Management compliance report documenting that the programmatic measures required in BMC Sections 23.334.030(C) and 23.322.090 are implemented shall be submitted to the Land Use Division prior to occupancy, and on an annual basis thereafter, which demonstrates that the Project is compliant with the applicable requirements in these sections. A. Unbundled Parking. Pursuant to BMC Section 23.334.030(A), all parking spaces provided for residents be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units. The property owner shall notify all residents of this restriction in leases and/or contracts and shall provide sample leases and/or contracts including such notification to the Project planner prior to issuance of Certificate of Occupancy or final inspection. B. Transit Benefit. 1. Pursuant to BMC Section 23.334.030 (B) , at least one of the following transit benefits shall be offered, at no cost to the resident, for a period of ten (10) years after the issuance of a Certificate of Occupancy. A notice describing these transportation benefits shall be posted in a location or locations visible to all residents. (a) A monthly pass for unlimited local bus transit service; or	City of Berkeley BMC Section 23.334.030 (C) BMC 23.322.090 (A)(2) BMC Section 23.334.030 (B)	Prior to Certificate of Occupancy	Land Use Planning



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	(b) A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.			
5.	Transportation Demand Management: Residential Projects that include 99 dwelling units or fewer. The project shall provide one transit benefit per bedroom, up to a maximum of two benefits per dwelling unit.	City of Berkeley BMC 23.334.030 (B) (2)	Prior to Certificate of Occupancy	Land Use Planning
6.	Real Time Transportation Information. Any project subject to this chapter shall provide publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors. Provided information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.	City of Berkeley BMC Section 23.334.030 (C)	Prior to Certificate of Occupancy	Land Use Planning

VIII. Fees		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Percent for Public Art. Pursuant to BMC 23.316, the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.	City of Berkeley BMC Section 23.316	Prior to Certificate of Occupancy	Office of Economic Development
2.	Payment of Affordable Housing In-Lieu Fee. The Affordable Housing In-Lieu Fee shall be paid as required by BMC Section 23.328.030(B) and Resolution 70,698 N.S. The fee for this project is \$1,477,210.51, subject to proration to reflect any affordable units provided. Any adjustments to the fee and the final fee amount will be determined prior to building permit issuance as part of the Affordable Housing Compliance Plan approval. The In-Lieu Fee shall be paid prior to the issuance of the first Certificate of Occupancy, or if no Certificate of Occupancy is required, prior to the final inspection of the Project. Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit	City of Berkeley BMC Section 23.328.030 (B)	Prior to Final Inspection	Health, Housing & Community Services



CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
Application Number: ZP2026-0039

	or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.			
XI. Assembly Bill 130		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Pursuant to Public Resources Code Section 21080.66 (b) (4) the City of Berkeley shall include, as binding conditions of the project approval, all of the following: (A) Any enforceable agreements reached during the project consultation. (i) Agreement reached with the Muwekma Ohlone Tribe : (I) Muwekma Ohlone tribal monitors be hired for all subsurface ground excavations for this housing project in order to ensure that any and all ancestral heritage artifacts, human remains and subsurface features are carefully addressed and dealt with by the Tribe and any hired CRM firm. (II) Tribal monitoring occur during all ground-disturbing activities unless and until a qualified archaeologist and tribal representative mutually determine that excavation is confined to previously disturbed soils with no reasonable potential to encounter tribal cultural resources, archaeological deposits, or Native American ancestral remains. (III) Tribal monitors be provided at least two business days (48 hours excluding weekends and holidays) advance notice of scheduled ground-disturbing activities. (IV) Work halt procedures be implemented in the event of a potential tribal cultural resource discovery. Work may continue in unaffected portions of the project area; however, work should immediately cease within a protective buffer of 50 ft. surrounding any potential tribal cultural resource discovery pending evaluation by the project archaeologist and consultation with the tribal monitor.	State of California Public Resources Code Section 21080.66	Prior to Issuance of Building Permit	Land Use Planning



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	(V) Inadvertent discoveries should be addressed in accordance with applicable state law, including Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and other applicable provisions governing Native American ancestral remains and associated cultural items. In the event that Native American human remains or associated funerary objects are encountered, all work within the vicinity of the discovery shall cease and the appropriate statutory procedures shall be followed. Upon designation by the Native American Heritage Commission, the Most Likely Descendant (MLD) shall be afforded the opportunity to make recommendations regarding the treatment, avoidance, preservation, reburial, and disposition of the remains and any associated cultural items in accordance with state law. The Tribe requests that the recommendations of the NAHC-designated MLD be implemented to the maximum extent feasible, and that avoidance and preservation in place remain the preferred treatment option whenever feasible. Consultation with the MLD shall occur prior to the implementation of any treatment measures affecting Native American ancestral remains or associated funerary objects. For discoveries of tribal cultural resources that do not involve human remains, the Muwekma Ohlone Tribe shall be consulted regarding appropriate avoidance, preservation, and treatment measures prior to the implementation of any actions that may affect the resource; and (VI) Tribal Cultural Sensitivity Training be provided to construction personnel prior to the start of ground disturbance activities, and Muwekma Ohlone Tribe will provide the Tribal Cultural Sensitivity Training. (ii) Agreement reached with the Confederated Villages of Lisjan: (I) The project shall include tribal monitoring by a Confederated Villages of Lisjan monitor during all ground-disturbing activities, as follows: (a)The California Native American tribe shall designate the monitor. (b)The tribal monitor shall comply with applicant’s site access and workplace safety requirements.			
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CONDITIONS OF APPROVAL

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	(c) The applicant shall compensate the tribal monitor at a reasonable rate, determined in good faith, that aligns with customary compensation for cultural resource monitoring, taking into account factors such as the scope and duration of the project. (II) Tribal cultural resources shall be avoided where feasible, in accordance with subdivision (a) of Section 21084.3. In furtherance of this requirement, where feasible, the project applicant shall provide deference to tribal preferences regarding access to spiritual, ceremonial, and burial sites, and incorporate tribal traditional knowledge in the protection and sustainable use of tribal cultural resources and landscapes. (III) All treatment and documentation of tribal cultural resources shall be conducted in a culturally appropriate manner, consistent with Section 21083.9. (IV) A California Historical Resources Information System archaeological records search and a tribal cultural records search shall be completed for the project site. (V) A Sacred Lands Inventory request shall be submitted to the Native American Heritage Commission. (VI) The project shall comply with Section 7050.5 of the Health and Safety Code and Section 5097.98, including immediate work stoppage upon discovery of human remains or burial grounds, and treatment in accordance with applicable law and in consultation with the affected California Native American tribe. Specifically, if cultural resources of Native American origin are identified during grading or excavation of the proposed project, all ground disturbing activities within 50 feet shall cease until a representative from the Confederated Villages of Lisjan Nation is consulted by the government agency. If the entity in consultation with the consulting Tribe(s), determines that the resource is a Tribal Cultural Resource, the entity shall retain a Tribal representative and, if applicable, a qualified archaeologist, at the applicant’s expense, to prepare a mitigation plan, which shall be implemented in consultation with the consulting Tribe. The mitigation plan shall include avoidance of the resource or, if avoidance of the resource is not feasible, the plan shall outline appropriate treatment of the resource in coordination with the consulting Tribe. Examples of			
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CONDITIONS OF APPROVAL

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	appropriate mitigation for Tribal Cultural Resources include, but are not limited to, protecting the cultural character and integrity of the resources, protecting traditional use of the resources, protecting the confidentiality of the resources, and/or permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places. If human remains are encountered during construction and ground disturbing activities, all work within 50 feet of the remains should be redirected and the County Coroner notified immediately. At the same time, an archeologist shall be contacted to assess the situation. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission (NAHC) within 24 hours of this identification. The NAHC will identify a Native American Most Likely Descendent (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and any associated funerary objects. There shall be no pictures taken or testing done on the Native American human remains. All bone, until identified as not human, shall be treated as potential human remains and the appropriate protocols followed. The archaeologist shall record information, as appropriate and in accordance with the recommendations of the MLD and/or Tribal representative. Upon completion of the archeologist’s assessment, a report should be prepared documenting methods and results, as well as the MLD’s recommendations regarding the treatment of the human remains and any associated funerary objects. The report should be submitted to the lead government agency, the NWIC and the consulting Tribe. Tribal representatives will rebury the Native American human remains and associated funerary objects with the appropriate dignity either; in accordance with the recommendations of the MLD if available or in the project vicinity at a location agreed upon between the Tribe and the entity, where the reburial would be accessible to Tribal members in perpetuity and would not be subject to further disturbance. The discovery and reburial is to be kept confidential and secure to prevent any further disturbance. (VII) An application of tribal ecological knowledge into habitat restoration efforts undertaken by the project as applicable to the specific environmental context and conditions of the project.			
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CONDITIONS OF APPROVAL

Property Address: 2298 Durant Avenue
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(B) All of the following measures, unless there is mutual agreement between the California Native American tribe and the project proponent not to include the measure as a binding condition: (i) Upon request by a California Native American tribe, the project shall include tribal monitoring during all ground-disturbing activities, as follows: (I) Confederated Villages of Lisjan Nation shall designate a monitor; Muwekma Ohlone Tribe Incorporated shall designate a monitor (II) Both tribal monitors shall comply with applicant’s site access and workplace safety requirements. (III) The applicant shall compensate both tribal monitors at a reasonable rate, determined in good faith, that aligns with customary compensation for cultural resource monitoring, taking into account factors such as the scope and duration of the project. (ii) Tribal cultural resources shall be avoided where feasible, in accordance with subdivision (a) of Section 21084.3. In furtherance of this requirement, where feasible, the project applicant shall provide deference to tribal preferences regarding access to spiritual, ceremonial, and burial sites, and incorporate tribal traditional knowledge in the protection and sustainable use of tribal cultural resources and landscapes. (iii) All treatment and documentation of tribal cultural resources shall be conducted in a culturally appropriate manner, consistent with Section 21083.9. (iv) A California Historical Resources Information System archaeological records search and a tribal cultural records search shall be completed for the project site. (v) A Sacred Lands Inventory request shall be submitted to the Native American Heritage Commission. (vi) The project shall comply with Section 7050.5 of the Health and Safety Code and Section 5097.98, including immediate work stoppage upon discovery of human remains or burial grounds, and treatment in accordance with applicable law and in consultation with the affected California Native American tribe.			
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CONDITIONS OF APPROVAL

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Application Number: ZP2026-0039

	(vii) An application of tribal ecological knowledge into habitat restoration efforts undertaken by the project as applicable to the specific environmental context and conditions of the project.			
2.	Pursuant to Public Resources Code Section 21080.66 (c) (1) (A) the City of Berkeley shall, as a condition of approval for the development, require the development proponent to complete a Phase I environmental assessment, as defined in Section 78090 of the Health and Safety Code. (B) If a recognized environmental condition is found, the development proponent shall complete a preliminary endangerment assessment, as defined in Section 78095 of the Health and Safety Code, prepared by an environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. (C) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any effects of the release shall be mitigated to levels required by current federal and state statutory and regulatory standards before the local government issues a certificate of occupancy. (D) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to levels required by current federal and state statutory and regulatory standards before the local government issues a certificate of occupancy.	State of California Public Resources Code Section 21080.66	Prior to Issuance of Building Permit	Land Use Planning
3.	Pursuant to Public Resources Code Section 21080.66(d)(2), if the Project is modified at a future date such that the building is over 85 feet tall, the provisions of this Section shall apply.	State of California Public Resources Code Section 21080.66	Prior to Issuance of Building Permit	Land Use Planning
4.	Pursuant to Public Resources Code Section 21080.66(d)(4), the provisions of Section 218.8 of the Labor Code shall extend to the development proponent in addition to the direct contractor or subcontractor. For purposes of this paragraph, “development proponent” shall mean a developer who submits the housing development project application to a local government that is exempt from this division pursuant to this section.	State of California Public Resources Code Section 21080.66	Prior to Issuance of Building Permit	Land Use Planning

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March 3, 2026

Via E-mail

Jordan Klein
Director of Planning and Development
Planning and Development Department
City of Berkeley
1947 Center Street, 3rd Floor
Berkeley, CA 94704

Re: SB 330 Preliminary Application Submittal and AB 130 Checklist -- Request to
Initiate Tribal Consultation for 2298 Durant Avenue

Dear Mr. Klein:

Holland & Knight LLP (“H&K” or “we”) represents 2298 Durant LP (the “Applicant”) in connection with the Applicant’s proposal to develop a 45-unit multifamily residential housing development project (the “Project”) at 2298 Durant Avenue (the “Project Site”) in Berkeley, California (the “City”).

The Applicant has, concurrently with this letter, submitted an SB 330 Preliminary Application and accompanying materials prepared by the Applicant and Rhoades Planning Group. This package also includes an AB 130 consistency checklist using the City’s form, which documents the Project’s eligibility for the AB 130 exemption from the California Environmental Quality Act (“CEQA”).

Pursuant to Public Resources Code section 21080.66(b)(1)(A)(i), the submission of this Preliminary Application initiates the City’s responsibility to begin AB 130’s tribal notification and consultation procedures. Accordingly, we respectfully request that the City:

Jordan Klein
March 3, 2026
Page 2

1. Formally notify and invite tribal consultation by each California Native American tribe that is traditionally and culturally affiliated with the Project Site no later than March 17, 2026, notifying each such tribe that it has 60 days to request consultation.¹
2. Initiate a formal tribal consultation process within 14 days of receiving a response from a qualifying California Native Tribe affirming the tribe's desire to consult with the Applicant and the City regarding the Project, in accordance with the procedures set forth in Public Resources Code section 21080.66(b)(3).²
3. Conclude the formal AB 130 tribal consultation process within 45 days (subject to one 15-day extension, if requested by a tribe).³
4. If no qualifying California Native Tribe accepts the opportunity to participate in the AB 130 consultation process within 60 days of the City's invitation, conclude the AB 130 tribal consultation process.⁴

We respectfully request that you notify us and the Applicant team (1) when tribal consultation notices and invitations have been sent, (2) whether, and which, tribes requested notification within the 60-day period, and (3) whether any extensions are requested, and (4) when tribal consultation has concluded.

If the City requires additional information, please let us know at your earliest convenience. We appreciate the City's review of this Project and look forward to coordinating throughout the entitlement process.

Sincerely yours,

HOLLAND & KNIGHT LLP



Daniel R. Golub
Luca Trumbull

¹ Pub. Res. Code § 21080.66(b)(1)(A).

² Pub. Res. Code § 21080.66(b)(3)(A).

³ Pub. Res. Code § 21080.66(b)(3)(F).

⁴ Pub. Res. Code § 21080.66(b)(2)(B).

Jordan Klein
March 3, 2026
Page 3

260326 - 2298 Durant Neighborhood Meeting Notes

March 26th, 2026 - 5:00-5:30 - Via Zoom Link Distributed by Mail

Attendees:

- Austin Springer - Studio KDA - Project Architect
- Matthew Ent - Valiance Capital - Developer
- Erik Knaresboro - Streets of Equality - Disability City Project and Neighborhood Resident
 - StreetsofEquality@gmail.com
- Mystery Attendee: "H"

Agenda:

- Brief Presentation of the Project
- Q&A

Notes:

- Erik expressed concerns about disabled access to the bus center across the street
 - Told him the likely impacts, including possible shut-downs of the sidewalk. When the sidewalk is shut down, either a protected in-street bypass or a street crossing is required.
 - I assured him that when this process is looked at (during the issuance of our building permit, a separate future process), we will follow all CoB guidelines and that our plans are reviewed by CoB Public Works and Transportation staff.
 - Furthermore - I took his email so that we can reach out during the drafting of the construction plan to be proactive in addressing the needs of the disabled community.
- Erik also asked about Construction times and timelines.
 - We told him that the build would likely last 18-20 months and would comply with CoB construction operation time limits.
- Erik asked about whether the building would be open to just students or to anyone, and also asked if there would be any affordable units in the building.
 - We informed him that the project does not have any tenant restrictions and that we are open to all applicants. We also informed him that we will have 2 Very Low Income (<50%AMI) units.
- A second attendee outside the project team arrived midway through the project presentation (which started promptly at 5:05 pm. Upon completion of the presentation I asked if they would like me to cover any of the presentation again if they missed it, but there was no response from them. Additionally, at the end of the Q&A I addressed attendee "H" to give them space to ask any questions they might have and again received no response.



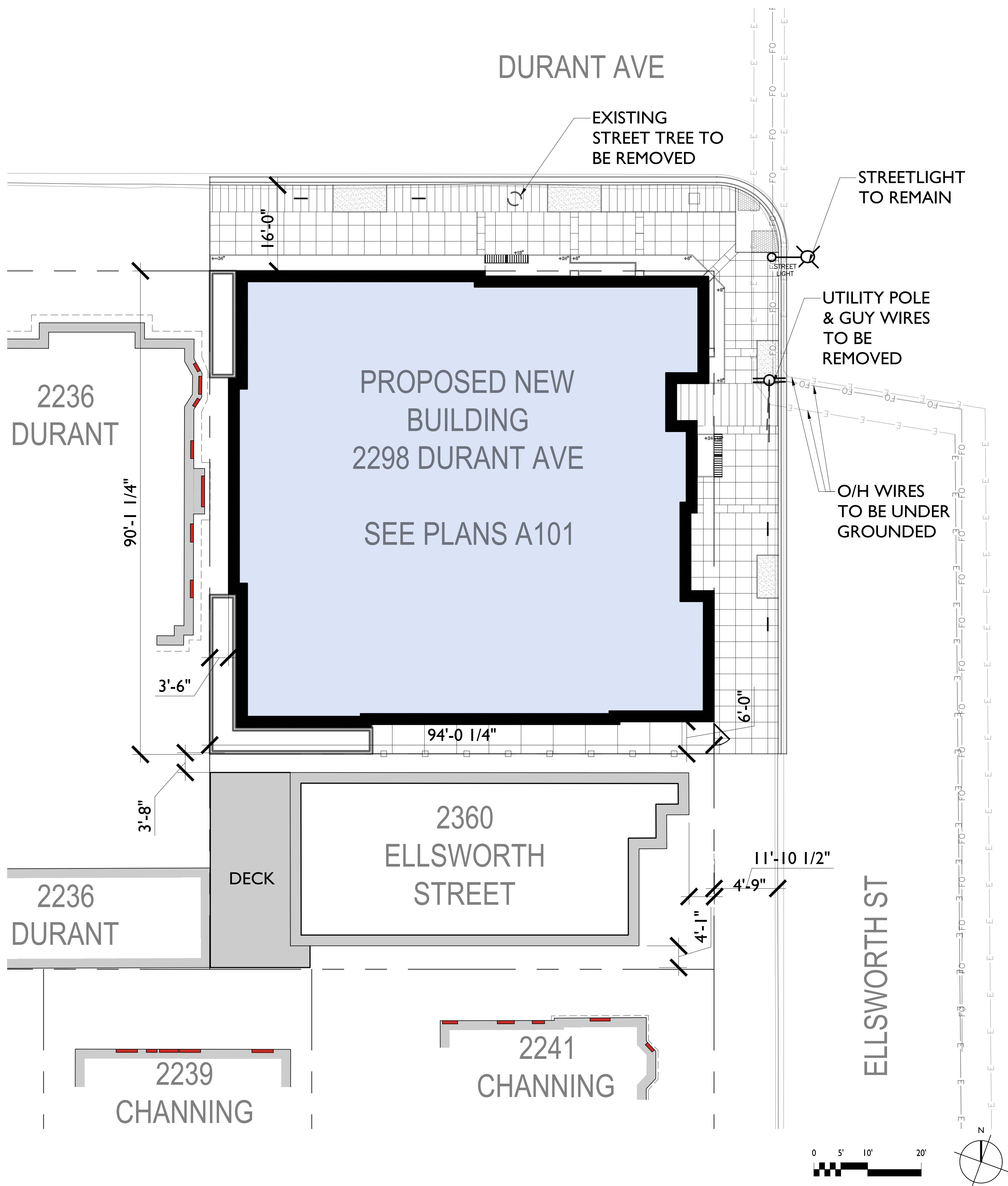
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1810 sixth street, berkeley ca 94710
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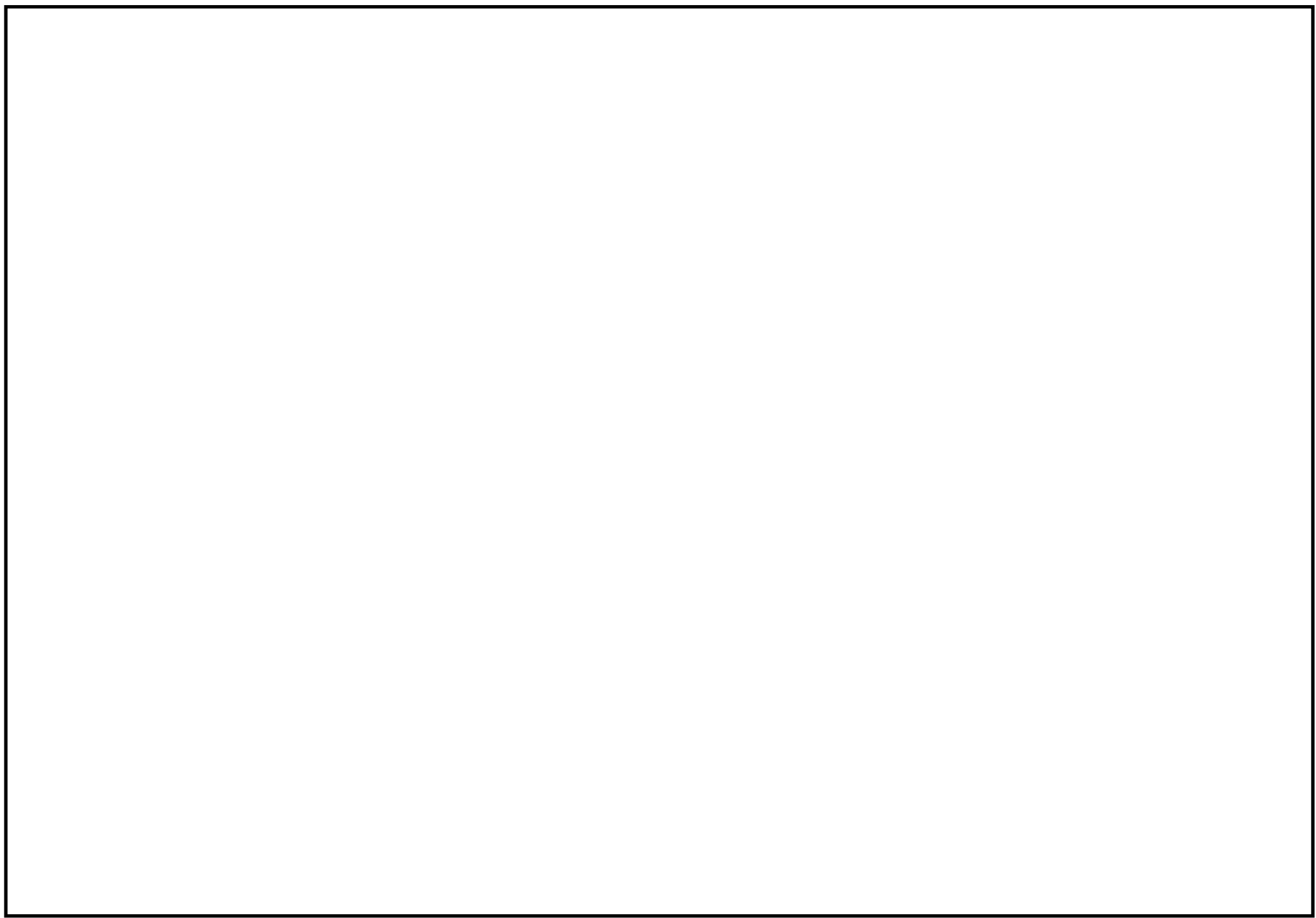
2298 DURANT AVE

BERKELEY, CA

NOT FOR CONSTRUCTION



ZONING CODE INFORMATION



AREA TABULATION

PROJECT ISSUE RECORD:

03/02/2026	SB330 SUBMITTAL
03/27/2026	ENTITLEMENT

CITY PERMIT RECORD:

PROJECT:

VLC09

TITLE:

SITE PLAN AND BUILDING INFO

SHEET:

AS-101

ARCHITECTURAL SITE PLAN

3/32"=1'-0"



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2298 DURANT AVE

BERKELEY, CA

NOT FOR
CONSTRUCTION



PROJECT ISSUE RECORD:	
03/02/2026	SB330 SUBMITTAL
03/27/2026	ENTITLEMENT

CITY PERMIT RECORD:

PROJECT:
VLC09

TITLE:
MASSING
STUDY

SHEET:

A-301



Z O N I N G A D J U S T M E N T S B O A R D

NOTICE OF PUBLIC HEARING

2298 Durant Avenue

Use Permit #ZP2026-0039 to demolish a commercial building and construct a seven-story, 85-foot, 49,970-square-foot, multifamily building containing 45 dwelling units, including 2 Very-Low Income units, utilizing a State Density Bonus.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance, Section [23.404.050 \(Public Hearings and Decisions\)](#)

When: Thursday, August 13, 2026, 7:00 pm

Where: Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

Please visit: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board> and click on the hearing date to access the most up-to-date meeting information, or call the Land Use Planning division (510) 981-7410.

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION AVAILABLE FOR MEMBERS OF THE PUBLIC.

For in-person attendees, face coverings or masks that cover both the nose and mouth are encouraged. If you're feeling sick, please do not attend the meeting in-person as a public health precaution.

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons that need to distance for personal health reasons.

A. Land Use Designations:

- General Plan: Residential Mixed Use (RMU)
- Zoning: Residential Southside Mixed Use (R-SMU)

B. Zoning Permits Required:

- **Demolition.** BMC Section 23.326.070(A) “**Main Non-Residential Building**” to demolish a non-residential building.
- **New Construction.** BMC Section 23.202.020 (A) “**Allowed Land Uses**” to construct a multi-family use.
- **Height Projection** BMC Section 23.304.050 (A) “**Projections Above Height Limits**” exceed height limit with a rooftop projection.

C. Concessions and Waivers Requested Pursuant to State Density Bonus Law (California Government Code Section 65915):

- Concession from the Bird Safe Building requirements (BMC Section 23.304.150).
- Waiver to provide a 3-foot, 6-inch rear setback where 4 feet is required (BMC Section 23.202.140(E)(1)(a)).
- Waiver to provide 1,569 square feet of Useable Open Space where 1,955 square feet is required (BMC Section 23.304.090(A)).
- Waiver to provide 28 square feet of landscaped Useable Open Space, where 782 square feet is required (BMC Section 23.304.090(B)(7)).
- Waiver to provide no long-term bicycle parking, where 61 long-term spaces are required (BMC Section 23.322.0690(A)(2)).
- Waiver to remove the camphor street tree on Durant Avenue; where street tree removal requires the City Arborist’s approval (BMC Section 12.44.020).

D. CEQA Determination: Statutorily exempt from CEQA pursuant to Public Resources Code Section 21080.66 (Assembly Bill 130).

E. Project Recommendation: Approve Use Permit #ZP2026-0039, pursuant to BMC Section 23.406.040(E) “**Findings for Approval.**”

F. Parties Involved:

- Applicant Austin Springer, Studio KDA
- Property Owner 2298 Durant LP

Further Information:

All application materials are available online at:
<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Allison Riemer, at (510) 981-7433 or ariemer@berkeleyca.gov.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@berkeleyca.gov.

Communication Disclaimer:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

Written Comments, Communications, and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@berkeleyca.gov. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

All persons are welcome to attend the hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM, two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports #1, which is released around noon one day before the public hearing.
- **Correspondence received by 12:00 PM, the day of** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports #2, which is released around noon the day of the public hearing.
- **Correspondence received after 12:00 PM, the day of** this public hearing will be saved in the project administrative record.



Accessibility Information / ADA Disclaimer:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@berkeleyca.gov) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within 14 days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than 90 days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that 90-day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - a. That this belief is a basis of your appeal.
 - b. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - c. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above. If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.