

**REVISED AGENDA
(REVISED TO UPDATE THE TELECONFERENCE LOCATION)
BERKELEY CITY COUNCIL MEETING**

**Tuesday, May 6, 2025
6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702
TELECONFERENCE LOCATION - 32581 VIA LOS SANTOS, SAN JUAN CAPISTRANO,
CA 92675

ADENA ISHII, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SHOSHANA O'KEEFE
DISTRICT 6 – BRENT BLACKABY
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. Live captioned broadcasts of Council meetings are available on B-TV (Channel 33) and via internet video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244. All Council meetings are recorded.

*To access the meeting remotely use this URL: <https://cityofberkeley-info.zoomgov.com/j/1612529488>. To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter **Meeting ID: 161 252 9488**. To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the public record, email council@berkeleyca.gov.*

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person. The City Council may take action related to any subject listed on the Agenda.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

Government Code Section 84308 (Levine Act) - Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$500 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$500 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

Preliminary Matters

Roll Call:

Land Acknowledgement Statement: *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

Ceremonial Matters: *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

1. John Beaulaurier, Scientist and Community Advocate

City Manager Comments: *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

Public Comment on Non-Agenda Matters: *Up to ten persons will be selected to address matters not on the Council agenda. If five or fewer persons are identified to provide non-agenda comment, each person selected will be allotted two minutes each. If more than five persons are selected to address matters not on the Council agenda, each person selected will be allotted one minute each.*

In-person attendees wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to the moment that the Presiding Officer calls for public comment on non-agenda items. Remote attendees must raise their hand in the videoconference application when the Presiding Officer calls for non-agenda speakers. The first five raised hands on the videoconference application will be selected to speak and the first five cards drawn at the meeting will be selected to speak. The number of in-person and remote speakers selected may be adjusted by the Presiding Officer if fewer than five speakers from either format are identified.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.

Public Comment by Employee Unions (first regular meeting of the month): *This period of public comment is reserved for officially designated representatives of City of Berkeley employee unions, with five minutes allocated per union if representatives of three or fewer unions wish to speak and up to three minutes per union if representatives of four or more unions wish to speak.*

Consent Calendar

The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Three members of the City Council must agree to pull an item from the Consent Calendar or Information Calendar for it to move to Action. Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.

No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Consent Calendar

- 1. Adoption of CALFIRE Map and Additional Areas Designated as the City of Berkeley Fire Hazard Severity Zones**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,958-N.S. to designate Fire Hazard Severity Zones (FHSZ) within the Local Responsibility Area as recommended by the California Department of Forestry and Fire Protection (CALFIRE) pursuant to Government Code Section 51178.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: David Sprague, Fire, (510) 981-3473

Consent Calendar

2. **Re-Establishment of the Berkeley Tourism Business Improvement District**

From: City Manager

Recommendation:

1. Adopt a Resolution declaring the City Council's intention to renew the Berkeley Tourism Business Improvement District (BTBID) for ten (10) years starting July 1, 2025, and directing the City Clerk to schedule a public meeting on June 3, 2025 and a public hearing on June 24, 2025 to renew the BTBID.

2. Adopt a Resolution declaring the City Council's intention to modify the existing BTBID to end on June 30, 2025, shortening the existing BTBID's term from ten (10) years to eight (8) years and directing the City Clerk to schedule a public hearing on June 24, 2025 on modification of the BTBID Management District Plan (Plan).

3. Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with Visit Berkeley, the BTBID's Owners' Association and the City of Berkeley's Convention and Visitor's Bureau, for an amount not to exceed total Tourism BID collections for the term of the renewed BTBID, beginning on July 1, 2025 and concluding on June 30, 2035.

Financial Implications: See report.

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

3. **Contract: Diablo Fire Safe Council for Home Hardening Donations**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the Diablo Fire Safe Council (DFSC) to serve as the fiscal sponsor for donations that support home hardening work in Berkeley, particularly in its Fire Hazard Severity Zones, for a term of five years.

Financial Implications: See report.

Contact: David Sprague, Fire, (510) 981-3473

4. **Contract No. 32400192 Amendment: GovernmentJobs.com (dba NEOGOV) for Online Data Management Services**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32400192 with GovernmentJobs.com (dba NEOGOV) for online data management services including applicant tracking, onboarding, learning management, and performance management to extend the contract from May 16, 2025 to May 15, 2028 and increase the contract cap to \$108,884 to cover the cost of three fiscal years.

Financial Implications: General Fund and Training Fund - \$108,884.79

Contact: Monica Walker, Human Resources, (510) 981-6800

Consent Calendar

5. Reject All Bids and Re-Scope and Re-Bid the Work Associated with South Cove West Lot Repaving Project

From: City Manager

Recommendation: Adopt a Resolution: 1. Approving plans and specifications for South Cove West Lot Repaving Project, Specification No. 25-11687-C; 2. Rejecting all bids for the work associated with the South Cove West Lot Repaving Project (Bid Specification No. 25-11687-C); and 3. Authorizing the City Manager to direct staff to re-scope and re-bid the work associated with the South Cove West Lot Repaving Project.

Financial Implications: See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

6. Contract No. 32200042 Amendment: WCG, Inc. for Updates to the BESO Program's Salesforce Software System

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200042 with WCG, Inc., to update the Building Emissions Saving Ordinance (BESO) program's Salesforce software system, to implement amendments to BESO, for an additional amount of \$100,000, for a total contract amount not to exceed \$124,750, and extending the term through December 31, 2027.

Financial Implications: See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

7. Contract No. 117441-1 Amendment: Chrisp Company for Painting Red Curbs to Enhance Compliance with California's Daylighting Law (Assembly Bill 413)

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 117441-1 with Chrisp Company to paint red curbs at the approach to approximately 918 intersections to improve safety in compliance with California's Daylighting Law (Assembly Bill 413, or AB 413). This contract amendment would increase the contract amount by \$375,574, for a new contract amount not to exceed of \$1,625,575.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

8a. Notice, tracking and enforcement of California SB 1343 sexual harassment prevention training for Berkeley private, public and non-profit employers and employees

From: Commission on the Status of Women

Recommendation: That Council refer to the City Manager to develop a procedure for all employers and employees doing business in Berkeley, whether public, private or nonprofit, to take the sexual harassment prevention online training as posted on the California Civil Rights Department website, conducted by a qualified trainer, as required by California SB 1343, on City premises and to provide certification of completion of training to be filed with the City.

Consent Calendar

That all employers doing business in Berkeley with 5 or more employees be provided with notice of the SB 1343 requirement to take sexual harassment prevention training every 2 years; the availability of free online training on the California Civil Rights Department website (formerly known as the California Department of Fair Employment and Housing) and the availability of the City of Berkeley online trainings if the employee is otherwise unable to access the online trainings.

That the City of Berkeley notice also advise each employer of the SB 1343 requirement to post a poster, in a prominent and accessible location, on discrimination in employment which includes the illegality of sexual harassment. That the notice advise employers that they can secure posters through the California Civil Rights Department or through the City of Berkeley.

That the City of Berkeley notice advise each employer that SB 1343 also requires that a poster on transgender rights, available through the California Civil Rights Department, also be posted in a prominent and accessible location in the workplace. That the City of Berkeley secure sufficient copies of the California Civil Rights Department posters on sexual harassment and transgender rights and make them available upon request to employers requesting them.

That the City of Berkeley notice advise employers that the City of Berkeley requires them to produce documentation to the City of having otherwise taken and provided the training to employees by submitting written certification that they have taken the training as well as providing written certification from each employee who has taken the training as required by SB 1343.

That written certification provided by employers and employees who have otherwise taken the training must include the date the employer and employee took the training as required by SB 1343; the location where the training was otherwise taken; the mode of the training (live or video); and the name, address, phone number and e-mail address of the qualified trainer, under SB 1343, who provided the training. Each certification must be signed.

That the City of Berkeley maintain an online database of employer and employee compliance with SB 1343 with all the data as stated above recorded on the data base.

That the City of Berkeley send out notices to employers and employees if they are out of compliance with the SB 1343 requirement of taking initial sexual harassment trainings or periodic trainings after they have completed the initial training.

That the SB 1343 online training, provided by the City of Berkeley, be available in all the languages that the California Civil Rights Department free online training provides, that being Chinese, English, Korean, Spanish, Tagalog and Vietnamese.

That the City Manager refer to the City Attorney to develop a procedure as to how employer non-compliance should be addressed.

That the City Manager report back to Council with a progress report of the implementation of this notice and enforcement procedure, under SB 1343, no later than the first Council meeting to be held in January, 2025 and continue to provide reports to Council until this procedure is fully implemented.

Financial Implications: See report

Contact: Peter Radu, City Manager's Office, (510) 981-7000

Consent Calendar

8b. Companion Report: Notice, tracking and enforcement of California SB 1343 sexual harassment prevention training for Berkeley private, public and non-profit employers and employees

From: City Manager

Recommendation: Since the City is already implementing and meeting the Commission's recommendations for City employees, and enforcement of this law for non-City businesses for 5 or more employees is covered by the State of California's Civil Rights Department and not within the City's jurisdiction to enforce, no action on the commission's recommendation is recommended.

Financial Implications: None

Contact: David White, City Manager's Office, (510) 981-7000

Action Calendar

The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during the Action Calendar public comment period on the item

The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

The Presiding Officer may open and close an additional comment period for Action items on this agenda (excluding any public hearings, appeals, and/or quasi-judicial matters), at the start of the Action Calendar. Those who speak on an item during this comment period may not speak a second time when the item is taken up by Council.

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by first the appellant and then the applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking during a public hearing, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

When applicable, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.

Action Calendar – Public Hearings

9. Modification and Adoption of Berkeley Fire Code Local Amendments

From: City Manager

Recommendation: Conduct a public hearing, and upon conclusion, adopt the second reading of Ordinance No. 7,959-N.S. which proposes to amend certain portions of Section 19.48.020 of the Berkeley Municipal Code (“Amendments to the California Fire Code”).

First Reading Vote: All Ayes.

Financial Implications: Staff time

Contact: David Sprague, Fire, (510) 981-3473

10. ZAB Appeal: 1048 Keith Avenue, Use Permit ZP2024-0014

From: City Manager

Recommendation: Conduct a public hearing, and upon conclusion adopt a Resolution denying the appeal and affirming the Zoning Adjustment Board (ZAB) decision approving a Use Permit to demolish a 2,760 square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600 square-foot single-family dwelling. The project includes a reduction of the rear building setback from 20 feet to 15 feet, two unenclosed off-street parking spaces within the front setback, the construction of a trellis within the front setback, and the installation of a fence and retaining wall along the lot line.

Financial Implications: None

Contact: Jordan Klein, Planning and Development, (510) 981-7400

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Archived indexed video streams are available at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council 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 the City Council, 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 to the City Clerk Department at 2180 Milvia Street. 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 City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street, and through the City's online records portal: <https://records.cityofberkeley.info/>.

Agendas, agenda reports, and revised/supplemental material may be accessed via the online agenda for this meeting at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

and may be accessed at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901
Email: clerk@berkeleyca.gov

Libraries: Main – 2090 Kittredge Street,
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,
North Branch – 1170 The Alameda, Tarea Hall Pittman South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at ada@berkeleyca.gov, (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900 or by email at clerk@berkeleyca.gov.

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***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on May 1, 2025.***

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

## Communications

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through [Records Online](#).*

### **Item #1: Adoption of CALFIRE Map and Additional Areas Designated as the City of Berkeley Fire Hazard Severity Zones**

1. Michael

### **Item #6: Contract No. 32200042 Amendment: WCG, Inc. for Updates to the BESO Program's Salesforce Software System**

2. Isla Peters (9)
3. Isabella Almeida (9)

### **EMBER**

4. Carl & Nancy Mampaey
5. Julia Bazar
6. Stanley Wulf
7. Nenelle Bunnin
8. Linda Press Wulf

### **Fire Prevention Proposal**

9. Marcia Umland and Robert Higginbotham
10. Geoff Reinhard

### **Alternative Housing Options**

11. Carol Franger
12. Fran Haselsteiner
13. Erwan Illian
14. Office of the Mayor
15. Michael Yohay
16. David Lerman
17. D Dorenz
18. Brittany Yohay
19. Marian Macindoe
20. Sheila Press
21. Kathy
22. Andrew Pomerantz
23. Bryan Vale

### **Ohlone Park Concern**

24. Holly Scheider
25. David Lerman
26. Carole Bennett-Simmons
27. Jennifer Kamenetz

**Friends Annual Meeting**

28. Cathy Brown

**Berkeley Rides for Seniors**

29. Larisa Cummings

30. Mukta Vie

31. Lynn Cooper

32. Julia Newton

33. Connie Arnold

34. Michai Freeman

**Work Concerns**

35. A Concerned Employee (2)

**EHBO's Affordable Housing**

36. Sophia DeWitt

**Trees**

37. Maria Tello

**Enforcement Officers**

38. Karen Weil

**Homeless Guest**

39. Travis Melvin

**Public Restroom**

40. Mike Kim

**Vendor Process Inquiry**

41. Aladdin Awad

**Police Oversight**

42. Nancy Lemon

**Cooling Standards**

43. Veena Nambiar (2)

**Code Enforcement Concern**

44. Willie Phillips

**Willard Park**

45. Pascale Fisher

**Parking Concern**

46. Shirley Kirsten

47. Sandra Sanchez

**UC Berkeley Project**

48. Tyler Lafayette

**E-Scooters**

49. Robert R. Byler

**Nevada Cares Campus**

50. John Craner

**Bayer's 2024 Development Agreement Annual Report**

51. Jennifer Cogley

**Middle East Conflict**

52. Russbumper

53. George Griener

54. Parker Keyes

**Forwards**

55. Russbumper

**Screenshots**

56. Josh Atwood (2)

57. Tom Luce

**URL's**

58. Russbumper (5)

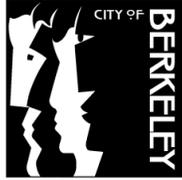
59. Josh Atwood

60. Eids TV

**Supplemental Communications and Reports**

*Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.*

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**  
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**  
Available by 5:00 p.m. two days following the meeting.



## AGENDA

### BERKELEY CITY COUNCIL MEETING

Tuesday, May 6, 2025

6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

TELECONFERENCE LOCATION - 1250 S HAYES STREET, ARLINGTON, VA 22202

ADENA ISHII, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI

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## Preliminary Matters

### Roll Call:

**Land Acknowledgement Statement:** *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

**Ceremonial Matters:** *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

1. John Beaulaurier, Scientist and Community Advocate

**City Manager Comments:** *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

**Public Comment on Non-Agenda Matters:** *Up to ten persons will be selected to address matters not on the Council agenda. If five or fewer persons are identified to provide non-agenda comment, each person selected will be allotted two minutes each. If more than five persons are selected to address matters not on the Council agenda, each person selected will be allotted one minute each.*

*In-person attendees wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to the moment that the Presiding Officer calls for public comment on non-agenda items. Remote attendees must raise their hand in the videoconference application when the Presiding Officer calls for non-agenda speakers. The first five raised hands on the videoconference application will be selected to speak and the first five cards drawn at the meeting will be selected to speak. The number of in-person and remote speakers selected may be adjusted by the Presiding Officer if fewer than five speakers from either format are identified.*

*The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

**Public Comment by Employee Unions (first regular meeting of the month):** *This period of public comment is reserved for officially designated representatives of City of Berkeley employee unions, with five minutes allocated per union if representatives of three or fewer unions wish to speak and up to three minutes per union if representatives of four or more unions wish to speak.*

## Consent Calendar

*The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Three members of the City Council must agree to pull an item from the Consent Calendar or Information Calendar for it to move to Action. Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.*

*No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.*

*For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.*

**Public Comment on Consent Calendar and Information Items Only:** *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

*Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.*

## Consent Calendar

- 1. Adoption of CALFIRE Map and Additional Areas Designated as the City of Berkeley Fire Hazard Severity Zones**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,958-N.S. to designate Fire Hazard Severity Zones (FHSZ) within the Local Responsibility Area as recommended by the California Department of Forestry and Fire Protection (CALFIRE) pursuant to Government Code Section 51178.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: David Sprague, Fire, (510) 981-3473

## Consent Calendar

### 2. **Re-Establishment of the Berkeley Tourism Business Improvement District**

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution declaring the City Council's intention to renew the Berkeley Tourism Business Improvement District (BTBID) for ten (10) years starting July 1, 2025, and directing the City Clerk to schedule a public meeting on June 3, 2025 and a public hearing on June 24, 2025 to renew the BTBID.

2. Adopt a Resolution declaring the City Council's intention to modify the existing BTBID to end on June 30, 2025, shortening the existing BTBID's term from ten (10) years to eight (8) years and directing the City Clerk to schedule a public hearing on June 24, 2025 on modification of the BTBID Management District Plan (Plan).

3. Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with Visit Berkeley, the BTBID's Owners' Association and the City of Berkeley's Convention and Visitor's Bureau, for an amount not to exceed total Tourism BID collections for the term of the renewed BTBID, beginning on July 1, 2025 and concluding on June 30, 2035.

**Financial Implications:** See report.

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

### 3. **Contract: Diablo Fire Safe Council for Home Hardening Donations**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the Diablo Fire Safe Council (DFSC) to serve as the fiscal sponsor for donations that support home hardening work in Berkeley, particularly in its Fire Hazard Severity Zones, for a term of five years.

**Financial Implications:** See report.

Contact: David Sprague, Fire, (510) 981-3473

### 4. **Contract No. 32400192 Amendment: GovernmentJobs.com (dba NEOGOV) for Online Data Management Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32400192 with GovernmentJobs.com (dba NEOGOV) for online data management services including applicant tracking, onboarding, learning management, and performance management to extend the contract from May 16, 2025 to May 15, 2028 and increase the contract cap to \$108,884 to cover the cost of three fiscal years.

**Financial Implications:** General Fund and Training Fund - \$108,884.79

Contact: Monica Walker, Human Resources, (510) 981-6800

## Consent Calendar

**5. Reject All Bids and Re-Scope and Re-Bid the Work Associated with South Cove West Lot Repaving Project**

**From: City Manager**

**Recommendation:** Adopt a Resolution: 1. Approving plans and specifications for South Cove West Lot Repaving Project, Specification No. 25-11687-C; 2. Rejecting all bids for the work associated with the South Cove West Lot Repaving Project (Bid Specification No. 25-11687-C); and 3. Authorizing the City Manager to direct staff to re-scope and re-bid the work associated with the South Cove West Lot Repaving Project.

**Financial Implications:** See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

**6. Contract No. 32200042 Amendment: WCG, Inc. for Updates to the BESO Program's Salesforce Software System**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200042 with WCG, Inc., to update the Building Emissions Saving Ordinance (BESO) program's Salesforce software system, to implement amendments to BESO, for an additional amount of \$100,000, for a total contract amount not to exceed \$124,750, and extending the term through December 31, 2027.

**Financial Implications:** See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

**7. Contract No. 117441-1 Amendment: Chrisp Company for Painting Red Curbs to Enhance Compliance with California's Daylighting Law (Assembly Bill 413)**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 117441-1 with Chrisp Company to paint red curbs at the approach to approximately 918 intersections to improve safety in compliance with California's Daylighting Law (Assembly Bill 413, or AB 413). This contract amendment would increase the contract amount by \$375,574, for a new contract amount not to exceed of \$1,625,575.

**Financial Implications:** See report

Contact: Terrance Davis, Public Works, (510) 981-6300

**8a. Notice, tracking and enforcement of California SB 1343 sexual harassment prevention training for Berkeley private, public and non-profit employers and employees**

**From: Commission on the Status of Women**

**Recommendation:** That Council refer to the City Manager to develop a procedure for all employers and employees doing business in Berkeley, whether public, private or nonprofit, to take the sexual harassment prevention online training as posted on the California Civil Rights Department website, conducted by a qualified trainer, as required by California SB 1343, on City premises and to provide certification of completion of training to be filed with the City.

## Action Calendar

That all employers doing business in Berkeley with 5 or more employees be provided with notice of the SB 1343 requirement to take sexual harassment prevention training every 2 years; the availability of free online training on the California Civil Rights Department website (formerly known as the California Department of Fair Employment and Housing) and the availability of the City of Berkeley online trainings if the employee is otherwise unable to access the online trainings.

That the City of Berkeley notice also advise each employer of the SB 1343 requirement to post a poster, in a prominent and accessible location, on discrimination in employment which includes the illegality of sexual harassment. That the notice advise employers that they can secure posters through the California Civil Rights Department or through the City of Berkeley.

That the City of Berkeley notice advise each employer that SB 1343 also requires that a poster on transgender rights, available through the California Civil Rights Department, also be posted in a prominent and accessible location in the workplace. That the City of Berkeley secure sufficient copies of the California Civil Rights Department posters on sexual harassment and transgender rights and make them available upon request to employers requesting them.

That the City of Berkeley notice advise employers that the City of Berkeley requires them to produce documentation to the City of having otherwise taken and provided the training to employees by submitting written certification that they have taken the training as well as providing written certification from each employee who has taken the training as required by SB 1343.

That written certification provided by employers and employees who have otherwise taken the training must include the date the employer and employee took the training as required by SB 1343; the location where the training was otherwise taken; the mode of the training (live or video); and the name, address, phone number and e-mail address of the qualified trainer, under SB 1343, who provided the training. Each certification must be signed.

That the City of Berkeley maintain an online database of employer and employee compliance with SB 1343 with all the data as stated above recorded on the data base.

That the City of Berkeley send out notices to employers and employees if they are out of compliance with the SB 1343 requirement of taking initial sexual harassment trainings or periodic trainings after they have completed the initial training.

That the SB 1343 online training, provided by the City of Berkeley, be available in all the languages that the California Civil Rights Department free online training provides, that being Chinese, English, Korean, Spanish, Tagalog and Vietnamese.

That the City Manager refer to the City Attorney to develop a procedure as to how employer non-compliance should be addressed.

That the City Manager report back to Council with a progress report of the implementation of this notice and enforcement procedure, under SB 1343, no later than the first Council meeting to be held in January, 2025 and continue to provide reports to Council until this procedure is fully implemented.

**Financial Implications:** See report

Contact: Peter Radu, City Manager's Office, (510) 981-7000

## Action Calendar

### 8b. Companion Report: Notice, tracking and enforcement of California SB 1343 sexual harassment prevention training for Berkeley private, public and non-profit employers and employees

**From: City Manager**

**Recommendation:** Since the City is already implementing and meeting the Commission's recommendations for City employees, and enforcement of this law for non-City businesses for 5 or more employees is covered by the State of California's Civil Rights Department and not within the City's jurisdiction to enforce, no action on the commission's recommendation is recommended.

**Financial Implications:** None

Contact: David White, City Manager's Office, (510) 981-7000

## Action Calendar – Public Hearings

*The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during the Action Calendar public comment period on the item*

*The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

*Action items may be reordered at the discretion of the Chair with the consent of Council.*

*The Presiding Officer may open and close an additional comment period for Action items on this agenda (excluding any public hearings, appeals, and/or quasi-judicial matters), at the start of the Action Calendar. Those who speak on an item during this comment period may not speak a second time when the item is taken up by Council.*

## Action Calendar – Public Hearings

*Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by first the appellant and then the applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to be recognized and to determine the number of persons interested in speaking at that time.*

*If ten or fewer persons are interested in speaking during a public hearing, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.*

*When applicable, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.*

## Action Calendar – Public Hearings

### 9. Modification and Adoption of Berkeley Fire Code Local Amendments

**From: City Manager**

**Recommendation:** Conduct a public hearing, and upon conclusion, adopt the second reading of Ordinance No. 7,959-N.S. which proposes to amend certain portions of Section 19.48.020 of the Berkeley Municipal Code (“Amendments to the California Fire Code”).

**First Reading Vote:** All Ayes.

**Financial Implications:** Staff time

Contact: David Sprague, Fire, (510) 981-3473

### 10. ZAB Appeal: 1048 Keith Avenue, Use Permit ZP2024-0014

**From: City Manager**

**Recommendation:** Conduct a public hearing, and upon conclusion adopt a Resolution denying the appeal and affirming the Zoning Adjustment Board (ZAB) decision approving a Use Permit to demolish a 2,760 square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600 square-foot single-family dwelling. The project includes a reduction of the rear building setback from 20 feet to 15 feet, two unenclosed off-street parking spaces within the front setback, the construction of a trellis within the front setback, and the installation of a fence and retaining wall along the lot line.

**Financial Implications:** None

Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Public Comment – Items Not Listed on the Agenda

### Adjournment

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Archived indexed video streams are available at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council 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 the City Council, 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 to the City Clerk Department at 2180 Milvia Street. 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 City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street, and through the City's online records portal: <https://records.cityofberkeley.info/>.

Agendas, agenda reports, and revised/supplemental material may be accessed via the online agenda for this meeting at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

and may be accessed at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor  
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901  
Email: [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov)

Libraries: Main – 2090 Kittredge Street,  
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,  
North Branch – 1170 The Alameda, Tarea Hall Pittman South Branch – 1901 Russell

**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at [ada@berkeleyca.gov](mailto:ada@berkeleyca.gov), (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900 or by email at [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov).

~~~~~  
I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on April 24, 2025.

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

Communications

Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through [Records Online](#).

Item #1: Adoption of CALFIRE Map and Additional Areas Designated as the City of Berkeley Fire Hazard Severity Zones

1. Michael

Item #6: Contract No. 32200042 Amendment: WCG, Inc. for Updates to the BESO Program's Salesforce Software System

2. Isla Peters (9)
3. Isabella Almeida (9)

EMBER

4. Carl & Nancy Mampaey
5. Julia Bazar
6. Stanley Wulf
7. Nenelle Bunnin
8. Linda Press Wulf

Fire Prevention Proposal

9. Marcia Umland and Robert Higginbotham
10. Geoff Reinhard

Alternative Housing Options

11. Carol Franger
12. Fran Haselsteiner
13. Erwan Illian
14. Office of the Mayor
15. Michael Yohay
16. David Lerman
17. D Dorenz
18. Brittany Yohay
19. Marian Macindoe
20. Sheila Press
21. Kathy
22. Andrew Pomerantz
23. Bryan Vale

Ohlone Park Concern

24. Holly Scheider
25. David Lerman
26. Carole Bennett-Simmons
27. Jennifer Kamenetz

Friends Annual Meeting

28. Cathy Brown

Berkeley Rides for Seniors

29. Larisa Cummings

30. Mukta Vie

31. Lynn Cooper

32. Julia Newton

33. Connie Arnold

34. Michai Freeman

Work Concerns

35. A Concerned Employee (2)

EHBO's Affordable Housing

36. Sophia DeWitt

Trees

37. Maria Tello

Enforcement Officers

38. Karen Weil

Homeless Guest

39. Travis Melvin

Public Restroom

40. Mike Kim

Vendor Process Inquiry

41. Aladdin Awad

Police Oversight

42. Nancy Lemon

Cooling Standards

43. Veena Nambiar (2)

Code Enforcement Concern

44. Willie Phillips

Willard Park

45. Pascale Fisher

Parking Concern

46. Shirley Kirsten

47. Sandra Sanchez

UC Berkeley Project

48. Tyler Lafayette

E-Scooters

49. Robert R. Byler

Nevada Cares Campus

50. John Craner

Bayer's 2024 Development Agreement Annual Report

51. Jennifer Cogley

Middle East Conflict

52. Russbumper

53. George Griener

54. Parker Keyes

Forwards

55. Russbumper

Screenshots

56. Josh Atwood (2)

57. Tom Luce

URL's

58. Russbumper (5)

59. Josh Atwood

60. Eids TV

Supplemental Communications and Reports

Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.

- **Supplemental Communications and Reports 1**
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**
Available by 5:00 p.m. two days following the meeting.

ORDINANCE NO. 7,958-N.S.

ADOPTION OF CALFIRE MAP DESIGNATING CITY OF BERKELEY FIRE HAZARD SEVERITY ZONES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1: Findings

Pursuant to California Government Code 51177-51179, California Department of Forestry and Fire Protection (CALFIRE) has released identified updates to Fire Hazard Severity Zones in the Local Responsibility Area. This process last occurred in 2007 and is directed by state law. Fire Hazard Severity Zones consist of Very High, High, and Moderate designations. Of note, when the current maps were released in 2007 the High and Moderate designations did not apply to the Local Responsibility Area and only Very High area were designated by the City Council. Senate Bill 63 (Stern, 2021) amended Government Code 51178 to add the Moderate and High Fire Hazard Severity Zones in the Local Responsibility Area.

Panoramic Hill and the areas immediately surrounding it are recommended to also be designated as Very High Fire Hazard Severity Zone due to narrow structure separation distance and high housing density, limited retrofitting of structures to bring them in compliance with Chapter 7A of the Building Standards Code, a single evacuation route that will cause extended evacuation time, proximity to dense vegetation and topographic features capable of supporting fast moving wind driven fire, the benefits to evacuation and wildfire risk reduction associated with long term replacement of existing housing stock with structures that meet wildfire resistive construction standards, and the strategic opportunity that the relatively straight, wide, north-south street selected as the western boundary could provide in terms of stopping or slowing the advance of a fire moving from the hills, west into the City.

The areas recommended to be designated as High Fire Hazard Severity Zones are included due to fire history (with major fires occurring in and around this area in 1905, 1923, 1970, 1980, and 1991), the narrow structure separation distance between homes, the limited retrofitting of structures to bring them in compliance with Chapter 7A of the Building Standards Code, the benefits to evacuation and wildfire risk reduction associated with long term replacement of existing housing stock with wildfire resistive construction, limited east to west evacuation routes that will cause extended evacuation time, and the strategic opportunity that the relatively straight, wide, north-south streets selected as western boundaries could provide in terms of stopping or slowing the advance of a fire moving from the hills, west into the City.

Community members in areas designated as Very High Fire Hazard Severity Zones are required to maintain defensible space within 100 feet of structures, or the property line, whichever is closer and in the case of new construction or major remodels classified by the Building Official as new construction, to meet the wildfire resistant construction requirements included in Chapter 7A of the Building Standards Code.

Community members in areas designated as High Fire Hazard Severity Zones are required to meet the wildfire resistant construction requirements included in Chapter 7A of the Building Standards Code and in the case of new construction or major remodels classified by the Building Official as new construction.

Finally, community members selling property in the Very High and High Fire Hazard Severity Zones must conduct a natural hazard real estate disclosure at time of sale per CA CIV 1102.19 (AB 38, 2019).

Section 2: Adoption of CALFIRE recommended Fire Hazard Severity Zones:

The City hereby designates the Fire Hazard Severity Zones as recommended by the CALFIRE pursuant to Government Code Section 51178, and

Section 3: Designation of Additional Lands as Fire Hazard Severity Zones:

Notwithstanding the minimum fire safety standards required by state law, under the authority included in Government Code 51175 the City has the authority to establish more stringent wildfire safety standards. Further, as part of the Local Responsibility Area map adoption process, the City may designate areas not included in the identified CALFIRE maps as Moderate, High, or Very High Fire Hazard Severity Zones. The City may not reduce the identified designations, or boundaries, included in the CALFIRE maps.

Staff have reviewed the CALFIRE maps and recommend the following additional designations:

1. Designate as Very High Fire Hazard Severity Zones those areas of the City bounded by the line formed by these roads. Homes addressed on, or with a structural frontage on either side of these road segments are included in the zone:
 - a. Canyon Road from the Oakland border to Stadium Rim Way
 - b. Stadium Rim Way from Canyon Road to Bancroft Way
 - c. Bancroft Way from Stadium Rim Way to Prospect Street
 - d. Prospect Street from Bancroft Way to Bancroft Steps
 - e. Bancroft Steps from Prospect Street to Warring Street
 - f. Bancroft Way from Warring Street to Piedmont Avenue
 - g. Piedmont Avenue from Bancroft Way to Dwight Way
 - h. Dwight Way from Piedmont Avenue to the Oakland border
2. Designate as High Fire Hazard Severity Zones those areas of the City west of the CALFIRE Very High Fire Hazard Severity Zone and east / northeast of the line formed by these roads. Homes addressed on, or with a structural frontage on either side of these road segments are included in the zone:
 - a. The Arlington Avenue from the Kensington Border to Marin Avenue

- b. Sutter Street from the Southern portal of the Northbrae Tunnel to Eunice Street
- c. Eunice Street from Sutter Street to Spruce Street
- d. Spruce Street from Eunice Street to Hearst Avenue
- e. Gayley Road from Hearst Avenue to Stadium Rim Way
- f. Piedmont Avenue from Stadium Rim Way to Dwight Way
- g. Warring Street from Dwight Way to Derby Street
- h. Belrose Avenue from Derby Street to Garber Street
- i. Claremont Boulevard from Garber Street to Claremont Avenue
- j. Claremont Avenue from Claremont Boulevard to the Oakland Border
- k. Tunnel Road from Ashby Avenue to the Oakland Border

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

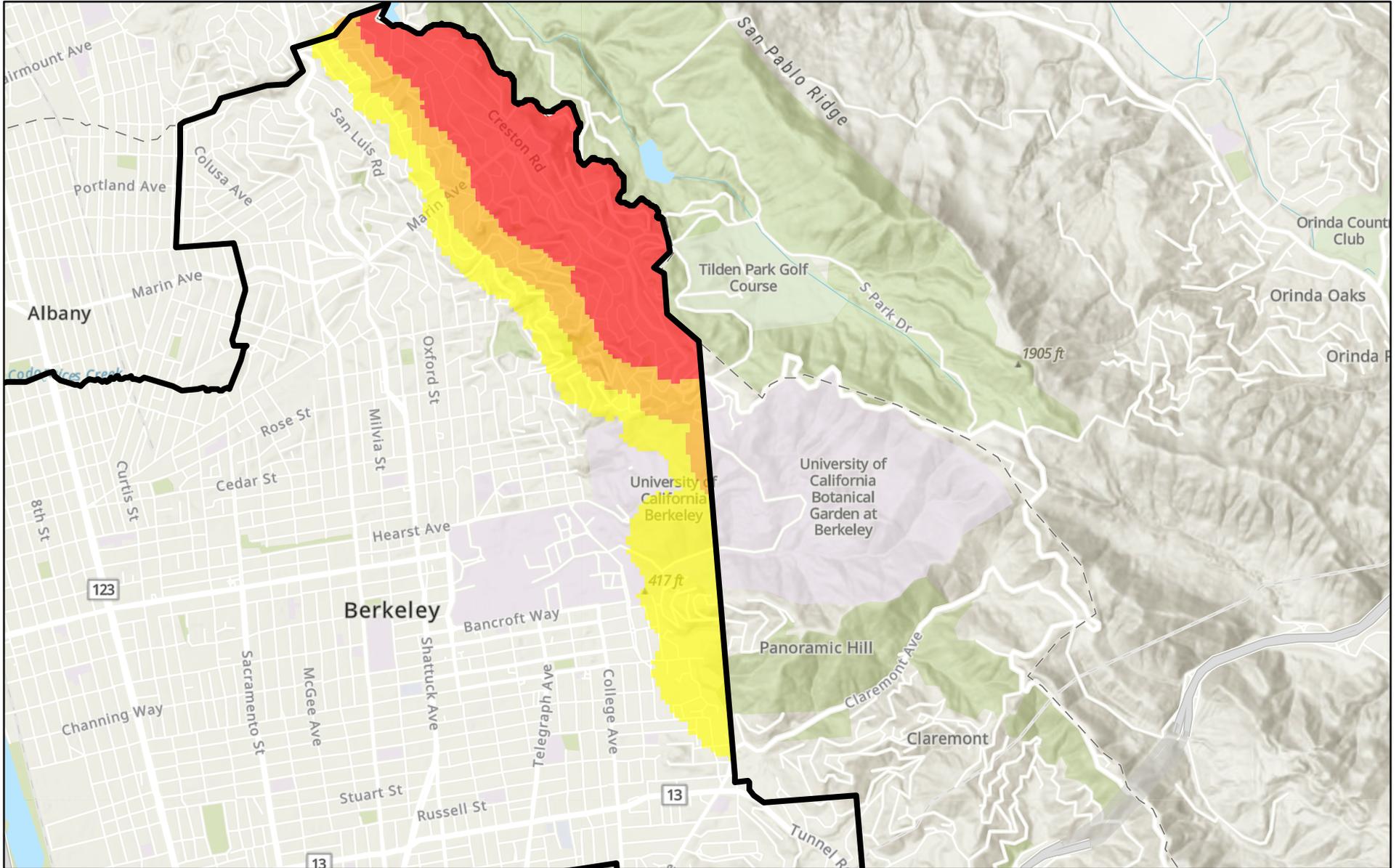
At a special meeting of the Council of the City of Berkeley held on April 15, 2025, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Blackaby, Humbert, Kesarwani, Lunaparra, O’Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: None.

CALFIRE FHSZ Reccomendations



3/12/2025

City_of_Berkeley

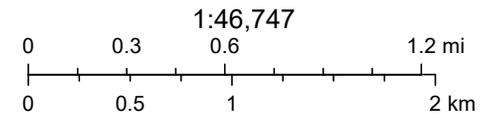
City Boundary

Very High

High

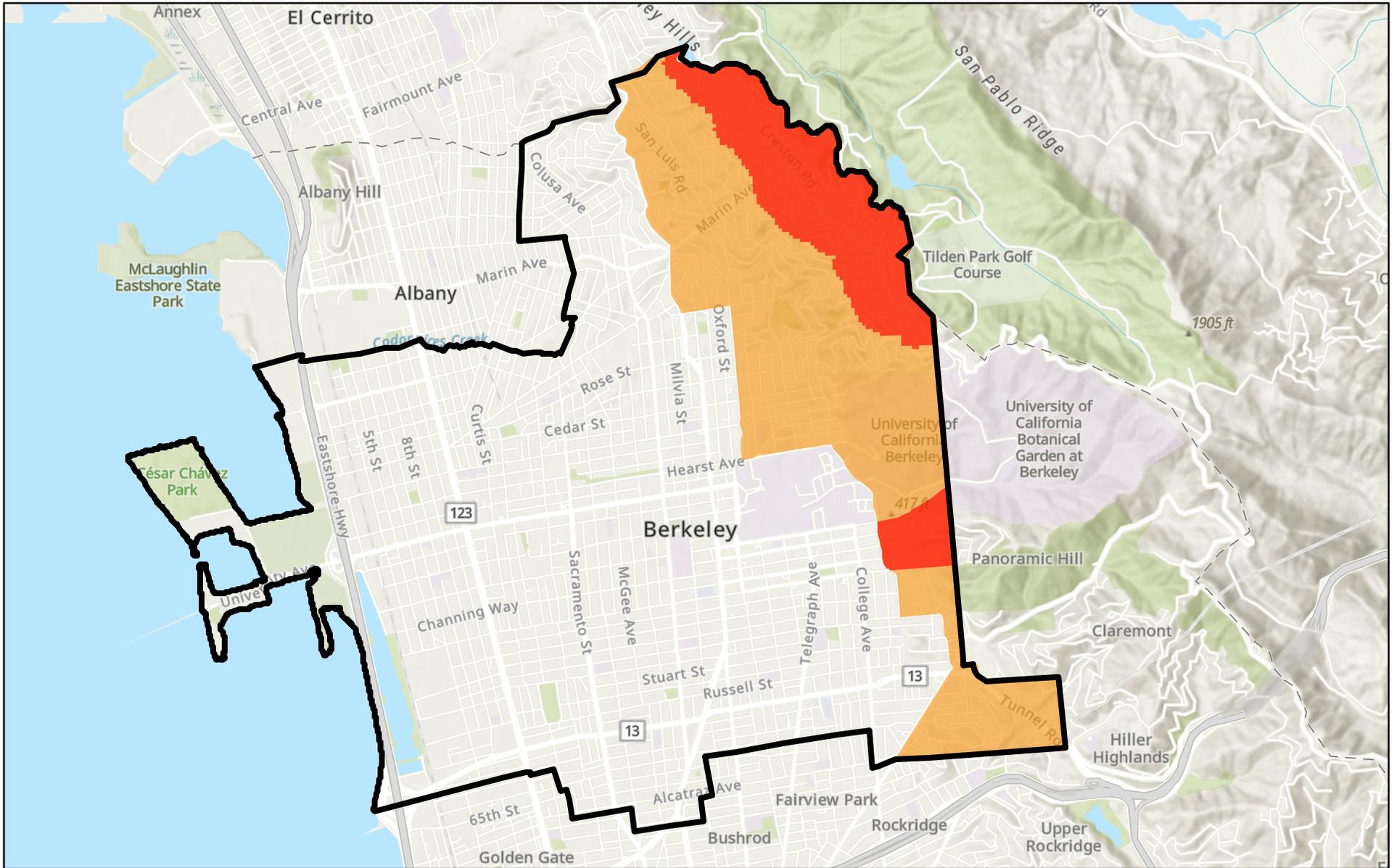
Moderate

World_Hillshade



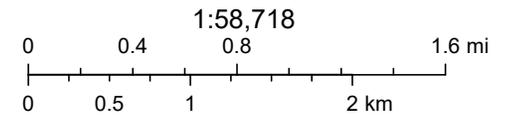
Esri, NASA, NGA, USGS, FEMA, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User

Additional Areas Recommended as FHSZ by the COB



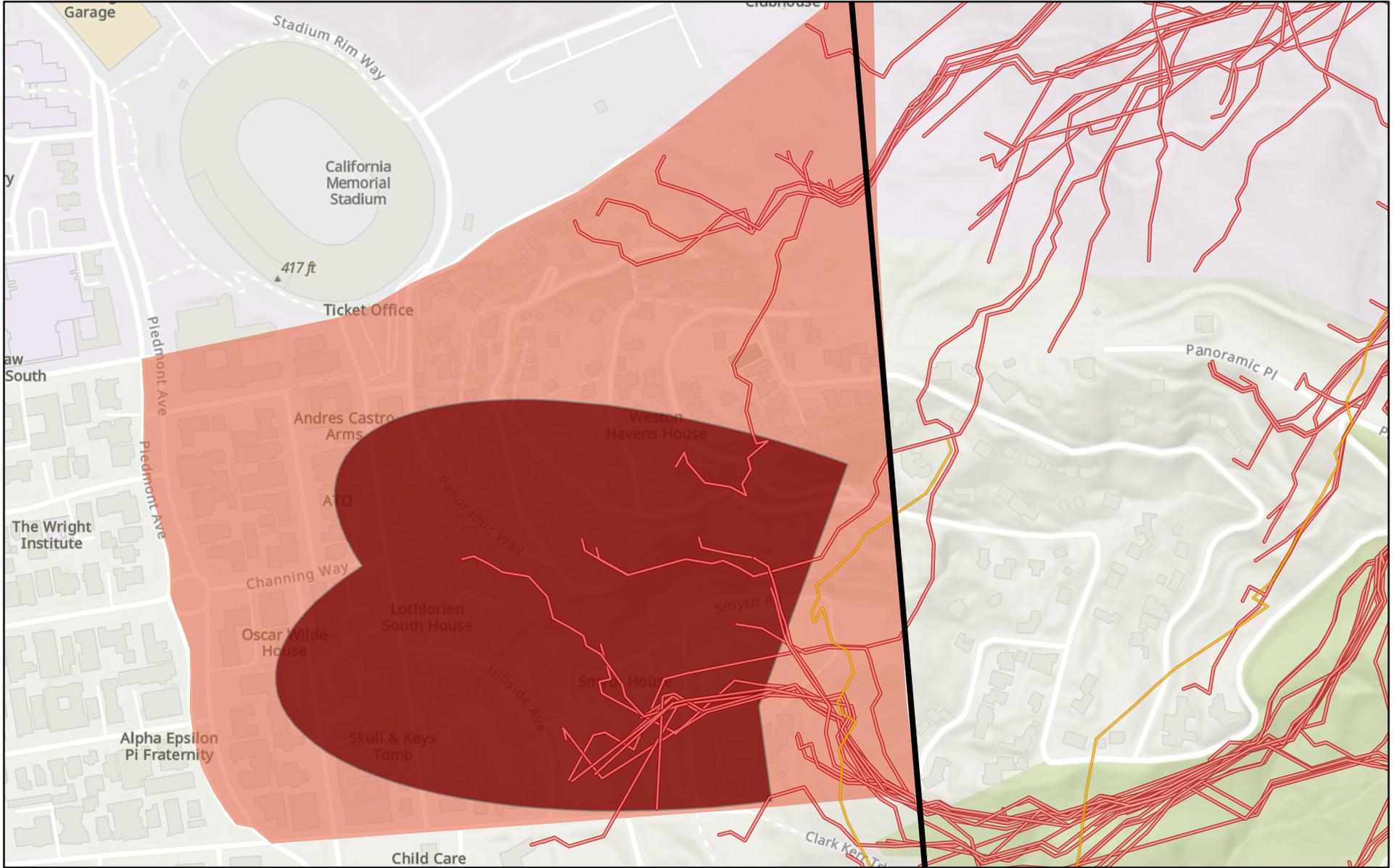
3/18/2025

-  CALFIRE Very High
-  COB High (2025)
-  City Boundary
-  COB Very High (2025)



Esri, NASA, NGA, USGS, FEMA, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User

Panoramic Hill Mitigation Area with Fire Pathway Overlay



3/12/2025

City_of_Berkeley

 City Boundary

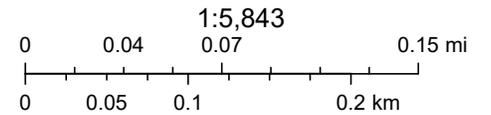
 SW Fire Pathways

 NE Fire Pathways

 NE Entry

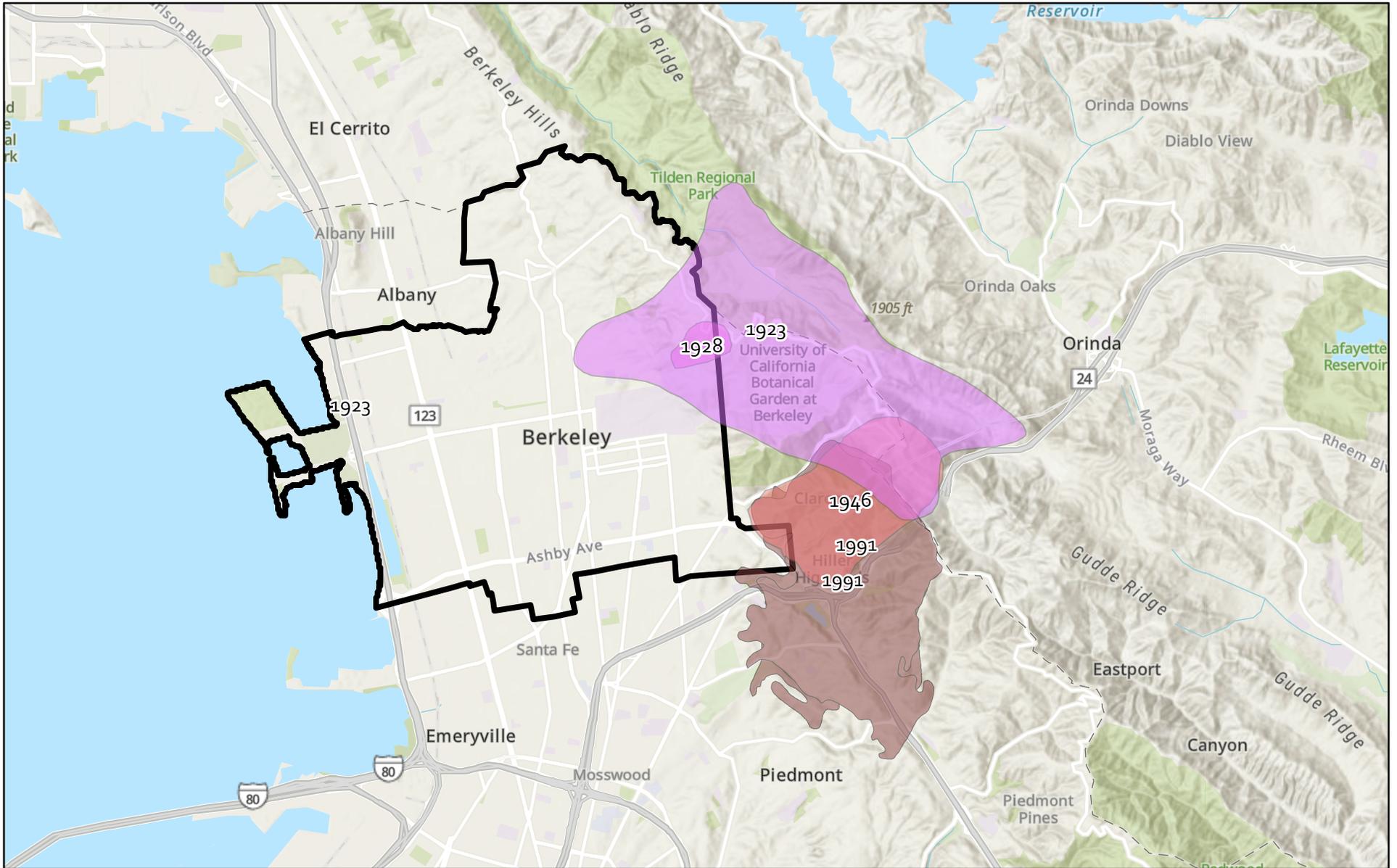
 COB Very High FHSZ (2025)

World_Hillshade

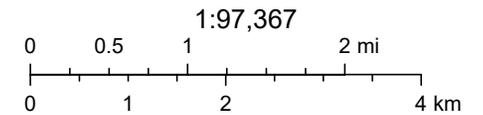


Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User Community, Sources: Esri, Maxar, Airbus DS,

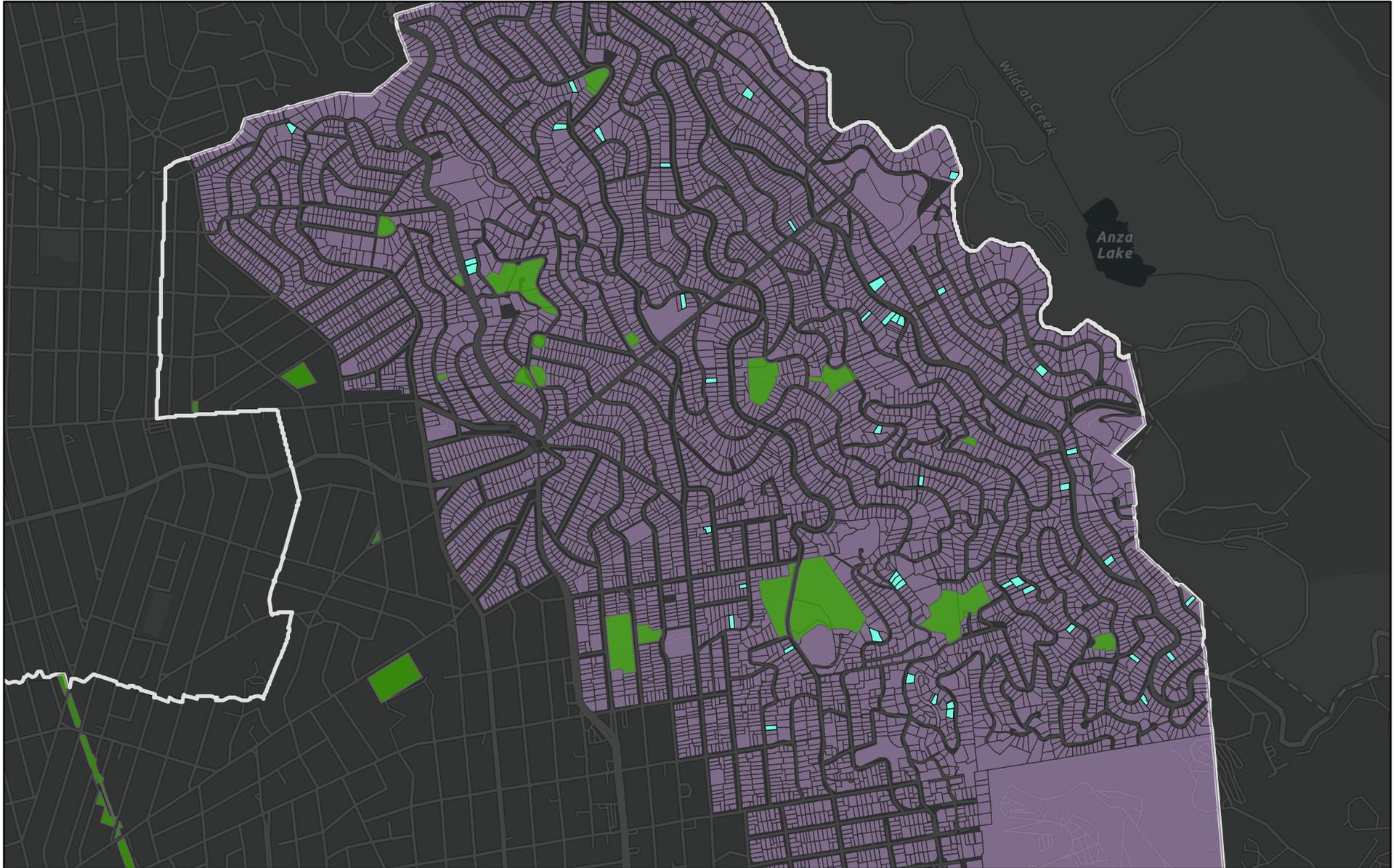
Page 7 of 11
Historical Fire Boundaries



3/14/2025

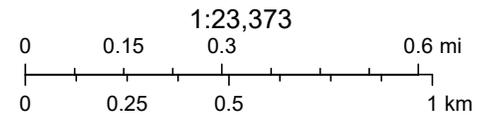


Esri, NASA, NGA, USGS, FEMA, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User

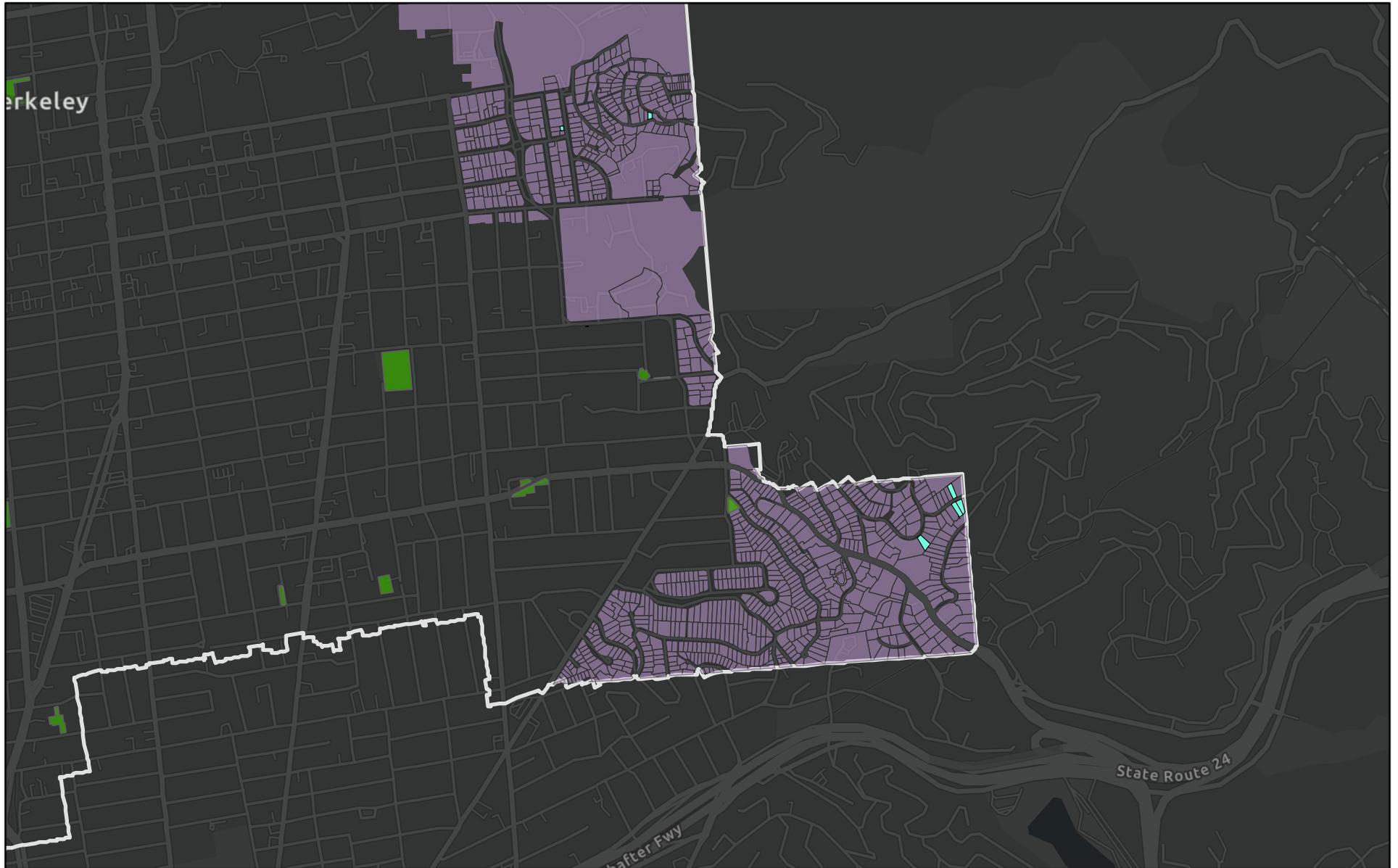


3/12/2025

-  Parks
-  after2008
-  before2008
-  City of Berkeley Boundary

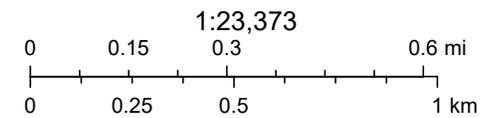


Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community



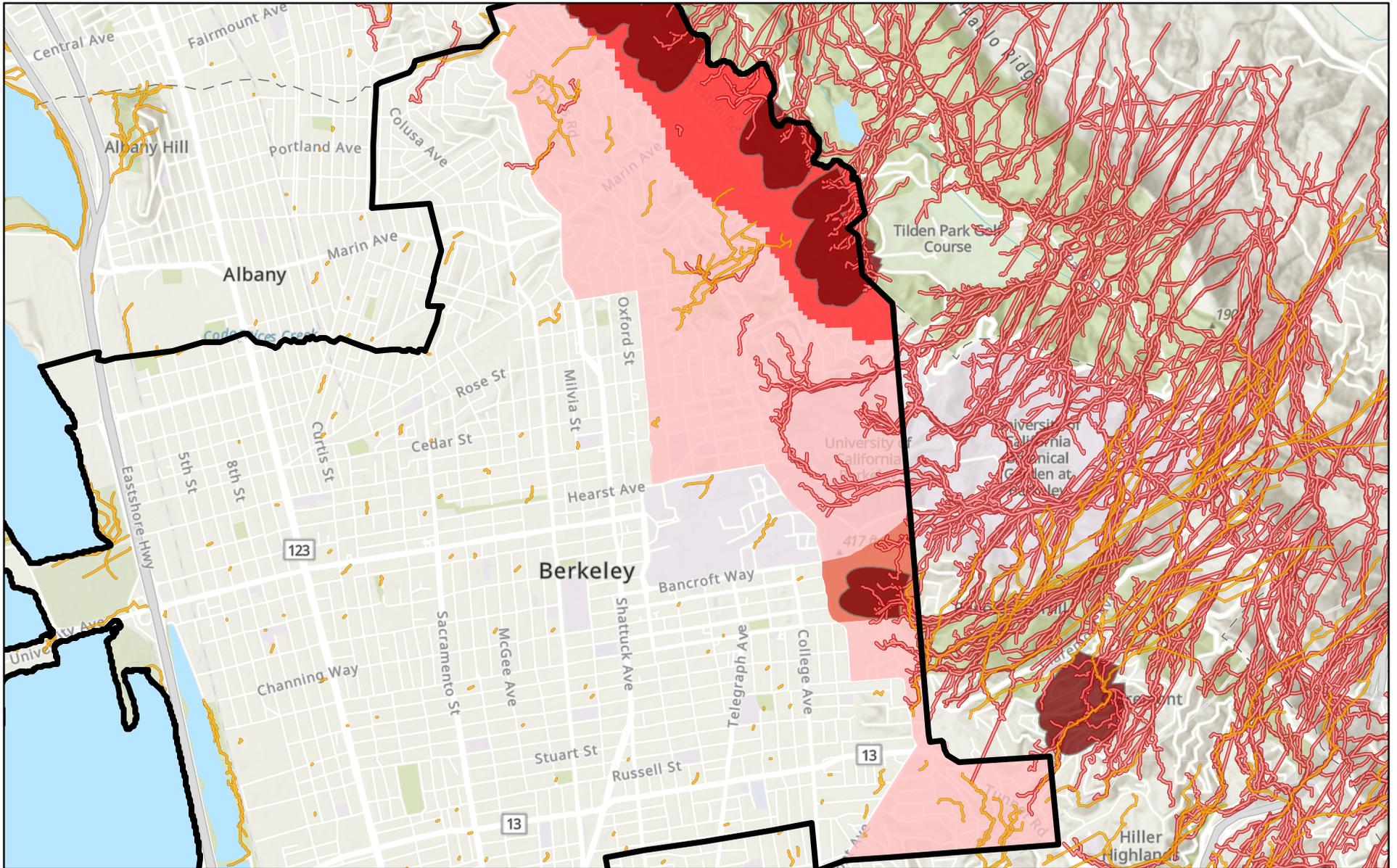
3/12/2025

-  Parks
-  before2008
-  after2008
-  City of Berkeley Boundary



Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

Very High & High FHSZs with Fire Pathway Overlay



3/12/2025

City_of_Berkeley

City Boundary

SW Fire Pathways

NE Fire Pathways

NE Entry

CALFIRE Very High (2025)

COB Very High FHSZ (2025)

COB High FHSZ (2025)

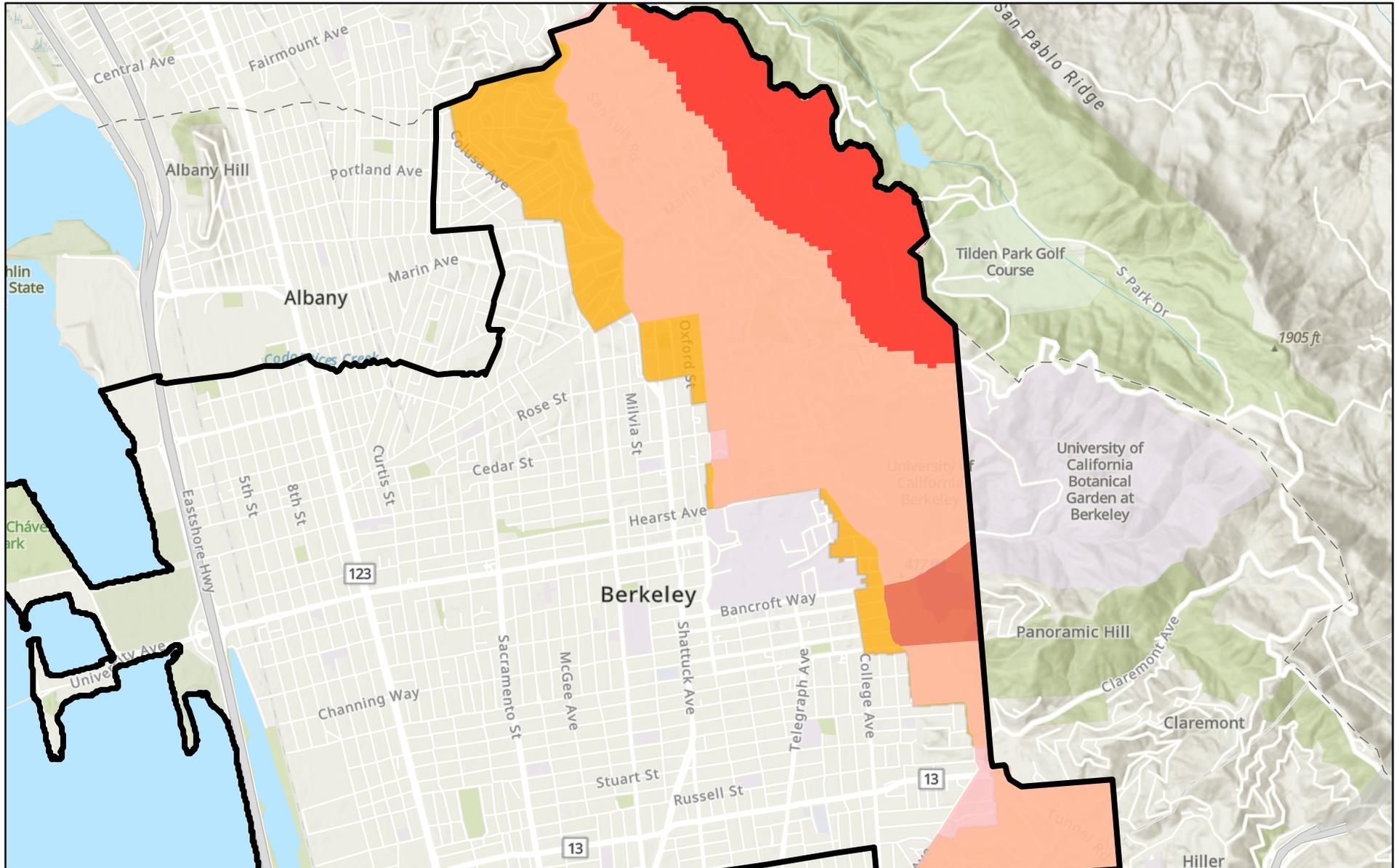
1:46,747

0 0.3 0.6 1.2 mi

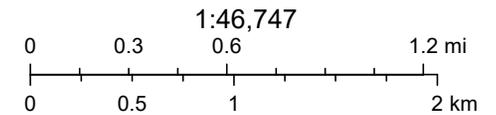
0 0.5 1 2 km

Esri, NASA, NGA, USGS, FEMA, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User

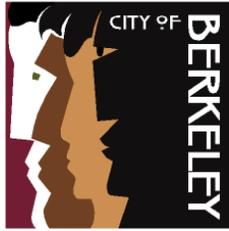
Page 11 of 11
FHSZ Comparison 2019 to 2025



-  City Boundary
-  CALFIRE Very High (2025)
-  Additional Area Recommended as a **Very High** Fire Hazard Severity Zone by the City of Berkeley(2025)
-  Additional Area Recommended a **High** Fire Hazard Severity Zone by the City of Berkeley (2025)
-  Very High FHSZ (2019)



Esri, NASA, NGA, USGS, FEMA, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User



Office of the City Manager

CONSENT CALENDAR
May 6, 2025

To: Honorable Mayor and Members of the City Council
From: Paul Buddenhagen, City Manager
Submitted by: Eleanor Hollander, Economic Development Manager
Subject: Re-Establishment of the Berkeley Tourism Business Improvement District

RECOMMENDATION

1. Adopt a Resolution declaring the City Council’s intention to renew the Berkeley Tourism Business Improvement District (BTBID) for ten (10) years starting July 1, 2025, and directing the City Manager to schedule a public meeting on June 3, 2025 and a public hearing on June 24, 2025 to renew the BTBID.
2. Adopt a Resolution declaring the City Council’s intention to modify the existing BTBID to end on June 30, 2025, shortening the existing BTBID’s term from ten (10) years to eight (8) years and directing the City Manager to schedule a public hearing on June 24, 2025 on modification of the BTBID Management District Plan (Plan).
3. Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with Visit Berkeley, the BTBID’s Owners’ Association and the City of Berkeley’s Convention and Visitor’s Bureau, for an amount not to exceed total Tourism BID collections for the term of the renewed BTBID, beginning on July 1, 2025 and concluding on June 30, 2035.

SUMMARY

The Berkeley Tourism Business Improvement District or, BTBID, is a benefit assessment district created in 2012 and subsequently renewed in 2017, to fund marketing and sales promotion efforts for assessed lodging businesses in Berkeley with five rooms or more. Lodging business owners decided to pursue renewal of the BTBID in order to maintain a revenue source devoted to marketing the City of Berkeley (City) as a destination for tourism, meetings, and events. The City contracts with Visit Berkeley, the BTBID’s Owners’ Association, which also functions as the City’s Convention and Visitor’s Bureau to implement the activities funded by the BTBID. These activities are described fully in the BTBID Management District Plan and are incorporated as Attachment 5.

The BTBID is proposed to be renewed pursuant to the Property and Business Improvement District Law of 1994, Streets and Highways Code section 36600 et. seq. If

renewed, the BTBID District would generate funding annually—approximately \$2,221,000 in FY 2026—for the promotion of travel and tourism specific to Berkeley.

Staff recommends that the City Council adopt the attached Resolution of Intention to Renew the BTBID, directing the City Manager to schedule a public meeting on June 3, 2025, and a public hearing on June 24, 2025, on the renewal and the levy of assessments on lodging businesses with five rooms or more within the boundaries of the City of Berkeley.

In addition, staff and the BTBID's Owners' Association seek to modify the existing BTBID to shorten the term by two years to conclude on June 30, 2025. The purpose of the modification is to align the BTBID's term with the renewal term, implementing the annual assessment rate of 3% of gross short-term sleeping room rental revenue. Staff recommends that the City Council adopt the attached Resolution of Intention to Modify the BTBID, directing the City Manager to schedule a public hearing on June 24, 2025 on the modification of the Plan.

Finally, staff recommends that council adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with Visit Berkeley, the BTBID's Owners' Association and the City of Berkeley's Convention and Visitor's Bureau, for an amount not to exceed total Tourism BID collections for the term of the renewed BTBID, beginning on July 1, 2025, and concluding on June 30, 2035.

FISCAL IMPACTS OF RECOMMENDATION

The proposed renewed BTBID would place a three percent (3%) assessment on short-term sleeping room rental revenue on all lodging businesses, existing and in the future, with five (5) rooms or more, available for public occupancy within the boundaries of the City. Lodging businesses may include, but are not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, or other similar structure or portion thereof.

The total BTBID annual assessment budget for the initial year of its ten (10) year operation is anticipated to be approximately \$2,221,000 in FY2026. If renewed, the BTBID would be in effect for ten (10) years and a similar assessment budget is expected to apply to subsequent years, though the total assessment amounts would vary each year based on the revenue generated by the lodging businesses.

The *Management District Plan* (Attachment 5) designates that the funds generated by the BTBID are to be used for marketing & sales promotions, cultural tourism programs, and other specific lodging business-serving activities. One percent (1%) of the funds would be retained annually by the City for its administrative services in collecting the assessments and contracting for the BTBID services. Because the BTBID programs are designed to bring more visitors to the City, the program should continue to result in an increase in transient occupancy tax (TOT) collections. There may also be an increase in travel-related sales tax revenues as a result of higher hotel occupancies.

These Resolutions will have minor administrative impact. The City Manager will be directed to mail notice of hearings and a copy of the Resolution of Intention to all lodging businesses within the proposed BTBID. If the proposed BTBID is renewed, the City will be responsible for collecting and forwarding assessment funds and will be reimbursed for the cost of this service. Annual assessment funds will be deposited into Tourism BID Fund 781-21-208-251-0000-000-000-412110 and expended from fund 781-21-208-251-0000-000-446-636110.

CURRENT SITUATION AND ITS EFFECTS

The BTBID is a benefit assessment district created in 2012 (Resolution No. 65,899–N.S.) and subsequently renewed in 2017 (Resolution No 67-926-N.S.) to provide marketing & sales promotions for assessed lodging businesses. The proposed renewed BTBID includes all lodging businesses, existing and in the future, with five (5) rooms or more, available for public occupancy within the boundaries of the City. The proposed renewed BTBID would place a three percent (3%) assessment on short-term sleeping room rental revenue on all lodging businesses. Lodging business owners decided to pursue renewal of the BTBID and increase the assessment from 1% to 3% in order to maintain a revenue source devoted to marketing the City as a destination for tourism, meetings, and events and to add a cultural resources component to their programming as outlined on page 8 of the *BTBID Management District Plan* (Attachment 5).

The current BTBID was renewed in 2017 for a ten (10) year term, beginning July 1, 2017, through June 30, 2027. Visit Berkeley, the BTBID's Owners' Association, has requested that the current BTBID term be modified to shorten the ten (10) year term to eight (8) years. The process to modify the current BTBID is set to be completed concurrently with the completion of BTBID renewal. That is, the proposed modified BTBID's term will expire on June 30, 2025, and the renewed BTBID will begin on July 1, 2025, with no break in service. The purpose of the modification is to align the BTBID's term with the renewed term, while simultaneously implementing the annual assessment rate of three percent (3%) of gross short-term sleeping room rental revenue.

The Tourism BID assessment would continue to be collected from the assessed businesses by the City concurrently with Transient Occupancy Tax, or TOT, which remains at 1%. The City would continue to contract with Visit Berkeley to act as the Owners' Association of the BTBID and provide services with the BTBID funds collected. The *BTBID Management District Plan* designates that the funds would be used for marketing & sales promotions and cultural tourism programs. The BTBID Management District Plan also calls for City oversight of Visit Berkeley's management of BTBID funds, including the yearly submission of an annual report and proposed budget for the following Fiscal Year, typically presented to City Council in late spring/early summer prior to the commencement of the fiscal year on July 1.

Renewal Process

The BTBID Owners' Association, Visit Berkeley, began the process of renewing the BTBID in January 2025 by circulating a petition of all eligible lodging establishments. In March 2025, the Berkeley City Clerk certified that the City has received written petitions

signed by lodging business owners in the proposed district who will pay more than fifty percent (50%) of the assessments proposed to be levied (Attachment 4) with the assistance of the City's Finance Department. This majority petition allows the City Council to initiate proceedings for district renewal. The Adoption of the attached Resolution is the first City Council action required to renew the BTBID.

Following the adoption of the Resolution of Intention to renew the district, the City Council must also schedule and hold a public meeting, where the City Council must allow public testimony regarding the proposed assessment. Finally, the City Council must schedule and hold a public hearing where any protests may be received. If at the time of the public hearing, written protests have not been received from businesses that will pay fifty percent or more of the proposed assessments, the City Council can adopt a resolution renewing the BTBID. Staff recommends that the City Council adopt the Resolution of Intention to renew the BTBID, directing the City Manager to schedule a public meeting for June 3, 2025, and the final public hearing for June 24, 2025.

District Modification Process

At the written request of the BTBID Owners' Association, the City Council may modify the existing *Management District Plan* after conducting one public hearing on the proposed modification. Visit Berkeley, the BTBID's Owners' Association, has submitted a letter to City Council requesting modification of the current BTBID's term to shorten the term from ten (10) years to eight (8) years (Attachment 2: Exhibit A). Submission of this written request allows the City Council to initiate proceedings to modify the current term of the BTBID.

The Property and Business Improvement District Law of 1994 requires the City to mail a copy of the Resolution of Intention to modify the BTBID to assessed lodging businesses within the BTBID. The resolution must be mailed at least ten (10) days before the public hearing on the modification. The Property and Business Improvement District Law of 1994 also requires the City to publish a copy of the Resolution of Intention to modify the BTBID in a newspaper of general circulation in the City. The resolution must be published once at least seven (7) days before the public hearing on the modification.

Staff recommends that the City Council adopt the attached Resolution of Intention to Modify the BTBID, directing the City Manager to schedule a public hearing on the proposed modification on June 24, 2025, concurrently with the public hearing to renew the district for ten years for a term of 2025-35. If the City Council, following the public hearing, decides to modify the current BTBID, the City Council can adopt a resolution of modifying the existing *Management District Plan* to conclude on June 24, 2025.

Contract for Distribution of Tourism BID Funds

Pending the modification of the existing term of the Tourism BID, and the successful renewal of the BTBID for 2025-35, staff recommends that council adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with Visit Berkeley, the BTBID's Owners' Association and the City of Berkeley's Convention and Visitor's Bureau, for an amount not to exceed total Tourism BID

collections for the term of the renewed BTBID, beginning on July 1, 2025 and concluding on June 30, 2035, so the city may “pass through” the collected assessments to the owners association smoothly.

BACKGROUND

A Tourism BID is a special purpose Business Improvement District (BID) focused on the hotel sector. Tourism BIDs are formed by a local city government at the request of hotels and motels which stand to benefit from joint marketing and promotion activities directed by a separate non-profit corporation. In California, more than 112 communities have established Tourism BIDs, many of which are located in the Bay Area. Tourism BID funds are customized to fit the needs of each destination and allow for a wide range of services including marketing & sales promotions and cultural tourism programs.

In Berkeley, the convention and visitor’s bureau, known as Visit Berkeley, established a Tourism BID in 2012 known as the BTBID for a term of five years and subsequently renewed the BTBID in 2017 for a term of ten years. This renewal of the BID continues the same scope of services going forward, contemplates an increase in collections from 1% to 3% of room rates, and provides an updated *Management District Plan* (Attachment 4) which details the proposed BID services for the renewed BTBID and also includes the proposed boundary of the BTBID, a budget, and a proposed means of governance. The BTBID will continue to include all lodging businesses existing and, in the future, with five (5) rooms or more, available for public occupancy within the boundaries of the City. The renewed BTBID will have a ten (10) year life. The assessment will be implemented beginning July 1, 2025. Once per year beginning on the anniversary of district renewal there is a 30-day period in which business owners paying more than fifty percent (50%) of the assessment may protest and begin proceedings to terminate the district.

The City will be responsible for collecting the assessment on a monthly basis from each assessed lodging business. The City shall forward the assessments to Visit Berkeley, which will have the responsibility of managing BTBID programs as provided in the *Management District Plan*. The City shall retain a fee equal to one percent (1%) of the amount of assessment collected to cover its costs of collection and administration.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Renewal of the BTBID will continue a stable funding source for tourism promotion and visitor resources in Berkeley. Modification of the current BTBID’s term will allow the current BTBID’s term to end before the renewed BTBID is implemented. This effort will continue to build on Berkeley’s success as a visitor destination and will help to maintain and grow General Fund revenues generated by TOT and visitor-generated sales taxes.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Eleanor Hollander, Office of Economic Development, (510) 981-7536

Attachments:

1: Resolution: Resolution of the City Council of the City of Berkeley Declaring its Intention to Renew the Berkeley Tourism Business Improvement District and Fixing the Time and Place of a Public Meeting and a Public Hearing Thereon and Giving Notice Thereof

EXHIBIT A: District Boundaries

2: Resolution: Resolution of the City Council of the City of Berkeley Declaring its Intention to Modify the Berkeley Tourism Business Improvement District and Public Hearing Notices

EXHIBIT A: Letter from Visit Berkeley Requesting Modification of the Management District Plan for the Berkeley Tourism Business Improvement District

3: Resolution: Contract with Visit Berkeley to Implement the Berkeley Tourism Business Improvement District

4: Tourism BID Petition Certification, March 2025

5: Berkeley Tourism Business Improvement District *Management District Plan, 2025*

RESOLUTION NO. ##,###-N.S.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY DECLARING ITS INTENTION TO RENEW THE BERKELEY TOURISM BUSINESS IMPROVEMENT DISTRICT (BTBID) AND FIXING THE TIME AND PLACE OF A PUBLIC MEETING AND A PUBLIC HEARING THEREON AND GIVING NOTICE THEREOF

WHEREAS, the City of Berkeley (City) created the BTBID on September 18, 2012 by Resolution No. 65,899-N.S.; and

WHEREAS, the BTBID was subsequently renewed on April 25, 2017 by Resolution No. 67-926-N.S.; and

WHEREAS, the BTBID was renewed for a ten (10) year term which ends on June 30, 2027, and the BTBID Owner's Association, Visit Berkeley, has requested the City Council to modify the Management District Plan (Plan) of the BTBID so that the current BTBID term ends June 30, 2025; and

WHEREAS, the Property and Business Improvement District Law of 1994, Streets and Highways Code § 36600 et seq., authorizes the City to renew business improvement districts for the purposes of promoting tourism; and

WHEREAS, Visit Berkeley, lodging business owners, and representatives from the City have met to consider the renewal of the BTBID; and

WHEREAS, Visit Berkeley has drafted a Plan which sets forth the proposed boundary of the BTBID, a service plan and budget, and a proposed means of governance; and

WHEREAS, lodging business which will pay more than fifty percent (50%) of the assessment under the BTBID have petitioned the City Council to renew the BTBID.

NOW THEREFORE, BE IT RESOLVED BY THE BERKELEY CITY COUNCIL THAT:

1. The recitals set forth herein are true and correct.
2. The City Council finds that lodging businesses that will pay more than fifty percent (50%) of the assessment proposed in the Plan have signed and submitted petitions in support of the renewal of the BTBID. The City Council accepts the petitions and adopts this Resolution of Intention to renew the BTBID and to levy an assessment on certain lodging businesses within the BTBID boundaries in accordance with the Property and Business Improvement District Law of 1994.
3. The City Council finds that the Plan satisfies all requirements of Streets and Highways Code § 36622.
4. The City Council declares its intention to renew the BTBID and to levy and collect assessments on lodging businesses within the BTBID boundaries pursuant to the Property and Business Improvement District Law of 1994.

5. The BTBID shall include all lodging businesses, existing and in the future, with five (5) rooms or more, available for public occupancy within the boundaries of the City, as shown in the map attached as Exhibit A.
6. The name of the district shall be Berkeley Tourism Business Improvement District
7. The annual assessment rate is three percent (3%) of gross short-term sleeping room rental revenue. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days; and stays by any officer or employee of a government who is exempt by express provision of federal international treaty.
8. The assessments levied for the BTBID shall be applied toward marketing & sales promotions and cultural tourism programs to market assessed lodging businesses in the City as tourist, meeting, and event destinations, as described in the Plan. Funds remaining at the end of any year may be used in subsequent years in which BTBID assessments are levied as long as they are used consistent with the requirements of this resolution, the resolution of formation, and the Plan.
9. Subject to completion of the modification of the current BTBID term, the renewed BTBID will have a ten (10) year life, beginning July 1, 2025 or as soon as possible thereafter, and ending ten (10) years from its start date, unless renewed pursuant to Streets and Highways Code § 36660.
10. Bonds shall not be issued to fund the BTBID.
11. The time and place for the public meeting to hear testimony on renewing the BTBID and levying assessments are set for June 3, 2025, at 6:00 PM, or as soon thereafter as the matter may be heard, at the School District Board Room located at 1231 Addison Street, Berkeley, CA 94702.
12. The time and place for the public hearing to renew the BTBID and the levy of assessments are set for June 24, 2025, at 6:00 PM, or as soon thereafter as the matter may be heard, at the School District Board Room located at 1231 Addison Street, Berkeley, CA 94702. The City Manager is directed to provide written notice to the lodging businesses subject to assessment of the date and time of the meeting and hearing, and to provide that notice as required by Streets and Highways Code § 36623, no later than May 9, 2025.
13. At the public meeting and hearing the testimony of all interested persons for or against the renewal of the BTBID may be received. If at the conclusion of the public hearing, there are of record written protests by the owners of the lodging businesses within the proposed BTBID that will pay fifty percent (50%) or more of the estimated total assessment of the entire BTBID, no further proceedings to renew the BTBID shall occur for a period of one year.
14. The complete Plan is on file with the City Clerk and may be reviewed upon request.
15. This resolution shall take effect immediately upon its adoption by the City Council.

Exhibit

A: District Boundaries

RESOLUTION NO. ##,###-N.S.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY DECLARING ITS INTENTION TO MODIFY THE BERKELEY TOURISM BUSINESS IMPROVEMENT DISTRICT

WHEREAS, on April 25, 2017 the City Council of the City of Berkeley (City Council) adopted Resolution No. 67-926-N.S. declaring the results of the majority protest proceedings and renewing the Berkeley Tourism Business Improvement District (BTBID); and

WHEREAS, the Property and Business Improvement District Law of 1994, Streets and Highways Code §36600 et seq., allows cities to modify the Management District Plan (Plan) of a District at the request of the Owners' Association; and

WHEREAS, the BTBID Owners' Association, Visit Berkeley, has requested modification of the Plan.

NOW THEREFORE, BE IT RESOLVED BY THE BERKELEY CITY COUNCIL THAT:

1. The recitals set forth herein are true and correct.
2. The City Council declares its intention to modify the BTBID Plan.
3. The proposed modification of the BTBID Plan will reduce the term of the BTBID from ten (10) years to eight (8) years, with a modified ending date of June 30, 2025.
4. The time and place for a public hearing on modification of the BTBID Plan are set for 6:00 PM or as soon thereafter as the matter may be heard on June 24, 2025 at School District Board Room located at 1231 Addison Street, Berkeley, CA 94702.
5. This resolution shall take effect immediately upon its adoption by the City Council.

Exhibit

A: Letter from Visit Berkeley Requesting Modification of the Management District Plan of the Berkeley Tourism Business Improvement District

EXHIBIT A: Letter from Visit Berkeley Requesting Modification of the Management District Plan for the Berkeley Tourism Business Improvement District



March 28, 2025

Honorable Mayor & Councilmembers
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Re: Berkeley Tourism Business Improvement District

Honorable Mayor and Councilmembers:

As the Berkeley Tourism Businesses Improvement District (BTBID) Owners' Association, Visit Berkeley hereby requests modification of the BTBID Management District Plan enacted in 2012 and most recently renewed in 2017.

Specifically, we request the term of the BTBID be modified. The current term is set to end in two years, effective through October 31, 2027. We request shortening the BTBID's term so that it ends on June 30, 2025, to coincide with the City's Fiscal year and the beginning of our new BTBID set to start July 1, 2025.

We ask that you consider this item at your May 6, 2025, meeting. If you have any questions of comments, please contact me at 510-549-7040.

Thank you,

A handwritten signature in black ink, appearing to read "Jeffrey Church".

Jeffrey Church, President & CEO

Visit Berkeley

Visit Berkeley Convention & Visitors Bureau and Film Office
2030 Addison St., #102, Berkeley, CA 94704 P: 510.549.7040

www.visitberkeley.com

RESOLUTION NO. ##,###-N.S.

AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH *VISIT BERKELEY* THE OWNERS' ASSOCIATION OF THE BERKELEY TOURISM BUSINESS IMPROVEMENT DISTRICT (BTBID), TO IMPLEMENT THE BERKELEY TOURISM BUSINESS IMPROVEMENT DISTRICT FOR THE TERM OF THE RESTABLISHED TOURISM BUSINESS IMPROVEMENT DISTRICT

WHEREAS, Visit Berkeley (VB) has proven to be an effective partner with the City of Berkeley in managing the existing Berkeley Tourism Business Improvement District (BTBID) and implementing hotel and tourism marketing and promotions; and

WHEREAS, Visit Berkeley is the single private sector organization that is taking comprehensive action to improve the economic vitality of the hotel sector across Berkeley, as reflected in Visit Berkeley's current stewardship of the established Berkeley Tourism Business Improvement District; and

WHEREAS, Visit Berkeley, the convention and visitor's bureau for the City of Berkeley, has declared its intention to renew the Berkeley Tourism Business Improvement District (BTBID) for ten (10) years starting July 1, 2025; and

WHEREAS, Visit Berkeley functions as the Owners' Association of the BTBID; and

WHEREAS, Visit Berkeley, in its capacity as the Owners' Association of the BTBID, has drafted a *Management District Plan* which sets forth the proposed boundary of the BTBID, a service plan and budget, and a proposed means of governance; and

WHEREAS, The BTBID Owners' Association, Visit Berkeley, is charged with managing funds and implementing programs in accordance with the *Management District Plan*, and must provide annual reports to the City; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute a sole source contract and any amendments with Visit Berkeley for the purpose of implementation of the BTBID Management District Plan, for an amount not to exceed total Tourism BID collections for the term of the renewed BTBID, beginning on July 1, 2025 and concluding on June 30, 2035. A record signature copy of said contract and any amendments are to be on file in the Office of the City Clerk.

**NOTICE OF PUBLIC MEETING AND PUBLIC HEARING
BERKELEY CITY COUNCIL**

**CONCERNING THE RENEWAL OF THE BERKELEY TOURISM
BUSINESS IMPROVEMENT DISTRICT AND LEVY OF AN
ASSESSMENT ON CERTAIN LODGING BUSINESSES WITHIN THE
DISTRICT**

NOTICE IS HEREBY GIVEN that on May 6, 2025, the City Council (the "Council") of the City of Berkeley (the "City") adopted a Resolution of Intention to renew the Berkeley Tourism Business Improvement District (the "BTBID") and to levy an assessment on certain lodging businesses within the BTBID as set forth in the attached Resolution of Intention.

NOTICE IS HEREBY FURTHER GIVEN that at 6:00 PM on June 3, 2025, at the School District Board Room located at 1231 Addison Street, Berkeley, CA 94702, a public meeting shall be held pursuant to Government Code section 54954.6 to allow public testimony regarding the renewal of the BTBID and the levy of assessments therein as set forth in the enclosed Resolution of Intention and pursuant to Government Code section 54954.6.

NOTICE IS HEREBY FURTHER GIVEN that at 6:00 PM on June 24, 2025, at School District Board Room located at 1231 Addison Street, Berkeley, CA 94702 has been set as the time and place for a public hearing at which time the City Council proposes to renew the BTBID and to levy the proposed assessment as set forth in the Resolution of Intention.

Location: The renewed BTBID includes all lodging businesses, existing and in the future, with five (5) rooms or more, available for public occupancy within the boundaries of the City.

Services: The BTBID is designed to provide specific benefits directly to payors by increasing awareness and demand for room night sales. Marketing & sales promotions and cultural tourism programs will increase demand for overnight tourism and market payors as tourist, meeting and event destinations, thereby increasing demand for room night sales.

Budget: The total BTBID annual assessment budget for the initial year of its ten (10) year operation is anticipated to be approximately \$2,221,000. A similar assessment budget is expected to apply to subsequent years, but this assessment budget is expected to fluctuate as room sales do and as businesses open and close.

- Cost:** The existing annual assessment rate is one percent (1%) of gross short-term room rental revenue. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days; stays by any officer or employee of a government who is exempt by express provision of federal international treaty; and stays at a bed and breakfast establishment as defined in Section 23F.04.010 of the Berkeley Municipal Code. The proposed annual assessment rate is three percent (3%) of gross short-term sleeping room rental revenue. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days; and stays by any officer or employee of a government who is exempt by express provision of federal international treaty.
- Collection:** The City will be responsible for collecting the assessment on a monthly basis (including any delinquencies, interest, and overdue charges) from each assessed lodging business located in the boundaries of the BTBID. The City shall take all reasonable efforts to collect the assessments from each assessed lodging business.
- Duration:** The renewed BTBID will have a ten (10) year life, beginning July 1, 2025 or as soon as possible thereafter, and ending ten (10) years from its start date. After ten (10) years, the BTBID may be renewed pursuant to the Property and Business Improvement District Law of 1994, Streets and Highways Code section 36600 et seq. if business owners support continuing the BTBID programs.
- Management:** Visit Berkeley shall continue to serve as the BTBID's Owners' Association. The Owners' Association is charged with managing funds and implementing programs and must provide annual reports to the City Council.
- Protest:** Any owner of a lodging business within the proposed BTBID that will be subject to the assessment may protest the renewal of the BTBID. If written protests are received from the owners of lodging businesses in the proposed BTBID who represent 50 percent (50%) or more of the estimated annual assessments to be levied, the BTBID shall not be renewed, and the assessment shall not be imposed.

You may mail a written protest to:

Office of the City Clerk
City of Berkeley
2180 Milvia Street, 1st Floor
Berkeley, CA 94704

You may also appear at the public meeting or hearing and submit a written protest at that time.

Information: Should you desire additional information about this proposed BTBID or assessment contact:

Jeffrey Church, President & CEO
Visit Berkeley
2030 Addison Street, #102
Berkeley, CA 94704
(510) 549-7040

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of June 12, 2025.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council 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 the City Council, 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 City Clerk. 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 City Clerk at 981-6900 or clerk@berkeleyca.gov for further information.

Mailed: * *

Notice provided pursuant to Government Code section 54954.6.

~~~~~  
I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on June 12, 2025.

\_\_\_\_\_  
Mark Numainville, City Clerk

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY  
DECLARING ITS INTENTION TO MODIFY THE BERKELEY TOURISM  
BUSINESS IMPROVEMENT DISTRICT**

NOTICE IS HEREBY GIVEN that at 6:00 PM on June 24, 2025, at the School District Board Room located at 1231 Addison Street, Berkeley, CA 94702 has been set as the time and place for a public hearing at which time the Council proposes to modify the existing BTBID, to conclude service on June 30, 2025, as set forth in the Resolution of Intention.

**Location:** There is no proposed change to BTBID boundaries which include all lodging businesses with five (5) rooms or more, located within the boundaries of the City of Berkeley.

**Services:** The BTBID is designed to provide specific benefits directly to payors by increasing room night sales. Marketing and sales promotions will increase overnight tourism and market payors as tourist, meeting and event destinations, thereby increasing room night sales.

**Budget:** The total BTBID annual budget for each full year of operation is anticipated to be approximately \$557,760. This budget is expected to fluctuate as room sales do, but is not expected to significantly change over the BTBID's term.

**Cost:** There is no change proposed to the annual assessment rate. The current assessment rate is one percent (1%) of gross short-term room rental revenue. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days; stays by any officer or employee of a government who is exempt by express provision of federal international treaty; and stays at a bed and breakfast establishment as defined in Section 23F.04.010 of the Berkeley Municipal Code.

**Collection:** The City of Berkeley will continue to be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business with five (5) rooms or more, located in the boundaries of the BTBID. The City shall take all reasonable efforts to collect the assessments from each lodging business.

**Duration:** The modified BTBID will have an eight (8) year life, with a modified ending date of June 30, 2025. The City of Berkeley created the BTBID on April 25, 2017 by Resolution No. 67-926-N.S.; for a ten (10) year term which

currently ends on June 30, 2027. The BTBID Owner's Association has requested the City Council to modify the Management District Plan of the BTBID so that the current BTBID term ends June 30, 2025. The process to modify the current BTBID is set to be completed concurrently with completion of BTBID renewal. That is, the proposed modified BTBID's term will expire on June 30, 2025, and the renewed district will begin on July 1, 2025 with no break in service. The purpose of the modification is to align the BTBID's term with the renewed BTBID, implementing the annual assessment rate of 3% of gross short-term sleeping room rental revenue.

**Management:** Visit Berkeley will continue to serve as the BTBID's Owners' Association. The Owners' Association is charged with managing funds and implementing programs in accordance with the Plan, and must provide annual reports to the City of Berkeley.

**Protest:** Any owner of a lodging business within the proposed BTBID that will be subject to the assessment may protest the modification of the BTBID. If written protests are received from the owners of lodging businesses in the existing BTBID who represent fifty percent (50%) or more of the estimated annual assessments to be levied, the BTBID shall not be modified.

You may mail a written protest to:

Office of the City Clerk  
City of Berkeley  
2180 Milvia Street, 1st Floor  
Berkeley, CA 94704

You may also appear at the public meeting or hearing and submit a written protest at that time.

**Information:** Should you desire additional information about the modified BTBID or assessment contact:

Jeffrey Church, President & CEO  
Visit Berkeley  
2030 Addison Street, #102  
Berkeley, CA 94704  
(510) 549-7040

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of June 12, 2025.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to [council@berkeleyca.gov](mailto:council@berkeleyca.gov) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council 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 the City Council, 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 City Clerk. 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 City Clerk at 981-6900 or [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov) for further information.

**Mailed:** \* [redacted] \*

**Notice provided pursuant to Government Code section 54954.6.**

Pursuant to Streets and Highways Code section 36636, notice for the public hearing that will result from the adoption of this Resolution shall be accomplished by mailing a copy of the Resolution to assessed business owners and publishing a copy of the Resolution in a newspaper of general circulation in the City.

“Notice of all other public hearings pursuant to this section shall comply with both of the following:

- (1) The Resolution of Intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.
- (2) A complete copy of the Resolution of Intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.”

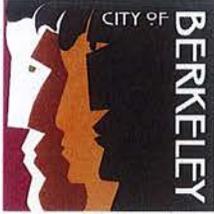
**Mailed:** \* [redacted] \*

**Published:** \* [redacted] \*

**Notice provided pursuant to Streets and Highways Code section 36636.**

~~~~~  
I hereby certify that the Notice for this Public Meeting and Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building 2134 Martin Luther King Jr. Way, as well as on the City’s website, on June 12, 2025.

Mark Numainville, City Clerk



City Clerk Department

March 24, 2025

Memo to File

I hereby certify that 8 Valid Petitions to Establish the Berkeley Tourism Business Improvement District were delivered to the Finance Department by representatives of the Berkeley Tourism BID.

The petitions represent a weighted approval of greater than 50% of the total assessment as verified by the Berkeley Finance Department.

A handwritten signature in blue ink that reads "Mark Numainville".

Mark Numainville
City Clerk

A handwritten date in blue ink that reads "3/24/2025".

Date



BERKELEY TOURISM BUSINESS IMPROVEMENT DISTRICT MANAGEMENT DISTRICT PLAN

CONTENTS

I. Overview.....	3
II. Background.....	4
III. Accomplishments.....	5
IV. Boundary	6
V. Assessment Budget And Services.....	7
A. Annual Service Plan	7
B. Annual Budget	9
C. California Constitutional Compliance	9
D. Assessment	10
E. Interest And Overdue Charges	11
F. Time And Manner For Collecting Assessments.....	12
VI. Governance.....	13
A. Owners’ Association	13
B. Brown Act And California Public Records Act Compliance.....	13
C. Annual Report	13
Appendix 1 – Law.....	14
Appendix 2 – Assessed Businesses	26



Prepared by
Civitas



(800)999-7781

www.civitasadvisors.com

I. OVERVIEW

Developed by Berkeley lodging businesses and Visit Berkeley (VB), the convention and visitors bureau for Berkeley, California the Berkeley Tourism Business Improvement District (BTBID) is an assessment district proposed to continue to provide specific benefits to payors by funding marketing and sales promotion efforts for assessed businesses. This approach has been used successfully in other destination areas throughout the country to provide the benefit of additional room night sales directly to payors. The BTBID was initially created in 2012 for a five (5) year term, and was subsequently renewed in 2017 for a ten (10) year term. VB and Berkeley lodging businesses now wish to renew the BTBID for an additional ten (10) year term.

Location: The renewed BTBID includes all lodging businesses, existing and in the future, with five (5) rooms or more, available for public occupancy within the boundaries of the City of Berkeley (City), as shown on the map in Section IV.

Services: The BTBID is designed to provide specific benefits directly to payors by increasing awareness and demand for room night sales. Marketing & sales promotions and cultural tourism programs will increase demand for overnight tourism and market payors as tourist, meeting and event destinations, thereby increasing demand for room night sales.

Budget: The total BTBID annual assessment budget for the initial year of its ten (10) year operation is anticipated to be approximately \$2,221,000. A similar assessment budget is expected to apply to subsequent years, but this assessment budget is expected to fluctuate as room sales do and as businesses with five or more lodging rooms open and close.

Cost: The annual assessment rate is three percent (3%) of gross short-term sleeping room rental revenue. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days; and stays by any officer or employee of a government who is exempt by express provision of federal international treaty.

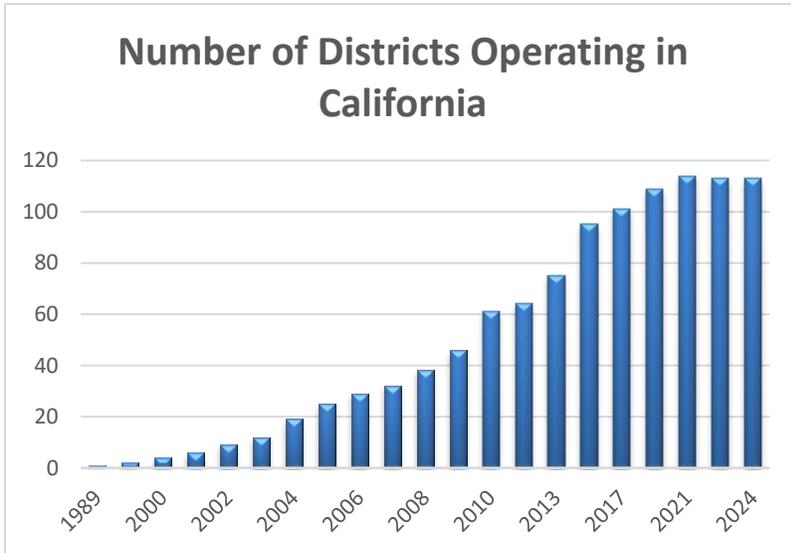
Collection: The City will be responsible for collecting the assessment on a monthly basis (including any delinquencies, interest, and overdue charges) from each assessed lodging business located in the boundaries of the BTBID. The City shall take all reasonable efforts to collect the assessments from each assessed lodging business.

Duration: The renewed BTBID will have a ten (10) year life, beginning July 1, 2025 or as soon as possible thereafter, and ending ten (10) years from its start date. After ten (10) years, the BTBID may be renewed pursuant to the Property and Business Improvement District Law of 1994, Streets and Highways Code section 36600 et seq. (94 Law) if business owners support continuing the BTBID programs.

Management: VB shall continue to serve as the BTBID's Owners' Association. The Owners' Association is charged with managing funds and implementing programs in accordance with this Management District Plan (Plan), and must provide annual reports to the City Council.

II. BACKGROUND

TBIDs are an evolution of the traditional Business Improvement District. The first TBID was formed in West Hollywood, California in 1989. Since then, over 100 California destinations have followed suit. In recent years, other states have begun adopting the California model –Illinois, Minnesota, Massachusetts, Montana, South Dakota, Washington, Colorado, Texas and Louisiana have adopted TBID laws. Several other states are in the process of adopting their own legislation. The cities of Wichita, Kansas and Newark, New Jersey used an existing business improvement district law to form a TBID. Additionally, some cities, like Portland, Oregon and Memphis, Tennessee have utilized their home rule powers to create TBIDs without a state law.



California’s TBIDs collectively raise over \$300 million annually for local destination marketing in 2024. With competitors raising their budgets, and increasing rivalry for visitor dollars, it is important that Berkeley lodging businesses continue to invest in stable, commerce-specific marketing programs.

TBIDs utilize the efficiencies of private sector operation in the market-based promotion of tourism districts. TBIDs allow tourism business owners to

organize their efforts to increase commerce. Lodging business owners within the TBID pay an assessment and those funds are used to provide services that increase commerce.

In California, most TBIDs are formed pursuant to the Property and Business Improvement District Law of 1994. This law allows for the creation of a benefit assessment district to raise funds within a specific geographic area. *The key difference between Tourism BIDs and other benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.*

There are many benefits to TBIDs:

- Funds must be spent on services and improvements that provide a specific benefit only to those who pay;
- Funds cannot be diverted to general government programs;
- They are customized to fit the needs of payors in each destination;
- They allow for a wide range of services;
- They are **designed, created and governed by those who will pay** the assessment; and
- They provide a stable, long-term funding source for tourism promotion.

III. ACCOMPLISHMENTS OF BERKELEY’S TOURSIM BID TO DATE

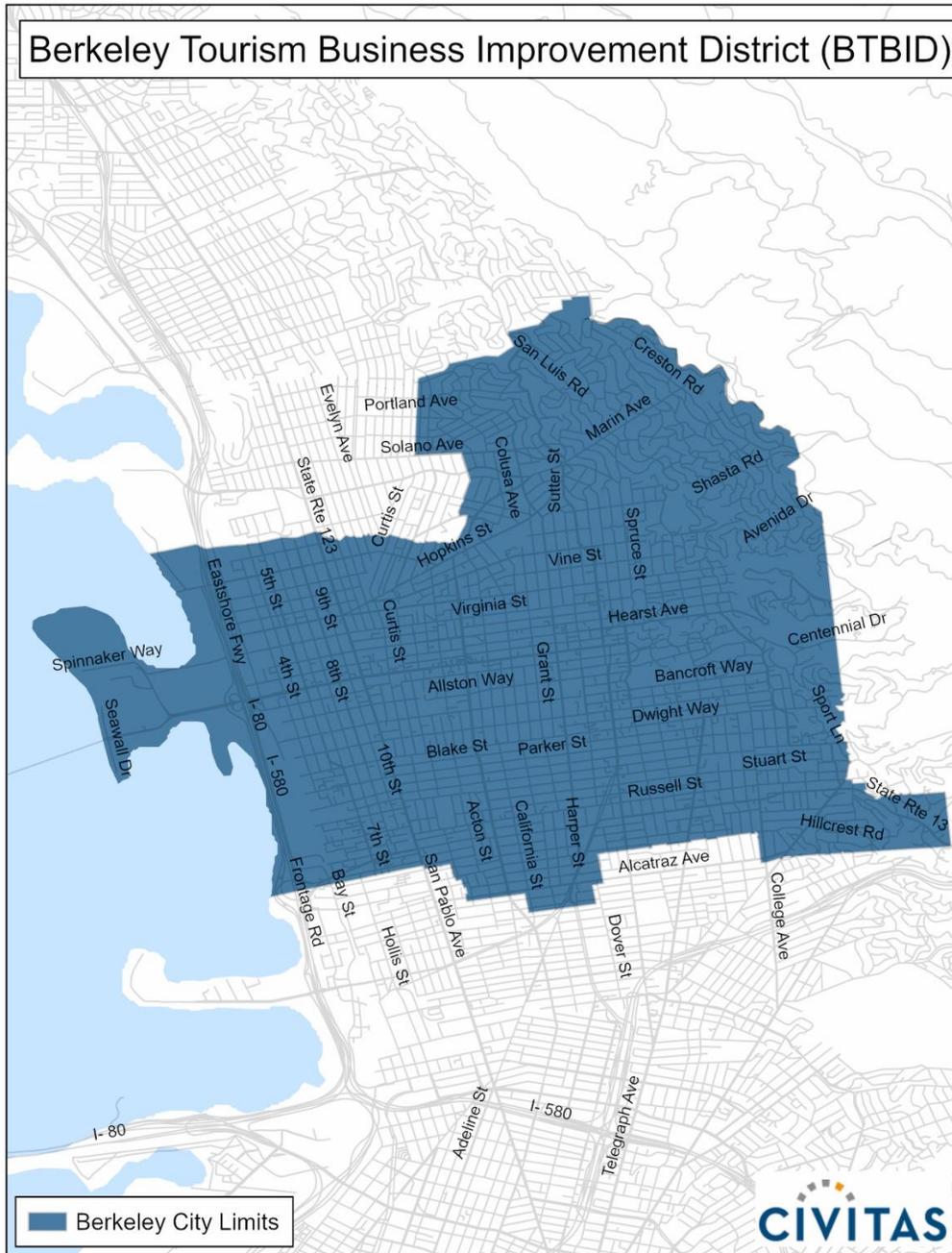
- Creation of Berkeley Restaurant Week, celebrating the culinary excellence the city has to offer.
- Implementation of *Berkeley Bucks*, the City of Berkeley’s first e-gift card redeemable only in Berkeley to support local businesses, with a focus on shopping, dining, and accommodations.
- Utilized the Visit Berkeley website and team as a resource during the pandemic to support local businesses with a “What’s Open?” page, hosting restaurant roundtables to phase in outdoor dining, and supported the City of Berkeley’s “Berkeley Relief Fund” campaign to raise funds for those most impacted by the pandemic.
- Sponsorship and support of large-scale events such as the Bay Area Book Festival and Bioneers to increase overnight visitation.
- Sponsored California Hotel & Lodging Association (CHLA) Membership for All Lodging Properties
- Through CHLA, were able to deliver then-hard-to-source PPE (masks and hand sanitizer) to all hotel properties
- Provided Advanced Hotel Performance Metrics through Smith Travel Report (STR) / Kalibri Reports to Lodging Partners
- Invested in metrics-supported online travel agency (OTA) marketing campaigns to boost Berkeley hotel occupancy
- Developed a partnership with Placer AI, utilizing their platform on annual subscription basis to quantify the local economic impact of tourism through location-based data
- Hosted meeting planner familiarization tours for Berkeley hotel and event venues
- 1,500+ RFP’s received and processed through CVENT & Direct Lead retrieval from various tradeshow
- Created the Visit Berkeley Partner Showcase, connecting UC Berkeley event planners with Berkeley Businesses and vendors (i.e. local caterers)
- Invested in a modern interactive website, VisitBerkeley.com, in 2019
- 503,609 visitors to VisitBerkeley.com in ’24 (14% increase over 2023)
- 1,105,293 VisitBerkeley.com page views in ’24 (10% increase over 2023)
- Invested in an independent, non-OTA, commission-free booking engine (Ripe Booking) for onsite hotel bookings in 2024

IV. TOURISM BID BOUNDARY

The BTBID will continue to include all lodging businesses, existing and in the future, with five (5) rooms or more, available for public occupancy within the boundaries of the City of Berkeley (City), as shown in the map below.

Lodging business may include, but is not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, or other similar structure or portion thereof.

A complete listing of assessed lodging businesses within the renewed BTBID can be found in Appendix 2.



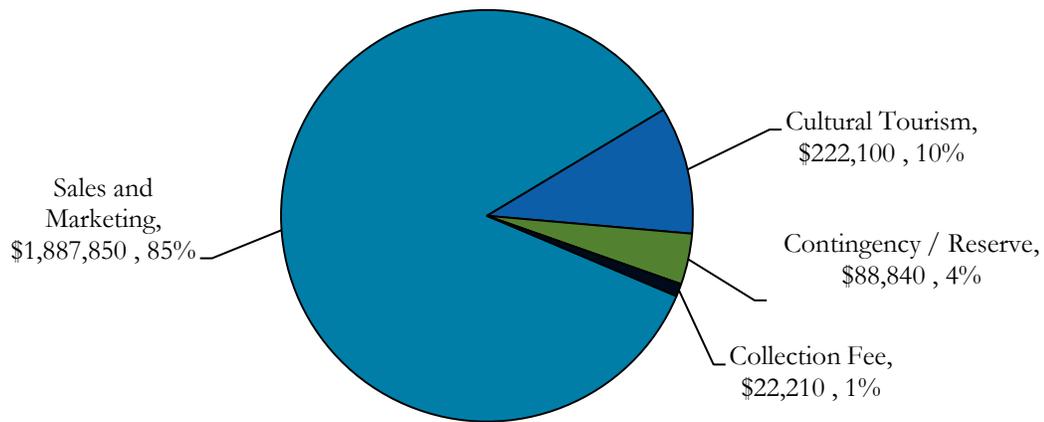
V. ASSESSMENT BUDGET AND SERVICES

A. Annual Service Plan

Assessment funds will be spent to provide specific benefits conferred or privileges granted directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost to the City of conferring the benefits or granting the privileges. The privileges and services provided with the BTBID funds are sales & marketing and cultural tourism programs available only to assessed businesses.

A service plan assessment budget has been developed to deliver services that benefit the assessed businesses. A detailed annual assessment budget will be developed and approved by the VB Board. The chart below illustrates the initial annual assessment budget allocations. These activities and allocations will also apply in subsequent years. The total initial assessment budget is estimated to be \$2,221,000 in year one.

Initial Annual Assessment Budget - \$2,221,000



Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain the same. However, the City and the VB Board shall have the authority to adjust budget allocations between the categories by no more than fifteen percent (15%) of the total budget per year. A description of the proposed improvements and activities for the initial year of operation is below. The same activities are proposed for subsequent years. In the event of a legal challenge against the BTBID, any and all assessment funds may be used for the costs of defending the BTBID.

Each budget category includes all costs related to providing that service. For example, the sales and marketing budget includes the cost of staff time dedicated to overseeing and implementing the sales and marketing program. Staff time dedicated purely to administrative tasks is allocated to the administrative portion of the budget. The costs of an individual staff member may be allocated to multiple budget categories. The staffing levels necessary to provide the services below will be determined by VB on an as-needed basis.

A sales and marketing program will promote assessed businesses as tourist, meeting, and event destinations. The sales and marketing program will have a central theme of promoting Berkeley as a desirable place for overnight visits. The program will have the goal of increasing overnight visitation and room night sales at assessed businesses, and may include, but is not limited to, the following activities:

- Internet marketing efforts to increase awareness and optimize internet presence to drive overnight visitation and room sales to assessed businesses;
- Print ads in magazines and newspapers, television ads, and radio ads targeted at potential visitors to drive overnight visitation and room sales to assessed businesses;
- Attendance of trade shows to promote assessed businesses;
- Sales blitzes for assessed businesses;
- Familiarization tours of assessed businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps featuring assessed businesses;
- Attendance of professional industry conferences and affiliation events to promote assessed businesses;
- Lead generation activities designed to attract tourists and group events to assessed businesses;
- Director of Sales and General Manager meetings to plan and coordinate tourism promotion efforts for assessed businesses; and
- Development and maintenance of a website designed to promote assessed businesses.

Cultural Tourism

Cultural tourism programs are intended to drive travel to Berkeley by attracting visitors to experience cultural, historical, and artistic attractions to generate visitation to assessed businesses. By promoting Berkeley's rich heritage and unique cultural offerings, the Cultural Tourism program encourages higher visitation and longer stays to assessed businesses. The Cultural Tourism program may include, but is not limited to, the following activities:

- Creation of new arts, cultural and educational programs and activities to generate overnight visitation to assessed businesses;
- Organizing events including as festivals, performances, and exhibitions that celebrate Berkeley's unique heritage and arts, resulting in overnight visitation to assessed businesses;
- Promoting food-related experiences that highlight Berkeley's local cuisine, driving demand for overnight visitation to assessed businesses;
- Sustainability programs that offset impacts of tourist visitation within the destination;
- Enhancements to environmental experiences, which attract overnight visitors, and expose visitors to the value of the vital ecosystems;
- Services designed to improve the visitors experience such as, but not limited to, beautification of public spaces to drive overnight visitation to assessed businesses; and
- Infrastructure improvements that enhance the destination's competitive position to attract desirable special events year-round and attract overnight visitors.

Collection Fee

The City shall be paid a fee equal to one percent (1%) of the amount of assessment collected to cover its costs of collection and administration.

Contingency/Reserve

**BTBID Management District Plan
March 5, 2025**

The budget includes a contingency line item to account for uncollected assessments, if any. If there are contingency funds collected, they may be held in a reserve fund or utilized for other program, advocacy or renewal costs at the discretion of VB. Policies relating to contributions to the reserve fund, the target amount of the reserve fund, and expenditure of monies from the reserve fund shall be set by the VB Board of Directors. Contingency/Reserve funds may be spent on BTBID programs or administrative and renewal costs in such proportions as determined by VB. The reserve fund may be used for the costs of renewing the BTBID.

B. Annual Budget

The total ten (10) year assessment budget is projected at approximately \$2,221,000 annually, or \$22,210,000 through the ten (10) year term of the BTBID. A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do, and as businesses open and close.

C. California Constitutional Compliance

The BTBID assessment is not a property-based assessment subject to the requirements of Proposition 218. Courts have found Proposition 218 limited the term ‘assessments’ to levies on real property.¹ Rather, the BTBID assessment is a business-based assessment, and is subject to Proposition 26. Pursuant to Proposition 26 all levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the BTBID, a “specific benefit” and a “specific government service.” Both require that the costs of benefits or services do not exceed the reasonable costs to the City of conferring the benefits or providing the services.

1. Specific Benefit

Proposition 26 requires that assessment funds be expended on, “a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.”² The services in this Plan are designed to provide targeted benefits directly to assessed businesses, and are intended only to provide benefits and services directly to those businesses paying the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific businesses within the BTBID. The activities described in this Plan are specifically targeted to increase demand for room night sales for assessed lodging businesses within the boundaries of the BTBID, and are narrowly tailored. BTBID funds will be used exclusively to provide the specific benefit of increased demand for room night sales directly to the assessees. Assessment funds shall not be used to feature non-assessed lodging businesses in BTBID programs, or to directly generate sales for non-assessed businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses. Nothing in this Plan limits the ability of the Owners’ Association to enter into private contracts with non-assessed lodging businesses for the provision of services to those businesses.

The assessment imposed by this BTBID is for a specific benefit conferred directly to the payors that is not provided to those not charged. The specific benefit conferred directly to the payors is an increase in demand for room night sales. The specific benefit of an increase in demand for room night sales for assessed lodging businesses will be provided only to lodging businesses paying the district assessment, with marketing & sales and cultural tourism programs promoting lodging businesses paying the BTBID assessment. The marketing & sales and cultural tourism programs will be designed to increase room night sales at each assessed lodging businesses. Because they are

¹ *Jarvis v. the City of San Diego* 72 Cal App. 4th 230

² Cal. Const. art XIII C § 1(e)(1)

necessary to provide the marketing & sales and cultural tourism programs that specifically benefit the assessed lodging businesses, the administration and contingency services also provide the specific benefit of increased demand for room night sales to the assessed lodging businesses.

Although the BTBID, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, “A specific benefit is not excluded from classification as a ‘specific benefit’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific benefit to the payor.”³

2. Specific Government Service

The assessment may also be utilized to provide, “a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.”⁴ The legislature has recognized that marketing and promotions services like those to be provided by the BTBID are government services within the meaning of Proposition 26⁵. Further, the legislature has determined that “a specific government service is not excluded from classification as a ‘specific government service’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific government service to the payor.”⁶

3. Reasonable Cost

BTBID services will be implemented carefully to ensure they do not exceed the reasonable cost of such services. The full amount assessed will be used to provide the services described herein. Funds will be managed by the VB, and reports submitted on an annual basis to the City. Only assessed lodging businesses will be featured in marketing materials, receive sales leads generated from BTBID-funded activities, be featured in advertising campaigns, and benefit from other BTBID-funded services. The assessed lodging business list was compiled from records provided by the jurisdiction and complies with the requirements of the 94 Law. Pursuant to Streets and Highways Code Section 36615, the City Council’s determination of ownership is final and conclusive, with no obligation to obtain other information. Non-assessed lodging businesses will not receive these, nor any other, BTBID-funded services and benefits.

The BTBID-funded programs are targeted directly to benefit assessed businesses. It is, however, possible that there will be a spill over benefit to non-assessed businesses. If non-assessed lodging businesses receive incremental room nights, that portion of the promotion or program generating those room nights shall be paid with non-BTBID funds. BTBID funds shall only be spent to benefit the assessed businesses, and shall not be spent on that portion of any program which directly generates incidental room nights for non-assessed businesses.

D. Assessment

The annual assessment rate is three percent (3%) of gross short term sleeping room rental revenue on lodging businesses with five (5) rooms or more. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days; and stays by any officer or employee of a government who is exempt by express provision of federal international treaty.

³ Government Code § 53758(a)

⁴ Cal. Const. art XIII C § 1(e)(2)

⁵ Government Code § 53758(b)

⁶ Government Code § 53758(b)

The assessment was calculated based on the total cost of the activities to be provided for the benefit of the businesses within the BTBID, with costs allocated based on the proportional benefit conferred to each business. Activities funded by the BTBID, are specifically targeted to increase room nights at assessed businesses. All room night sales do not represent the same benefit to the payors. For example, a higher priced room night is of greater benefit than a lower priced room night because the assessee derives greater revenue. To account for this benefit differential and to make sure the benefits are proportional, an assessment formula based on a percentage of revenue has been selected. The proposed formula accurately reflects greater benefit to assessed businesses with higher priced room nights.

The term “gross room rental revenue” as used herein means: the consideration charged for the occupancy of space in a lodging business valued in money. Gross sleeping room rental revenue shall not include, and therefore the assessment shall not be charged upon, any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

The assessment is levied upon and a direct obligation of the assessed lodging business. However, the assessed lodging business may, at its discretion, pass the assessment on to transients. The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. If the BTBID assessment is identified separately it shall be disclosed as the “BTBID Assessment.” As an alternative, the disclosure may include the amount of the BTBID assessment and the amount of the assessment imposed pursuant to the California Tourism Marketing Act, Government Code §13995 et seq. and shall be disclosed as the “Tourism Assessment.” The assessment is imposed solely upon, and is the sole obligation of the assessed lodging business even if it is passed on to transients. The assessment shall not be considered revenue for calculation of transient occupancy taxes.

Bonds shall not be issued.

E. Interest and Overdue Charges

The BTBID shall reimburse the City of Berkeley for any costs associated with collecting unpaid assessments. If sums in excess of the delinquent BTBID assessment are sought to be recovered in the same collection action by the City, the BTBID shall bear its pro rata share of such collection costs. Assessed businesses which are delinquent in paying the assessment shall be responsible for paying:

1. *Original Delinquency:* Any lodging business which fails to remit any assessment imposed within the time required shall pay an overdue charge of ten percent (10%) of the amount of the assessment.
2. *Continued Delinquency:* Any lodging business which fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency overdue charge of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment and the ten percent (10%) overdue charge first imposed.
3. *Fraud:* If the tax administrator determines that the nonpayment of any remittance due is due to fraud, an overdue charge of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the overdue charges stated in subsections 1 and 2 of this section.
4. *Interest:* In addition to the overdue charges imposed, any lodging business which fails to remit any assessment imposed shall pay interest at the rate of one percent (1%) per month or fraction

thereof on the amount of the assessment, exclusive of overdue charges, from the date on which the remittance first became delinquent until paid.

5. *Overdue Charges Merged With Assessment:* Every overdue charge imposed and such interest as accrues shall become a part of the assessment herein required to be paid.

F. Time and Manner for Collecting Assessments

The BTBID assessment will be implemented beginning July 1, 2025 or as soon as possible thereafter, and ending ten (10) years from its start date. The City will be responsible for collecting the assessment on a monthly basis (including any delinquencies, interest and overdue charges) from each assessed lodging business. The City shall take all reasonable efforts to collect the assessments from each assessed lodging business. The City shall forward the assessments collected to the Owners' Association.

VI. GOVERNANCE

A. Owners' Association

The City Council, through adoption of this Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the BTBID as defined in Streets and Highways Code §36612. The Berkeley City Council has determined that VB will continue to serve as the Owners' Association for the BTBID for the term of the renewal (10 years).

B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the VB Board and certain committees must be held in compliance with the public notice and other requirements of the Brown Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act.

C. Annual Report

VB shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1). The annual report shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for that fiscal year.
- An estimate of the cost of providing the improvements and the activities for that fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

APPENDIX 1 – LAW

CURRENT THROUGH ALL LEGISLATION OF THE 2024 REGULAR AND SPECIAL SESSIONS

**STREETS AND HIGHWAYS CODE
DIVISION 18. PARKING
PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994**

CHAPTER 1. General Provisions

ARTICLE 1. Declarations

36600. Citation of part

This part shall be known and may be cited as the “Property and Business Improvement District Law of 1994.”

36601. Legislative findings and declarations; Legislative guidance

The Legislature finds and declares all of the following:

- (a) Businesses located and operating within business districts in some of this state’s communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.
- (b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.
- (c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.
- (d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.
- (e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:
 - (1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.
 - (2) Job creation.
 - (3) Business attraction.
 - (4) Business retention.
 - (5) Economic growth.
 - (6) New investments.
- (f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.
- (g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.
- (h) The act amending this section is intended to provide the Legislature’s guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.
 - (1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.
 - (2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those

special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

36603. Preemption of authority or charter city to adopt ordinances levying assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

36603.5. Part prevails over conflicting provisions

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

ARTICLE 2. Definitions

36606. “Activities”

“Activities” means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district.

36606.5. “Assessment”

“Assessment” means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

36607. “Business”

“Business” means all types of businesses and includes financial institutions and professions.

36608. “City”

“City” means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

36609. “City council”

“City council” means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

36609.4. “Clerk”

“Clerk” means the clerk of the legislative body.

36609.5. “General benefit”

“General benefit” means, for purposes of a property-based district, any benefit that is not a “special benefit” as defined in Section 36615.5.

36610. “Improvement”

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the district.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

36611. “Management district plan”; “Plan”

“Management district plan” or “plan” means a proposal as defined in Section 36622.

36612. “Owners’ association”

“Owners’ association” means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners’ association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners’ association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code), for all records relating to activities of the district.

36614. “Property”

“Property” means real property situated within a district.

36614.5. “Property and business improvement district”; “District”

“Property and business improvement district,” or “district,” means a property and business improvement district established pursuant to this part.

36614.6. “Property-based assessment”

“Property-based assessment” means any assessment made pursuant to this part upon real property.

36614.7. “Property-based district”

“Property-based district” means any district in which a city levies a property-based assessment.

36615. “Property owner”; “Business owner”; “Owner”

“Property owner” means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. “Business owner” means any person recognized by the city as the owner of the business. “Owner” means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

36615.5. “Special benefit”

(a) “Special benefit” means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

(b) “Special benefit” also includes, for purposes of a property-based district, a particular and distinct benefit provided directly to each assessed parcel within the district. Merely because parcels throughout an assessment district share the same special benefits does not make the benefits general.

36616. “Tenant”

“Tenant” means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

ARTICLE 3. Prior Law

36617. Alternate method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

CHAPTER 2. Establishment

36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

36621. Initiation of proceedings; Petition of property or business owners in proposed district

- (a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.
- (b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:
- (1) A map showing the boundaries of the district.
 - (2) Information specifying where the complete management district plan can be obtained.
 - (3) Information specifying that the complete management district plan shall be furnished upon request.
- (c) The resolution of intention described in subdivision (a) shall contain all of the following:
- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.
 - (2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

36622. Contents of management district plan

The management district plan shall include, but is not limited to, all of the following:

- (a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.
- (b) The name of the proposed district.
- (c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.
- (d) The improvements, maintenance, and activities proposed for each year of operation of the district and the estimated cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities

and a statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against their property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years.

Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k)

(1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(3) In a property-based district, properties throughout the district may share the same special benefits. In a district with boundaries that define which parcels are to receive improvements, maintenance, or activities over and above those services provided by the city, the improvements, maintenance, or activities themselves may constitute a special benefit. The city may impose assessments that are less than the proportional special benefit conferred, but shall not impose assessments that exceed the reasonable costs of the proportional special benefit conferred. Because one or more parcels pay less than the special benefit conferred does not necessarily mean that other parcels are assessed more than the reasonable cost of their special benefit.

(l) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(m) Any other item or matter required to be incorporated therein by the city council.

36623. Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be

mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.
- (2) The number, date of adoption, and title of the resolution of intention.
- (3) The time and place where the public hearing was held concerning the establishment of the district.
- (4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.
- (5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.
- (6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the

district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

36627. Notice and assessment diagram

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

CHAPTER 3. Assessments

36631. Time and manner of collection of assessments; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

36633. Time for contesting validity of assessment

The validity of an assessment levied under this part shall not be contested in an action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36625. An appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

36634. Service contracts authorized to establish levels of city services

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

36635. Request to modify management district plan

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

36637. Reflection of modification in notices recorded and maps

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

36638. Assessment as government imposed fee on Civ C § 1770 transaction [Operative July 1, 2024]

- (a) A business assessment pursuant to this part is a fee imposed by a government on the transaction for purposes of paragraph (29) of subdivision (a) of Section 1770 of the Civil Code.
- (b) This section shall become operative on July 1, 2024.

CHAPTER 3.5. Financing

36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments

- (a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.
- (b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.
- (c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

CHAPTER 4. Governance

36650. Report by owners' association; Approval or modification by city council

- (a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.
- (b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:
 - (1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.
 - (2) The improvements, maintenance, and activities to be provided for that fiscal year.
 - (3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.
 - (4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.
 - (5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
 - (6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.
- (c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of

assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

36651. Designation of owners' association to provide improvements, maintenance, and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

CHAPTER 5. Renewal

36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

- (a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.
- (b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.
- (c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

CHAPTER 6. Disestablishment

36670. Circumstances permitting disestablishment of district; Procedure

- (a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:
 - (1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.
 - (2) During the operation of the district, there shall be a 30-day period each year in which assessees may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.
- (b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

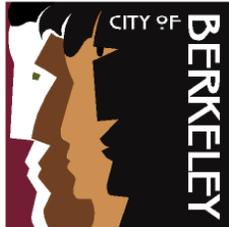
36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

- (a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.
- (b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

APPENDIX 2 – ASSESSED BUSINESSES

Assessed Berkeley Tourism BID Contributors, lodgings with 5 or more rooms, as of: March 2025

Business Name	Site Address	City, State	ZIP
Aiden by Best Western	1499 University Ave.	Berkeley, CA	94702
Bancroft Hotel	2680 Bancroft Way	Berkeley, CA	94704
Berkeley City Club	2315 Durant Ave.	Berkeley, CA	94704
Berkeley Travelodge (Sather Hotel by Wyndham Berkeley)	1820 University Ave.	Berkeley, CA	94703
Doubletree Berkeley Marina	200 Marina Blvd.	Berkeley, CA	94710
Downtown Berkeley Inn	2001 Bancroft Way	Berkeley, CA	94704
Graduate Berkeley	2600 Durant Ave.	Berkeley, CA	94704
Holiday Inn Express	1175 University Ave.	Berkeley, CA	94702
Hotel Shattuck Plaza	2086 Allston Way	Berkeley, CA	94704
Howard Johnson Hotel	1512 University Ave.	Berkeley, CA	94702
Marina Inn	975 University Ave.	Berkeley, CA	94710
Nash Hotel	2045 University Ave.	Berkeley, CA	94704
Prima Donna Hotels Inc., dba Sens Hotel & Bistro Berkeley	1540 Shattuck Ave.	Berkeley, CA	94709
Residence Inn	2121 Center St.	Berkeley, CA	94704
Rose Garden Inn	2740 Telegraph Ave.	Berkeley, CA	94705
University Inn	920 University Ave.	Berkeley, CA	94710
Urban Adamah	1151 Sixth St.	Berkeley, CA	94710
Vista Inn & Suites, dba Quality Inn	1761 University Ave.	Berkeley, CA	94703
YMCA of the East Bay	2001 Allston Way	Berkeley, CA	94704



Office of the City Manager

CONSENT CALENDAR
May 6, 2025

To: Honorable Mayor and Members of the City Council
 From: Paul Buddenhagen, City Manager
 Submitted by: David Sprague, Fire Chief
 Subject: Contract: Diablo Fire Safe Council for Home Hardening Donations

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the Diablo Fire Safe Council (DFSC) to serve as the fiscal sponsor for donations that support home hardening work in Berkeley, particularly in its Fire Hazard Severity Zones, for a term of five years.

FISCAL IMPACTS OF RECOMMENDATION

There is no impact to the City's General Fund. Administrative fees for the DFSC will be deducted from the donated funds as follows - over the life of the agreement, 10% on the first \$100,000 received, 7% on the next \$150,000 (up to \$250,000 total), and 5% on any amount above \$250,000. These fees will be used by DFSC to administer the fund and process disbursements.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Fire Department has launched the EMBER (Effective Measures for Berkeley's Ember Resilience) initiative to reduce wildfire ignition risk. A key part of this initiative is supporting residents with costs associated with home hardening — retrofitting homes to meet standards in Chapter 7A of the California Building Code.

By partnering with the DFSC, a well-established and qualified 501(c)(3) nonprofit, the City will be able to encourage and accept charitable contributions that will directly support residents conducting home hardening work.

This is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

BACKGROUND

The DFSC has extensive experience administering cost-share and matching fund programs to support wildfire prevention and mitigation. Under this agreement, DFSC will serve as the fiduciary agent for donations made to support home hardening projects through the City's Resident Assistance Program (RAP). DFSC will manage the funds in

a dedicated subaccount, issue payments according to City direction, and ensure compliance with all nonprofit fiscal regulations.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Home hardening is a proven strategy to reduce wildfire spread and ignition in the built environment. Facilitating this work supports the City's climate adaptation goals and strengthens community resilience.

RATIONALE FOR RECOMMENDATION

This partnership provides a transparent and legally compliant method to accept and distribute donations in support of wildfire safety, while reducing administrative burden on the City. DFSC's existing infrastructure and nonprofit status make them well-suited to serve in this role.

ALTERNATIVE ACTIONS CONSIDERED

The City considered creating its own donation management program but determined that partnering with an experienced nonprofit fiscal sponsor would be more efficient and cost-effective.

CONTACT PERSON

David Sprague, Fire Chief, (510) 981-3473

Attachments:

1: Resolution

Exhibit A: Diablo Fire Safe and City of Berkeley Agreement

RESOLUTION NO. ##,###-N.S.

CONTRACT: DIABLO FIRE SAFE COUNCIL TO SERVE AS THE FISCAL SPONSOR FOR DONATIONS THAT SUPPORT HOME HARDENING WORK IN BERKELEY

WHEREAS, the City of Berkeley faces elevated wildfire risk, particularly in hillside and wildland-urban interface (WUI) areas; and

WHEREAS, the City has established the EMBER (Effective Measures for Berkeley's Ember Resilience) initiative to reduce wildfire ignition risk through community-level prevention strategies, including home hardening; and

WHEREAS, the City desires to provide financial assistance to residents conducting home hardening work to bring their properties into compliance with Chapter 7A of the California Building Code; and

WHEREAS, the City lacks an existing mechanism to receive and manage private donations for this purpose; and

WHEREAS, Diablo Fire Safe Council (DFSC) is a nonprofit 501(c)(3) organization with experience administering cost-share wildfire mitigation programs and is qualified to serve as a fiscal sponsor for private donations; and

WHEREAS, DFSC will receive, manage, and disburse private funds according to the City's direction for the benefit of residents participating in the City's Resident Assistance Program (RAP), supporting the EMBER initiative's goals.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with the Diablo Fire Safe Council for a term of five years to serve as the City's fiscal sponsor for private donations supporting home hardening in Berkeley's fire zones.

BE IT FURTHER RESOLVED that all disbursements from DFSC to residents shall be made in accordance with City-approved eligibility criteria, and DFSC shall maintain detailed financial records and provide regular reporting to the City.

Exhibits

A: Diablo Fire Safe and City of Berkeley Agreement

AGREEMENT BETWEEN DIABLO FIRE SAFE COUNCIL AND THE CITY OF BERKELEY FOR THE PROVISION OF FISCAL SPONSORSHIP FOR HOME HARDENING PROGRAMS

THIS AGREEMENT (the “Agreement”) is entered into on 3/26/25, 2025 (the “Effective Date”) between the Diablo Firesafe Council, a 501(c) non-profit, (“DFSC”) and the City of Berkeley, a municipal corporation (“City”) (together sometimes referred to as the “Parties”). DFSC is a California, USA nonprofit public benefit corporation located in Oakland, California, USA which has received recognition of exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code (IRC) and classification as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi).

WHEREAS, the City operates a program to encourage home owners to conduct home hardening which reduces the risk of ignition during a wildfire, and

WHEREAS, DFSC operates a cost-share matching program that distributes funds to residents engaging in similar types of projects; and

WHEREAS, City desires to have the DFSC receive external donations of funds on behalf of the City and distribute them per the City’s instructions, and the DFSC is willing to provide such support in the form of a nonprofit fiscal sponsorship in accordance with nonprofit laws

WHEREAS, DFSC’s Board of Directors has approved the establishment of a fund to receive donations of cash earmarked for support of the project in this agreement and to make disbursements in furtherance of the project’s mission (the “Fiscal Sponsorship”).

NOW, THEREFORE, the City and the DFSC hereby agree as follows:

Section 1. SERVICES.

In accordance with the terms and conditions set forth in this Agreement, the DFSC agrees to perform all services (the “Services”):

- A. Shall be the fiduciary agent for donations made for the purposes of funding work related to the City’s Home Hardening Resident Assistance Program (RAP).
- B. Shall notify the City of receipt of any donation aggregating more than \$1,000 from a single source, and shall not disburse funds from such donation until the Berkeley City Council has disclosed and approved such donation pursuant to Berkeley Municipal Code section 2.06.150.
- C. Shall maintain a proper accounting of funds including and state and federal tax filings. This will include keeping books for all funds received under this agreement in a separate sub account for this purpose only DFSC will

- submit regular reports to the City for the funds received and processed under this agreement.
- D. Shall disperse the funds per the City's instructions upon receipt of an invoice for payment, W-9, and/or a receipt for reimbursement of funds, with 1099s being issued for all homeowner payments issued under this agreement. Processing of invoices will commence upon receipts of invoice but may take up to 30 days for the check to be mailed.
- E. Shall provide a letter of acknowledgement to all donors and funders contributing \$75 or more to this fund, for their tax purposes, stating that no goods or services were received in exchange for their charitable donations.

The City agrees to:

- A. Accept RAP applications, review, prioritize and provide the DFSC a list of approved applicants to receive checks. The City will provide an invoice and a W-9 for all recipients.
- 1.1 **Term of Services.** This Agreement shall begin on the Effective Date and shall end five (5) years from the date this Agreement was signed by DFSC, unless the term of the Agreement is otherwise terminated or modified, as provided for herein.
- 1.2 **Standard of Performance.** DFSC, and representatives, shall diligently perform all services required in connection with this Agreement in the manner and according to the standards required by the City.
- 1.3 **Assignment of Personnel.** DFSC shall assign only competent personnel to perform services in connection with this Agreement.
- 1.4 **Termination.** Either Party may cancel this Agreement at any time and without cause upon written notification to the other Party.

Section 2. COMPENSATION.

In exchange for the Services by the DFSC, the City hereby agrees the DFSC may retain for itself an administrative fee from all funds received using the following formula:

- Ten-percent (10%) up to \$100,000 ,
- Five-percent (7%) up to \$250,000 ,
- Three-percent (5 %) for anything over \$250,000 .

The fund totals shown above are cumulative over the lifetime of the agreement.

The City shall not be responsible for any payment to DFSC and shall have no obligation to reimburse or otherwise compensate DFSC for any expenses it may incur in providing the services. The DFSC's sole compensation under this Agreement shall be from the amounts retained according to the foregoing formula. The DFSC is solely responsible for

the payment of all applicable federal and state taxes incurred under this Agreement. As a 501(c)3 nonprofit organization, DFSC will not be obligated to pay taxes on these funds.

Section 3. INSURANCE REQUIREMENTS.

Each Party shall, at its sole cost and expense, carry insurance or self-insure its activities in connection with this Agreement, and obtain and keep in force insurance or equivalent programs of self-insurance, for general liability, professional liability, workers' compensation, and business automobile liability adequate to cover its potential liabilities hereunder. The City's general liability insurance shall name DFSC as an additional insured.

Section 4. INDEMNIFICATION.

Each Party shall defend, indemnify, and hold harmless the other Parties, and their officials, officers, employees, agents and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, to the extent such is caused in whole or in part by the negligent or intentional acts or omissions of the indemnifying Party's respective officials, officers, employees, agents or volunteers.

It is the intention of each Party that the provisions of this paragraph be interpreted to impose on each Party responsibility to the other Party for the negligent or intentional acts and omissions of each Party's respective officials, officers, employees, agents and volunteers. It is also the intention of the Parties that each Party shall bear the proportionate cost of any damage attributable to the fault of that Party, its officials, officers, employees, agents and volunteers. The obligations in this section shall survive the termination or expiration of the Agreement.

Section 7. INDEPENDENT PARTIES.

For purposes of this Agreement, each Party will each act in an independent capacity and not as officers, employees or agents of the other. No Party shall have the right to control the other, except as expressly referenced in this Agreement. Nothing in this Agreement establishes, constitutes or shall be construed to establish or constitute a partnership, agency or employment relationship between the Parties. Persons providing services under this Agreement will remain the employees of their respective agencies, and will not be employees of the other.

Section 8. LEGAL REQUIREMENTS.

- 8.1 Governing Law.** The laws of the State of California shall govern this Agreement along with all IRS regulations governing 501(c)3 nonprofit organizations
- 8.2 Compliance with Applicable Laws.** The DFSC and any subcontractors shall comply with all laws and City ordinances applicable to the performance of the work in connection with this Agreement.

- 8.3 **Project Fund Management / Performance of Charitable Purposes.** All of the assets received by DFSC under the terms of this Agreement shall be devoted to the purposes of the Project, within the tax-exempt purposes of DFSC. The Signatories agree not to use its funds or operate in any way which would jeopardize the tax-exempt status of DFSC. No item of revenue shall be earmarked for use in any attempt to influence legislation within the meaning of IRC Section 501(c)(3) and no agreement, oral or written, to that effect shall be made between DFSC and any revenue source. DFSC shall not use any portion of the assets to participate or intervene in any political campaign on behalf or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, nor to take any other action inconsistent with IRC Section 501(c)(3).
- 8.4 **Licenses and Permits.** The DFSC represents and warrants to the City that its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.
- 8.5 **Nondiscrimination and Equal Opportunity.** In compliance with federal, state and local laws, the DFSC shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by DFSC under this Agreement.

Section 9. MODIFICATION.

- 9.1 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 9.2 **Assignment.** The DFSC may not assign this Agreement or any interest therein without the prior written approval of the City, which approval shall not be unreasonably withheld.
- 9.3 **Subcontracting.** The DFSC shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City. Where written approval is granted by the City, the DFSC shall supervise all work subcontracted by DFSC in performing the Services; shall be responsible for all work performed by a subcontractor if DFSC itself had performed such work; the subcontracting of any work to subcontractors shall not relieve DFSC from any of its obligations under this Agreement with respect to the Services; and DFSC is obligated to ensure that any and all subcontractors performing any Services shall be fully

insured in all respects and to the same extent as set forth under Section 3, to the City's satisfaction.

- 9.4 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between the DFSC and the City shall survive the termination of this Agreement.

Section 10. KEEPING AND STATUS OF RECORDS.

- 10.1 Records Created as Part of the City's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that the DFSC prepares or obtains in accordance with this Agreement and that relate to the matters covered under the terms of this Agreement shall be the property of the City.

- 10.2 Confidential Information and Disclosure.** During the term of this Agreement, either party (the "Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party (the "Receiving Party"). The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. The DFSC understands that the City is a public agency and is subject to the laws that may compel it to disclose information about DFSC's business.

Section 11. NON-DISCRIMINATION.

- 11.1** The DFSC shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.
- 11.2** The DFSC shall permit City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of City, are necessary to monitor compliance with this non-discrimination provision. In addition, DFSC shall fill-out, in a timely fashion, forms supplied by City to monitor this non-discrimination provision.

Section 12. MISCELLANEOUS PROVISIONS.

- 12.1 Attorneys' Fees.** If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 12.2 Venue.** In the event that either Party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 12.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect.
- 12.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 12.5 Contract Administration.** This Agreement shall be administered by the Berkeley Fire Chief. All correspondence shall be directed to or through the representative.
- 12.6 Notices.** Any written notice to City shall be sent to:
- City of Berkeley
2100 Martin Luther King Jr Way, 2nd Floor
Berkeley, California 94704
Attention: Fire Chief
- With a copy to
- City of Berkeley
2180 Milvia Street
Berkeley, California 94704
Attention: City Attorney
- Any written notice to the DFSC shall be sent to:
- Diablo Firesafe Council
4200 Park Boulevard, #544
Oakland, CA 94602
Attn: Holly Million
- 12.7 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between the DFSC and the City and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 12.8 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, the DFSC and the City agree to resolve the dispute in accordance with the following:

Each Party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority. If dispute remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both Parties. Mediation will begin within thirty (30) days of the selection of this disinterested third party, and will end fifteen (15) days after commencement. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, et. seq.

12.9 Audit. Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of DFSC's financial, performance and compliance records maintained in connection with the operations and services performed under this Agreement. In the event of such audit, DFSC agrees to provide the City Auditor with reasonable access to Company's employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide DFSC an opportunity to discuss and respond to any findings before a final audit report is filed.

12.10 Business License. DFSC has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, DFSC is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. **DFSC certifies under penalty of perjury that its taxpayer identification number is 31-1661233,**

12.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES PAGE

The Parties have executed this Agreement as of the Effective Date.

DIABLO FIRESAFE COUNCIL

CITY OF BERKELEY

Holly Million, DFSC Executive Director

Paul Buddenhagen, City Manager

Attest:

Attest:

Ra Criscatello, DFSC Board Secretary

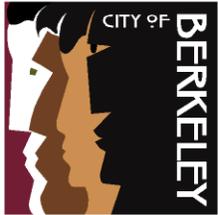
Mark Numainville, City Clerk

Approved as to Form:

Approved as to Form:

Rosemary Chang
DFSC Board Treasurer

Farimah Faiz Brown
City Attorney



Human Resources

CONSENT CALENDAR

May 6, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Monica Walker, Interim Director of Human Resources

Subject: Contract No. 32400192 Amendment: GovernmentJobs.com (dba NEOGOV) for Online Data Management Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32400192 with GovernmentJobs.com (dba NEOGOV) for online data management services including applicant tracking, onboarding, learning management, and performance management to extend the contract from May 16, 2025 to May 15, 2028 and increase the contract cap to \$108,884.79 to cover the cost of three fiscal years.

FISCAL IMPACTS OF RECOMMENDATION

The impact for three fiscal years is \$108,884.79 which will be funded through the General Fund (Fund 011) and Training Fund (Fund 146).

CURRENT SITUATION AND ITS EFFECTS

The Human Resources Department is responsible for recruiting, receiving, and processing job applications; administering candidate assessments and examinations; establishing eligible lists; referring lists of eligible candidates to City departments to fill vacancies; and providing mandatory and developmental training. The Recruitment, Exam, and Selection division received and processed a total of 19,826 applications in 2024; 564 applicants were hired and completed their onboarding paperwork electronically while also completing mandatory trainings. In addition to the Applicant Tracking System, the City of Berkeley contracted NEOGOV's Course Management Import and Position Import systems to assign mandatory training for new hires in 2024. In 2025, mandatory training has been rolled out for all City of Berkeley employees to comply with city policies, as well as state and federal laws.

The Department of Human Resources has moved away from paper applications, onboarding materials, training materials and personnel files with the help of NEOGOV. NEOGOV's state-of-the-art, web-based applicant tracking system has allowed the Human Resources department to quickly and effectively deliver services to both internal departments and external customers by automating the recruitment and selection process and improving its efficiency and effectiveness.

Internal

Adopt a Resolution authorizing the City Manager to Execute an Amendment to Contract No. 32400192 with GovernmentJobs.com (dba NEOGOV) for Online Data Management Services

CONSENT CALENDAR
May 6, 2025

BACKGROUND

The Human Resources Department issued a request for proposal (RFP), Specification No. 08-10275-C, on September 12, 2007, for a new job applicant tracking system and service. A selection committee made up by Human Resources and the Information Technology Department evaluated responses, conducted interviews and heard presentations from four vendors. NEOGOV was selected and has provided excellent services to the city. On June 3, 2024, the contracts held under NEOGOV were combined into a single contract, Contract No. 32400192 which includes training modules in addition to the applicant tracking system. The subscription for the current contract, in effect since 2024, ends on May 15, 2025 and is capped at \$50,000. An extension of the contract and an increase to its cap are necessary to keep these services viable for the next three fiscal years.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

NEOGOVS provides software services which enable paperless processing of applications, new hire documents, and training materials.

RATIONALE FOR RECOMMENDATION

Services through NEOGOV are essential for recruitment operations which include processing job applications, administering candidate assessments and examinations, establishing eligible lists, certifying lists to City departments to fill vacancies, and conducting mandatory and developmental training. NEOGOV was selected from nine respondents and has provided excellent services to the city since 2007.

ALTERNATIVE ACTIONS CONSIDERED

A three-year agreement allows the city to lock in a rate at the current annual price. An alternative is to extend the contract for one year at a time, at the risk of paying more per fiscal year.

CONTACT PERSON

Monica Walker, Interim Human Resources Director, 510-981-6818

Attachments:

1. Resolution

RESOLUTION NO. ##,###-N.S.

CONTRACT NO. 32400192 AMENDMENT: GOVERNMENTJOBS.COM (DBA NEOGOV) FOR ONLINE DATA MANAGEMENT SERVICES

WHEREAS, the Human Resources Department is responsible for recruiting, receiving and processing job applications, administering candidate assessments and examinations, establishing employment eligible lists, certifying lists to City departments and conducting mandatory training; and

WHEREAS, the City issued a request for proposal (RFP) for an integrated web-based job applicant tracking system and service and responses were evaluated by a selection committee from the Human Resources department and Information Technology Department; and

WHEREAS, the selection committee selected NEOGOV from the nine respondents as the most qualified vendor capable of providing the system and services to manage the hiring process lifecycle and manage mandatory training; and

WHEREAS, the work is still in progress and essential to keep up with the City's hiring and training needs; and

WHEREAS, the funds in an amount not to exceed \$108,884.79 will be made available in fiscal years 2025, 2026, and 2027 under budget codes 011-34-342-000-0000-000-412-612990 and 146-34-345-000-0000-000-412-634110.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with NEOGOV for a job applicant tracking system and service with training modules in an amount not to exceed \$108,884.79 across three fiscal years, 2025, 2026, and 2027.



Office of the City Manager

CONSENT CALENDAR
May 6, 2025

To: Honorable Mayor and Members of the City Council
 From: Paul Buddenhagen, City Manager
 Submitted by: Scott Ferris, Director, Department of Parks, Recreation, and Waterfront
 Subject: Reject All Bids and Re-Scope and Re-Bid the Work Associated with South Cove West Lot Repaving Project

RECOMMENDATION

Adopt a Resolution:

1. Approving plans and specifications for South Cove West Lot Repaving Project, Specification No. 25-11687-C;
2. Rejecting all bids for the work associated with the South Cove West Lot Repaving Project (Bid Specification No. 25-11687-C); and
3. Authorizing the City Manager to direct staff to re-scope and re-bid the work associated with the South Cove West Lot Repaving Project.

FISCAL IMPACTS OF RECOMMENDATION

Additional staff and consultant time will be required to re-scope and re-bid the work to complete the project. Staff believes this will result in lower overall project construction costs. There are no fiscal impacts due to construction until a contract is negotiated and approved by City Council.

CURRENT SITUATION AND ITS EFFECTS

South Cove West Lot Repaving Project (Project) is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

The City conducted a competitive Invitation For Bid (IFB) process in March, 2025, and opened bids on March 27, 2025. The City received 6 bids from a low bid of \$2,264,332.70 to a high bid \$4,095,849 for the base bid work. Terocons, Inc. was the apparent low bidder. Terocons, Inc.'s base bid of \$2,264,332.70 is almost 30% over the City's estimate. Terocons, Inc.'s base bid exceeds the available budget for the project.

Staff recommends that Council reject all bids and authorize the City Manager to direct staff to re-scope and re-bid the project to reflect available funding.

This project is one of four projects which are partially funded by State Coastal Commission (SCC) funds. The City has incurred expenses for the design of the project utilizing the Marina Fund and General Fund. SCC funds that are available for construction may only be reimbursed at the completion of the project

BACKGROUND

The South Cove West Parking Lot is a City-owned lot on state tidelands located on the south side of University Ave at the Berkeley Waterfront, with approximately 80 parking spaces for passenger vehicles. The gravel parking lot is adjacent to two non-profit sailing clubs (Cal Sailing Club and Cal Adventures) that provide a wide range of low-cost, free, volunteer-related, and summer camp activities along the shoreline for the general public, typically serving over 35,000 people per year. In addition, the parking lot serves the general public who visit the Berkeley Waterfront to access the waters of the Bay for sailing, windsurfing, kayaking, swimming, fishing, sight-seeing, visiting restaurants, and general outdoor recreation. The Berkeley Waterfront sees up to 300,000 person visits per year, and the parking lot is one of ten public lots that accommodate the visiting public.

The South Cove West Parking Lot is a key staging area at the Berkeley Waterfront for the general public for equitable access to the shoreline of the San Francisco Bay waters. It was originally constructed in the early 1970's when the current layout of the Berkeley Waterfront was developed. By the 1990's, the asphalt surfacing had deteriorated into a badly-rutted uneven surface consisting of gravel and soil with no ADA accessible features. In addition, the original parking lot never had a formal stormwater drainage system that meets current stormwater requirements; as a result, it ponds badly during winter storms and untreated stormwater drains directly to the Bay, and it becomes a huge dust bowl during summer months creating bad local air quality, and vehicles often track gravel onto nearby University Ave and the South Cove East Parking Lot (newly-renovated) causing accelerated deterioration of those asphalt surfaces. This free public resource that provides enhanced equitable access to the waters of San Francisco Bay is in desperate need of renovation.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The construction contract includes requirements to comply with the City's Environmentally Preferable Purchasing Policy. The work will also comply with the conditions contained in the Bay Conservation Development Commission (BCDC) permit for the project.

RATIONALE FOR RECOMMENDATION

The City is not able to accept the lowest bid because it exceeds the City's available budget for the project. The City does not have the in-house labor or equipment resources to complete this renovation project.

Reject All Bids and Re-Scope and Re-bid the
South Cove West Lot Repaving Project

CONSENT CALENDAR
May 6, 2025

ALTERNATIVE ACTIONS CONSIDERED

The City can suspend the project indefinitely. This action is not recommended because the City would lose the State Coastal Conservancy grant funding allocated to this project.

CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, 981-6700
Nelson Lam, Supervising Civil Engineer, PRW, 981-6395

Attachments:
1: Resolution

RESOLUTION NO. ##,###-N.S.

REJECT ALL BIDS AND DIRECT STAFF TO RE-SCOPE AND RE-BID THE WORK
ASSOCIATED WITH THE SOUTH COVE WEST LOT REPAVING PROJECT

WHEREAS, the South Cove West Parking Lot is a key staging point for the Berkeley Waterfront, serving the general public, two non-profit sailing clubs, and Adventure Playground; and

WHEREAS, the pavement condition at the parking lot has deteriorated significantly over recent decades, causing untreated stormwater to drain directly to the Bay, bad air quality due to airborne dust particles, and a poor driving condition with no ADA accessible features; and

WHEREAS, the City has neither the labor nor the equipment necessary to undertake this project; and

WHEREAS, the City conducted a competitive Invitation For Bid (IFB) process in March, 2025, and opened bids on March 27, 2025. The City received six bids, the lowest being from Terocons, Inc. at almost 30% over the engineer's estimate; and

WHEREAS, the lowest bid exceeded the City's available budget for the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specification No. 25-11687-C for the South Cove West Lot Repaving Project are approved.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the all bids are rejected; and the City Manager is authorized to direct staff to re-scope and re-bid the project.



Office of the City Manager

CONSENT CALENDAR
May 6, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Contract No. 32200042 Amendment: WCG, Inc. for updates to the BESO program's Salesforce software system

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200042 with WCG, Inc., to update the Building Emissions Saving Ordinance (BESO) program's Salesforce software system, to implement amendments to BESO, for an additional amount of \$100,000, for a total contract amount not to exceed \$124,750, and extending the term through December 31, 2027.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the additional scope of work in the amount of \$100,000 will be provided from the Permit Service Center Fund, budget code 621-53-583-611-0000-000-472-612990-.

CURRENT SITUATION AND ITS EFFECTS

The proposed contract amendment increases the contract authority, from \$24,750 to \$124,750 and extends the timeline of the existing contract with WCG, Inc. to December 31, 2027. This contract amendment will allow WCG, Inc. to upgrade the BESO program's Salesforce database and public portal to accommodate the new time of sale requirements, which will go into effect January 1, 2026. City Council adopted the second reading of proposed amendments to BESO on April 15, 2025.

The amendments to BESO established a flexible resilience standard that will require owners of small (one-to-four-unit) residential buildings to complete upgrades, from a menu of options, when a property is sold. For homes that have not met compliance with BESO prior to sale, a \$5,000 escrow deposit is required to help the buyer complete the upgrades. These amendments require that the BESO compliance database and public-facing portal be updated to:

- Track incoming escrow deposits and refund payments
- Issue new Compliance Certificates
- Collect verification information on completed upgrade measures
- Reflect updated BESO fees and processes

Staff does not have the technical ability to update the BESO program's Salesforce experience site (also known as the BESO portal). Updates are needed to implement the new time of sale requirements and facilitate a smooth sales process.

Amending this contract supports the Strategic Plan Priority to be a customer-focused organization that provides excellent, timely, easily accessible service and information to the community.

BACKGROUND

The BESO utilizes Salesforce as its main database and software system. In 2020, through a previous contract, a Salesforce software developer built a public portal for building owners to submit BESO applications, pay filing fees, and retrieve compliance documents. Since its launch, the BESO portal has significantly improved customer service and decreased staff time needed to implement the program. The BESO portal allows sellers, buyers, and real estate professionals to look up real time compliance information on each property and download disclosure documents and BESO compliance forms.

In 2021, the City of Berkeley entered into a contract with WCG, Inc. to provide as-needed technical support to maintain BESO's Salesforce database and implement future enhancements. The existing contract No. 32200042 has a not-to-exceed amount of \$24,750 and expires on August 1, 2025. Under the current contract, WCG, Inc. has provided several critical enhancements to the portal to increase usability and fix technical bugs. WCG, Inc. has worked with the City over the last three years and is familiar with the BESO program and its needs. They are well suited to make the additional upgrades needed to the portal and back-end processing resulting from the new Council-approved BESO time of sale requirements.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This contract amendment will help the Office of Energy and Sustainable Development implement the new BESO time of sale requirements that go into effect on January 1, 2026. This will advance the City's climate and resilience goals through the effective implementation of BESO, which will reduce building greenhouse gas emissions and improve the resilience of small residential buildings by requiring these buildings to complete resilience and decarbonization upgrades when sold, if compliance hasn't already been met.

RATIONALE FOR RECOMMENDATION

The additional funding and extension of the current contract to December 31, 2027, will ensure that staff are able to effectively implement the BESO amendments passed by City Council. Staff included these one-time costs to upgrade BESO's compliance software when the amendments were presented to Council earlier this year.

Amend WCG contract for BESO program Salesforce software

CONSENT CALENDAR
May 6, 2025

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Ammon Reagan, Community Services Specialist II, Office of Energy & Sustainable Development, 510-981-7416

Sarah Moore, Manager, Office of Energy & Sustainable Development, 510-981-7497

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

CONTRACT NO. 32200042 AMENDMENT: WCG, INC. FOR UPDATES TO THE
BESO PROGRAM'S SALESFORCE SOFTWARE SYSTEM

WHEREAS, on February 25, 2015, Berkeley City Council replaced the Residential and Commercial Energy Conservation Ordinances (RECO and CECO) with the Building Emissions Saving Ordinance (BESO), Berkeley Municipal Code Chapter 19.81; and

WHEREAS, on December 1, 2020, Berkeley City Council amended BESO and included a directive for staff to develop upgrade requirements for future consideration; and

WHEREAS, on March 25, 2025, Berkeley City Council adopted the first reading of the proposed amendments to BESO that establish a flexible resilience standard for one-to-four-unit residential buildings at time of sale; and

WHEREAS, additional updates are needed to BESO's Salesforce database and public portal to effectively implement the new time of sale upgrade requirements and ensure a smooth sales process; and

WHEREAS, on July 9, 2021, the City entered into a contract (No. 32200042) with WCG, Inc. to provide as-needed ongoing maintenance support and future enhancements to the BESO program's Salesforce database and public portal for an amount not to exceed \$24,750; and

WHEREAS, City staff does not have the technical ability to update the BESO program's public portal and WCG, Inc. has provided technical Salesforce development services in a reliable way to the City since 2021; and

WHEREAS, the additional funding and contract extension to December 31, 2027 will enable WCG, Inc. to update the BESO Program's Salesforce database and public portal to implement the new time of sale requirements; and

WHEREAS, funds for the additional scope of work in the amount of \$100,000 will be provided from the following funds: \$20,000 from a budget referral, budget code 011-53-583-611-0000-000-441-612990-, and \$80,000 from the Permit Service Center Fund baseline budget, budget code 621-53-583-611-0000-000-472-612990-.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32200042 with WCG, Inc., to update the BESO Program's Salesforce software system to implement the amendments to BESO, for an additional amount of \$100,000, for a total contract amount not to exceed \$124,750, and extending the term through December 31, 2027.



Office of the City Manager

CONSENT CALENDAR
May 6, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director, Public Works

Subject: Contract No. 117441-1 Amendment: Chrisp Company for Painting Red Curbs to Enhance Compliance with California's Daylighting Law (Assembly Bill 413)

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 117441-1 with Chrisp Company to paint red curbs at the approach to approximately 918 intersections to improve safety in compliance with California's Daylighting Law (Assembly Bill 413, or AB 413). This contract amendment would increase the contract amount by \$375,574.42, for a new contract amount not to exceed of \$1,625,575.

FISCAL IMPACTS OF RECOMMENDATION

The total cost for painting red curbs at the approach to intersections to improve safety in compliance with California's Daylighting Law is anticipated to cost up to \$1,250,000. The City has an existing on-call contract with Chrisp Company to provide traffic maintenance services in the City. This amendment would modify the City's existing contract with Chrisp Company to increase the total contract amount by \$375,575. This one-time funding is recommended to be included in the Fiscal Year 2025 budget process. Funding for this request would be made available from Measure BB – Local Streets and Roads (Fund 134). The budget may be augmented using Measure FF funds toward the end of 2025, once available.

Original contract amount	\$1,250,000
Remaining contract amount as of April 9, 2025	\$992,600
Anticipated spend on baseline activities before contract expiration on October 26, 2025 (not including this amendment)	\$118,175
Proposed increase (this amendment)	\$375,574
Total New Contract Amount	\$1,625,575

CURRENT SITUATION AND ITS EFFECTS

Since 2020, Public Works has been incorporating daylighting, or the practice of prohibiting parking within 20 feet of the approach to an intersection to increase visibility, into the City's annual pavement rehabilitation program, Vision Zero and transportation capital projects, traffic calming initiatives, and general work orders. However, there was no legal requirement to prohibit parking in daylighting zones until AB 413 went into effect on January 1, 2024. Compliance with AB 413 is made easier by marking daylighting zones with 20 feet of red curb adjacent to the prohibited parking space to remove ambiguity for both drivers and Parking Enforcement Officers. As a result of ongoing project and programmatic work, some of the City's 1,754 intersections already have 20 feet of red curb marked adjacent to the approach to intersections. However, the majority of intersections citywide are not marked, thus making compliance difficult for drivers and Parking Enforcement Officers.

Painting all daylighting zones citywide would remove subjectivity for drivers and Parking Enforcement Officers because the 20-foot daylighting distance would be marked, and drivers would not be left to estimate or measure the 20-foot distance.

Public Works has six Traffic Maintenance Workers who implement traffic calming initiatives and various work orders throughout the City. The Traffic Maintenance team is currently managing approximately 900 service requests. Given the team's small size and extreme demand for their services, Traffic Maintenance is currently working through a backlog of requests. This team does not have capacity to implement daylighting at all 1,754 intersections in the City in addition to their ongoing workload. Although their capacity is limited, Public Works Traffic Maintenance has made progress, addressing approximately 90 intersections on high-injury streets between February 1 and April 11. However, to accommodate daylighting, Traffic Maintenance had to shift priorities, causing additional delays to their service requests. Therefore, to expedite the marking of daylighting zones with red curb paint, it is prudent to utilize a vendor with whom the City currently has an on-call contract. This will allow Traffic Maintenance to resume addressing their existing service requests.

This recommendation's total project cost of \$1,625,575 encompasses labor and materials for Chrisp Company to perform site assessments and apply red curb paint to all daylighting zones, citywide. Anticipated daylighting implementation would occur according to the following prioritization schedule:

Priority 1 (months 1-4)

- Survey Site
- Post site notification, as needed
- Deactivate and remove existing parking meters in daylighting zones on high-injury corridors

- Relocate accessible parking spaces (blue zones) that currently fall within zones to be daylit to the nearest compliant locations as required by law
- Chrisp Company to paint red curbs at 918 prioritized intersections (refer to the map in Attachment 2 for the prioritized intersections).

Priority 2 (months 5-7)

- Survey site
- Post site notification, as needed
- Remove remaining parking meters not on high-injury streets from daylighting zones
- Chrisp Company to paint red curbs at remaining intersections citywide

Priority 3 (as needed)

- Chrisp Company to implement preventative infrastructure where necessary, based on repeat violations. Preventative infrastructure will include bike corrals, painted no parking areas, flexible delineator posts, or boulders.

BACKGROUND

AB 413, California's daylighting law, was signed into law in October 2023. The law created a new section of the California Vehicle Code, section 22500(n), to prohibit stopping, standing, or parking a vehicle within 20 feet of any unmarked or marked crosswalk or within 15-feet of any crosswalk with a curb extension. The law went into effect on January 1, 2024, and starting on January 1, 2025, cities can issue citations for violating it, regardless of whether a curb is marked red or not.

The City's support for daylighting predates the state's action. On February 28, 2023, the City Manager received a referral from Council titled, "Creation of an Intersection Daylighting Policy," to develop a comprehensive intersection daylighting policy, including to identify priority areas for daylighting such as high-injury streets, streets and intersections with especially high pedestrian traffic, commercial districts, and streets near schools.

On January 21, 2025, the City Manager received a referral from City Council titled, "Budget Referral: Curb Marking and Preventative Infrastructure Upgrades at High-Risk Intersections in Accordance with the New California Daylighting Law, AB 413." The referral requested the City Manager allocate \$1,250,000 to Public Works as part of the second amendment to the Fiscal Year 2025 Annual Appropriations Ordinance budget process to mark red curbs at daylighting zones and to implement preventative infrastructure where necessary to prevent vehicles from illegally parking.

Starting January 1, 2025, Parking Enforcement has been issuing warnings to vehicles parked within 20 feet of the approach to an intersection. Starting April 1, 2025, Parking

Enforcement will be issuing \$64 fines for daylighting violations on most days of the year, and \$96 fines on Cal Football game days, pursuant to Resolution No. 71,627-N.S. "Establishing a New Schedule for Parking Violations, Fines, and Late Payment Penalties; and Rescinding, Resolution No. 70,924-N.S." (adopted December 10, 2024). However, warnings will continue in unpainted red curbs as people continue to learn about AB 413 and repeat offenders in unpainted daylighting zones may find they are ticketed.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Daylighting intersections improves road safety for sustainable modes of transportation, such as walking and biking. Actions that encourage walking and biking are important steps to reducing climate impacts and helping Berkeley achieve the goals outlined in the City's Climate Action Plan.

RATIONALE FOR RECOMMENDATION

Authorizing Public Works' on-call Traffic Maintenance contractor to paint red curbs and implement other preventative infrastructure would significantly accelerate the amount of time required to paint red curbs citywide to improve compliance with AB 413. Painting red curbs and implementing other preventative infrastructure within 20 feet of the approach to intersections would make it easier for drivers to understand the location of daylighting zones, and would streamline enforcement of AB 413 for Parking Enforcement Officers because they would not be expected to estimate or measure the 20-foot daylighting distance from a crosswalk.

ALTERNATIVE ACTIONS CONSIDERED

If this resolution is not approved, Public Works would continue to implement AB 413 over an extended period of time as part of the City's annual pavement rehabilitation program, Vision Zero and transportation capital projects, traffic calming initiatives, and general work orders. Delaying implementation would make it more difficult for drivers to avoid parking in prohibited areas and potentially lead to more citations.

CONTACT PERSON

Wahid Amiri, Deputy Public Works Director, Public Works, (510) 981-6396
Elliott Schwimmer, Senior Transportation Planner, Public Works, 510-981-7066

Attachments:

- 1: Resolution
- 2: Map of Prioritized Intersections

RESOLUTION NO. ##,###-N.S.

CONTRACT NO. 117441-1 AMENDMENT: CHRISP COMPANY TO PAINT RED CURBS TO IMPROVE COMPLIANCE WITH CALIFORNIA'S DAYLIGHTING LAW, AB 413

WHEREAS, California Assembly Bill 413 (AB 413) amends section 22500 of the Vehicle Code to prohibit the stopping, standing, or parking of a vehicle within 20 feet of the vehicle approach side of any unmarked or marked crosswalk or 15 feet of any crosswalk where a curb extension is present, starting on January 1, 2024; and

WHEREAS, the City of Berkeley can begin issuing citations for violating section 22500(n) of the Vehicle Code starting January 1, 2025; and

WHEREAS, the Berkeley City Council has directed City staff to develop a comprehensive intersection daylighting policy; and

WHEREAS, the Berkeley City Council has directed the City Manager to provide Public Works with the necessary funds to mark curbs with red paint and implement other preventative infrastructure to improve compliance with AB 413; and

WHEREAS, Public Works Staff has been painting red zones at the approach to intersections consistent with the spirit of AB 413 over a number of years as part of the City's annual pavement rehabilitation program, Vision Zero and transportation capital projects, traffic calming initiatives, and general work orders; and

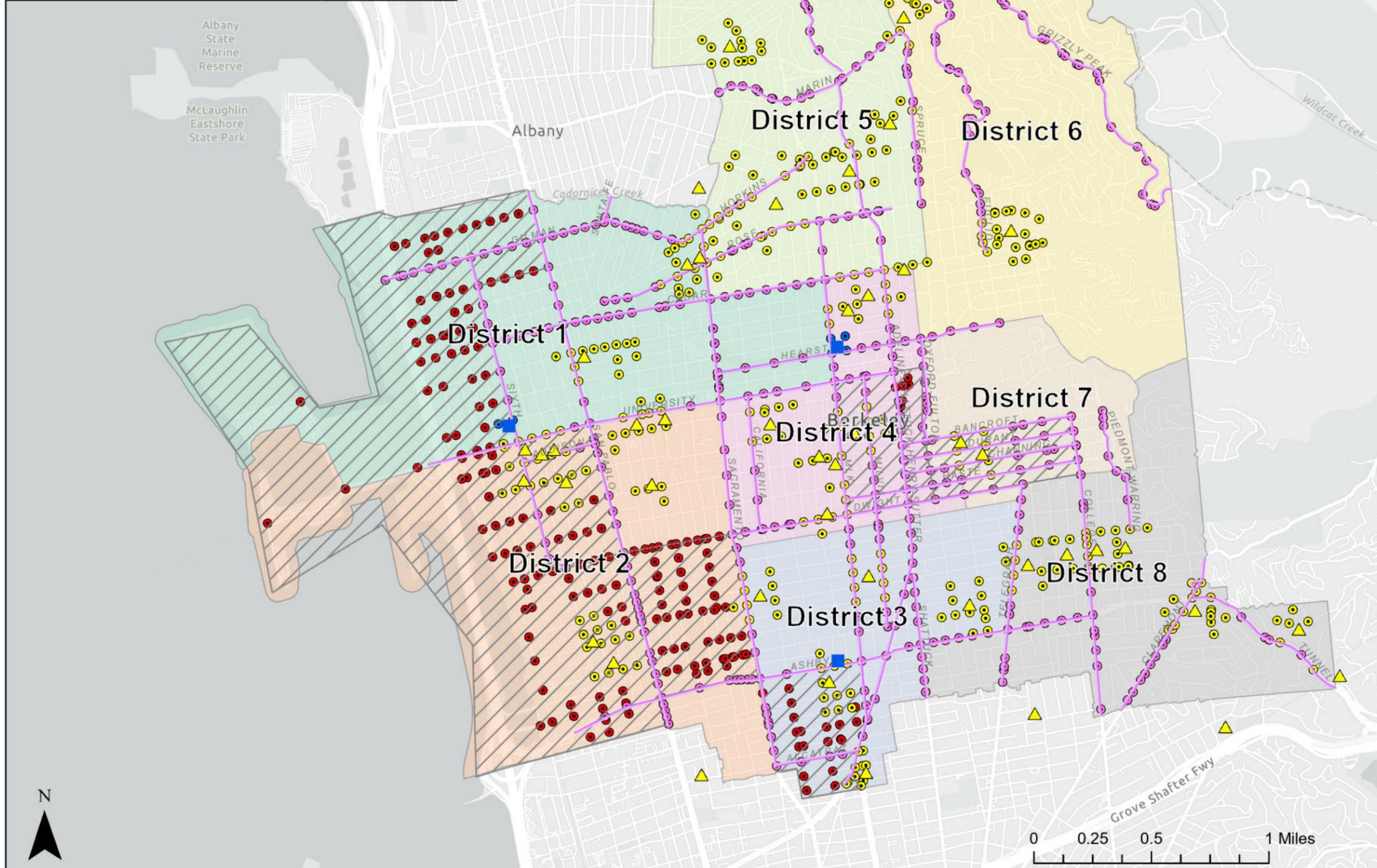
WHEREAS, Chrisp Company will support Public Works Staff to paint approximately 20 feet of red curb at all daylighting zones citywide, consistent with AB 413; and

WHEREAS, funding is anticipated to be made available to Public Works as part of the second amendment to the Fiscal Year 2025 Annual Appropriations Ordinance budget process.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 117441-1 with Chrisp Company to increase the contract amount by \$375,575, for a new contract amount not to exceed \$1,625,575.

Priority Intersections for Daylighting in Berkeley (AB 413)

Priority Intersections for Daylighting	
Intersections within:	#
500' of Schools	333
500' of Senior Centers	8
20' of High-Injury Corridors	520
Equity Priority Communities	321



Legend

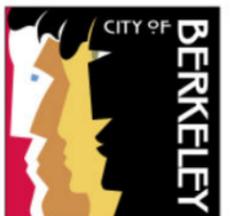
- ▲ Schools
- Senior Centers
- High-Injury Streets
- Equity Priority Communities (Plan Bay Area 2050)
- Intersections within 500' of Schools
- Intersections within 500' of Senior Centers
- Intersections within 20' of High-Injury Corridors
- Intersections within Equity Priority Communities

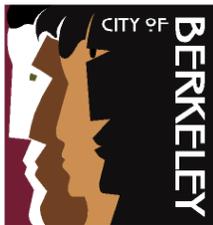
Berkeley City Council District

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Public Works, Transportation
December 2024

California State Parks, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/ NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA,





Commission on the Status of Women

CONSENT CALENDAR
May 6, 2025

To: Honorable Mayor and Members of the City Council

From: Commission on the Status of Women

Submitted By: Carole Marasovic, Chairperson, Commission on the Status of Women

Subject: Notice, tracking and enforcement of California SB 1343 sexual harassment prevention training for Berkeley private, public and non-profit employers and employees.

RECOMMENDATION

That Council refer to the City Manager to develop a procedure for all employers and employees doing business in Berkeley, whether public, private or nonprofit, to take the sexual harassment prevention online training as posted on the California Civil Rights Department website, conducted by a qualified trainer, as required by California SB 1343, on City premises and to provide certification of completion of training to be filed with the City.

That all employers doing business in Berkeley with 5 or more employees be provided with notice of the SB 1343 requirement to take sexual harassment prevention training every 2 years; the availability of free online training on the California Civil Rights Department website (formerly known as the California Department of Fair Employment and Housing) and the availability of the City of Berkeley online trainings if the employee is otherwise unable to access the online trainings.

That the City of Berkeley notice also advise each employer of the SB 1343 requirement to post a poster, in a prominent and accessible location, on discrimination in employment which includes the illegality of sexual harassment. That the notice advise employers that they can secure posters through the California Civil Rights Department or through the City of Berkeley.

That the City of Berkeley notice advise each employer that SB 1343 also requires that a poster on transgender rights, available through the California Civil Rights Department, also be posted in a prominent and accessible location in the workplace.

That the City of Berkeley secure sufficient copies of the California Civil Rights Department posters on sexual harassment and transgender rights and make them available upon request to employers requesting them.

That the City of Berkeley notice advise employers that the City of Berkeley requires them to produce documentation to the City of having otherwise taken and provided the training to employees by submitting written certification that they have taken the training as well as providing written certification from each employee who has taken the training as required by SB 1343.

That written certification provided by employers and employees who have otherwise taken the training must include the date the employer and employee took the training as required by SB 1343; the location where the training was otherwise taken; the mode of the training (live or video); and the name, address, phone number and e-mail address of the qualified trainer, under SB 1343, who provided the training. Each certification must be signed.

That the City of Berkeley maintain an online database of employer and employee compliance with SB 1343 with all the data as stated above recorded on the data base.

That the City of Berkeley send out notices to employers and employees if they are out of compliance with the SB 1343 requirement of taking initial sexual harassment trainings or periodic trainings after they have completed the initial training.

That the SB 1343 online training, provided by the City of Berkeley, be available in all the languages that the California Civil Rights Department free online training provides, that being Chinese, English, Korean, Spanish, Tagalog and Vietnamese.

That the City Manager refer to the City Attorney to develop a procedure as to how employer non-compliance should be addressed.

That the City Manager report back to Council with a progress report of the implementation of this notice and enforcement procedure, under SB 1343, no later than the first Council meeting to be held in January, 2025 and continue to provide reports to Council until this procedure is fully implemented.

FISCAL IMPACTS OF RECOMMENDATION

There are costs associated with the cost of sending out notices to all Berkeley employers with 5 employees or more. There are also costs associated with using premises and staffing. Staff are best informed as to advise of these costs.

CURRENT SITUATION AND ITS EFFECTS

On January 1, 2019, California SB 1343 went into effect. SB 1343 requires that all California employers with 5 or more employees provide sexual harassment prevention training to their employees every 2 years. Both supervisors and non-supervisors receive training with supervisors receiving 2 hours of training and non-supervisors receiving 1 hour of training. Each employee must be retrained every 2 years. Employees who must be trained include full-time, part-time, and temporary employees. Migrant and seasonal agricultural workers must be trained. Temporary workers supplied through a temp agency must be trained by that agency.

Employees must receive sexual harassment prevention training within 6 months of the hire. Seasonal employees, temporary employees not hired through a temp agency, and employees who work for less than 6 months must be trained within 30 days of hire, or within 100 hours worked, whichever comes first.

The California Civil Rights Department (formerly the California Department of Fair Employment and Housing) has oversight over SB 1343. However, enforcement only transpires if complaint triggered, frequently when a major sexual harassment violation has occurred. In consultation with administration at the California Civil Rights Department, the Commission Chair was advised that the agency was aware of that gap and that a local jurisdiction could choose to establish an enforcement procedure to insure compliance with SB 1343.

The California Civil Rights Department posts free online training. However, smaller employers may not have a location for employees to watch the online training on their premises. Some employees, particularly lower wage workers, may not have access to a computer at home to watch the online training.

BACKGROUND

On April 17, 2024, the Commission on the Status of Women voted as follows:

The Commission on the Status of Women moves to submit the recommendation for City of Berkeley enforcement of sexual harassment training, under SB 1343, as incorporated in this report.

M/S/C: Marasovic, Ortiz-Cedeno

Ayes: Goodwin, Marasovic, Oliver, Ortiz-Cedeno, Posey, Seshagiri

Noes: None

Abstain:

Absent: Arora

Leave of Absence: Boyd, Plese

ENVIRONMENTAL SUSTAINABILITY

There are no known identifiable environmental effects.

RATIONALE FOR RECOMMENDATION

The intent of SB 1343 is to avoid workplace sexual harassment before it happens. Risk management through prevention is always preferable for employers and employees. When enforcement exclusively transpires based on the triggering of a complaint, a serious violation is likely to have already occurred.

A local jurisdiction can enact procedures that comply with state law. Advising employers of their obligations under state law and providing the required training protects the employer as well as the employee.

Requiring employers and employees to take the sexual harassment prevention training on City premises and certifying that they have taken it insures that the training transpired. The City frequently uses premises such as offices on Center Street, the Berkeley Adult School, and Senior Centers for exams, meetings and events. These settings can as easily be used for training videos.

Although there are a large number of employers with 5 employees or more in Berkeley, those employers who have already provided the training and who they and their employees can certify that they have taken the training and opt out of the training provided on City premises. This will serve to greatly reduce the number of employers and employees who must take the training on City premises.

Larger employers will generally only be impacted by the written certification process, necessary to show that SB 1343 has been honored in Berkeley.

Smaller employers, where sexual harassment violations frequently take place and are less likely to have provided the training, will benefit from the free online training on City premises. These smaller employers may not have accessibility to a computer for their employees and may have employees who do not have online access at home.

Written certification with specified information works to guarantee compliance. A City online database insures transparency.

Sexual harassment prevention is an important issue in workplace rights. Laws unenforced are laws that are meaningless. Berkeley can be the leader in insuring that SB 1343 is fully enforced in its community. That can only be done by monitoring that the online training has been taken.

Within SB1343 is also the legally required posting of a poster regarding transgender rights. The online training provided by the California Civil Rights Department includes training based on gender identity, gender expression and sexual orientation. The monitoring for compliance extends to these basic rights.

ALTERNATIVE ACTIONS CONSIDERED

The alternative would be only to provide the written certification process.

However, that would lead to less employers and employees, particularly smaller employers and lower wage workers, not taking the required sexual harassment training and a higher likelihood of sexual harassment in Berkeley workplaces.

These laws could be left to the State which only acts upon a complaint triggered and a violation investigated. Prevention is better for employers and employees in Berkeley.

California SB 1343 Training

CONSENT CALENDAR
May 6, 2025

CITY MANAGER

See companion report.

CONTACT PERSON

Carole Marasovic, Chair, Commission on the Status of Women

Okeya Vance-Dozier, Commission Secretary, City Manager's Office, (510) 981-7239

Attachments:

1. SB 1343
2. California Civil Rights Department, Sexual Harassment Prevention Training for Employees



Bill Text: CA SB1343 | 2017-2018 | Regular Session | Chaptered California Senate Bill 1343 (**Prior Session Legislation**)

Bill Title: Employers: sexual harassment training: requirements.

Spectrum: Partisan Bill (Democrat 3-0)

Status: (*Passed*) 2018-09-30 - Chaptered by Secretary of State. Chapter 956, Statutes of 2018. [SB1343 Detail]

Download: California-2017-SB1343-Chaptered.html

Senate Bill No. 1343

CHAPTER 956

An act to amend Sections 12950 and 12950.1 of the Government Code, relating to employment.

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1343, Mitchell. Employers: sexual harassment training: requirements.

The California Fair Employment and Housing Act makes specified employment practices unlawful, including the harassment of an employee directly by the employer or indirectly by agents of the employer with the employer's knowledge. The act requires employers with 50 or more employees to provide at least 2 hours of prescribed training and education regarding sexual harassment, abusive conduct, and harassment based upon gender, as specified, to all supervisory employees within 6 months of their assumption of a supervisory position and once every 2 years, as specified.

This bill would instead require an employer who employs 5 or more employees, including temporary or seasonal employees, to provide at least 2 hours of sexual harassment training to all supervisory employees and at least one hour of sexual harassment training to all nonsupervisory employees by January 1, 2020, and once every 2 years thereafter, as specified. The bill would require the Department of Fair Employment and Housing to develop or obtain 1-hour and 2-hour online training courses on the prevention of sexual harassment in the workplace, as specified, and to post the courses on the department's Internet Web site. The bill would also require the department to make existing informational posters and fact sheets, as well as the online training courses regarding sexual harassment prevention, available to employers and to members of the public in specified alternate languages on the department's Internet Web site.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 12950 of the Government Code is amended to read:

12950. In addition to employer responsibilities set forth in subdivisions (j) and (k) of Section 12940 and in rules adopted by the department and the council, every employer shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements:

(a) (1) The department's poster on discrimination in employment shall include information relating to the illegality of sexual harassment. One copy of the poster shall be provided by the department to an employer or a member of the public upon request. The

poster shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Each employer shall post the poster in a prominent and accessible location in the workplace.

(2) Post a poster developed by the department regarding transgender rights in a prominent and accessible location in the workplace.

(3) Provide sexual harassment training as required by Section 12950.1.

(b) Each employer shall obtain from the department its information sheet on sexual harassment, which the department shall make available to employers for reproduction and distribution to employees. One copy of the information sheet shall be provided by the department to an employer or a member of the public upon request. The information sheets shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Each employer shall distribute this information sheet to its employees, unless the employer provides equivalent information to its employees that contains, at a minimum, components on the following:

(1) The illegality of sexual harassment.

(2) The definition of sexual harassment under applicable state and federal law.

(3) A description of sexual harassment, utilizing examples.

(4) The internal complaint process of the employer available to the employee.

(5) The legal remedies and complaint process available through the department.

(6) Directions on how to contact the department.

(7) The protection against retaliation provided by Title 2 of the California Code of Regulations for opposing the practices prohibited by this article or for filing a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by, the department or the council.

(8) A link to, or the Internet Web site address for, the sexual harassment online training courses developed pursuant to Section 12950.1 and located on the Internet Web site of the Department of Fair Employment and Housing.

(c) The information sheet or information required to be distributed to employees pursuant to subdivision (b) shall be delivered in a manner that ensures distribution to each employee, such as including the information sheet or information with an employee's pay.

(d) The Department of Fair Employment and Housing shall make the poster, fact sheet, and online training courses available in English, Spanish, Simplified Chinese, Tagalog, Vietnamese, Korean, and any other language that is spoken by a "substantial number of non-English-speaking people," as that phrase is defined in Section 7296.2. The department shall make versions of the online training courses with subtitles in each language and shall orally dub the online training courses into each language other than English. Simplified Chinese shall be sufficient for subtitling purposes.

(e) The department shall make the poster, fact sheet, and online training courses required by this section, and the corresponding translations, available to employers and to the public through its Internet Web site in formats that may be streamed or downloaded.

(f) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the information sheet or information required to be distributed pursuant to this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(g) If an employer violates the requirements of this section, the department may seek an order requiring the employer to comply with these requirements.

SEC. 2. Section 12950.1 of the Government Code is amended to read:

12950.1. (a) By January 1, 2020, an employer having five or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees in California within six months of their assumption of a position. An employer may provide this training in conjunction with other training provided to the employees. The training may be completed by employees individually or as part of a group presentation, and may be completed in shorter segments, as long as the applicable hourly total requirement is met. An employer who has provided this training and education to an employee after January 1, 2019, is not required to provide training and education by the January 1, 2020, deadline. After January 1, 2020, each employer covered by this section shall provide sexual harassment training and education to each employee in California once every two years. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. The department shall provide a method for employees who have completed the training to save electronically and print a certificate of completion.

(b) An employer shall also include prevention of abusive conduct as a component of the training and education specified in subdivision (a).

(c) An employer shall also provide training inclusive of harassment based on gender identity, gender expression, and sexual orientation as a component of the training and education specified in subdivision (a). The training and education shall include practical examples inclusive of harassment based on gender identity, gender expression, and sexual orientation, and shall be presented by trainers or educators with knowledge and expertise in those areas.

(d) The state shall incorporate the training required by subdivisions (a) to (c), inclusive, into the 80 hours of training provided to all new employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(e) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(f) If an employer violates this section, the department may seek an order requiring the employer to comply with these requirements.

(g) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination. This section shall not be construed to override or supersede statutes, including, but not limited to, Section 1684 of the Labor Code, that meet or exceed the training for nonsupervisory employees required under this section.

(h) (1) Beginning January 1, 2020, for seasonal and temporary employees, or any employee that is hired to work for less than six months, an employer shall provide training within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first. In the case of a temporary employee employed by a temporary services employer, as defined in Section 201.3 of the Labor Code, to perform services for clients, the training shall be provided by the temporary services employer, not the client.

(2) Beginning January 1, 2020, sexual harassment prevention training for migrant and seasonal agricultural workers, as defined in the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801, et seq.), shall be consistent with training for nonsupervisory employees pursuant to paragraph (8) of subdivision (a) of Section 1684 of the Labor Code.

(i) (1) For purposes of this section only, "employer" means any person regularly employing five or more persons or regularly receiving the services of five or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(2) For purposes of this section, "abusive conduct" means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

(j) For purposes of providing training to employees as required by this section, an employer may develop his or her own training module or may direct employees to view the online training course referenced in subdivision (k) and this shall be deemed to have complied with and satisfied the employers' obligations as set forth in this section and Section 12950.

(k) The Department of Fair Employment and Housing shall develop or obtain two online training courses on the prevention of sexual harassment in the workplace in accordance with the provisions of this section. The course for nonsupervisory employees shall be one hour in length and the course for supervisory employees shall be two hours in length.

(l) The department shall make the online training courses available on its Internet Web site. The online training courses shall contain an interactive feature that requires the viewer to respond to a question periodically in order for the online training courses to continue to play. Any questions resulting from the online training course described in this subdivision shall be directed to the trainee's employer's Human Resources Department or equally qualified professional rather than the department.

Sexual Harassment Prevention Training – Landing page

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Before You Start: Technology

- The training can be taken on a computer or mobile device.
- The training should be taken on the most up-to-date version of your operating system and browser. CRD cannot guarantee that the training will run successfully on operating systems or browsers that are not up to date and cannot offer technical support if the training is taken on out-of-date systems/browsers.
- The training is compatible with the newest version of the following systems:
 - Windows 10 or 11: Microsoft Edge, Google Chrome
 - Mac OS 14.X: Safari, Google Chrome
 - Mobile: Safari in Apple iOS/iPadOS, Google Chrome in Apple iOS/iPadOS, Google Chrome in Android OS 6 or later

Before You Start: How to Successfully Complete the Training

- Some slides may take longer than others to load. If the training appears stuck on a slide or will not advance, it may be a temporary delay. You may also try refreshing or reloading the page.
- Obtaining your certificate of completion
 - At the end of the training, you will be prompted to enter information to generate a certificate of completion. Using computer/mobile device functions, you can choose to save, print, take a screenshot, or take a photo of the certificate. Before you begin the training, please consult your employer for direction on if/how they prefer to receive the certificate. CRD cannot email you a replacement certificate.
- Please report technical issues to SHPT@calcivilrights.ca.gov.

Limitations on Use

- CRD's trainings may not be duplicated, reproduced, distributed, or ingested into a third-party system such as employers' e-learning platforms. The trainings contain materials licensed only to CRD. CRD anticipates updating these trainings from time to time to account for legal and policy developments.

Accessibility

- The trainings are available in English, Spanish, Korean, Chinese, Vietnamese, and Tagalog.
- You may choose to turn closed captioning on or off in any version.
- There is alt-text for the images and the icons.

Additional Information

- For more information about the requirements of the law, please see Government Code section 12950.1.
- CRD has created Frequently Asked Questions for both employees and employers about their responsibilities under the law. Please visit the following pages to learn more:
 - Employee FAQ
 - Employer FAQ



Office of the City Manager

CONSENT CALENDAR
MAY 6, 2025

To: Honorable Mayor and Members of the City Council
From: Paul Buddenhagen, City Manager
Submitted by: David White, Deputy City Manager
Subject: Companion Report: Notice, tracking and enforcement of California SB 1343 sexual harassment prevention training for Berkeley private, public and non-profit employers and employees

RECOMMENDATION:

Since the City is already implementing and meeting the Commission’s recommendations for City employees, and enforcement of this law for non-City businesses for 5 or more employees is covered by the State of California’s Civil Rights Department and not within the City’s jurisdiction to enforce, no action on the commission’s recommendation is recommended.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with this recommendation.

CURRENT SITUATION AND ITS EFFECTS:

The Commission on the Status of Women has recommended that Council refer to the City Manager the implementation of SB 1343 for all employers with 5 or more employees within the City of Berkeley, including the City itself. Critically, it is neither the City of Berkeley’s responsibility nor jurisdiction to enforce this law; that is the purview of the California Civil Rights Department.

The City of Berkeley is responsible for ensuring the necessary sexual harassment prevention training for City employees. Per the City’s Human Resources Department, for the most recent compliance year (2023), every City department notched training completion rates above 95%, and nine departments achieved 100% compliance. The same training will be provided in calendar year 2025, with similar completion rates anticipated.

For these reasons, we respectfully recommend that Council take no action on the Commission’s recommendation.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental benefits nor challenges associated with this recommendation.

BACKGROUND

On April 17, 2024, the Commission on the Status of Women voted as follows:

The Commission on the Status of Women moves to submit the recommendation for City of Berkeley enforcement of sexual harassment training, under SB 1343, as incorporated in this report.

M/S/C: Marasovic, Ortiz-Cedeno

Ayes: Goodwin, Marasovic, Oliver, Ortiz-Cedeno, Posey, Seshagiri

Noes: None

Abstain: None

Absent: Arora

Leave of Absence: Boyd, Plese

RATIONALE FOR RECOMMENDATION

The City is currently implementing this law for its own employees. Enforcing it for non-City employers is the State's jurisdiction.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dave White, Deputy City Manager, (510) 981-7014.



Office of the City Manager

PUBLIC HEARING

May 6, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: David Sprague, Fire Chief

Subject: Modification and Adoption of Berkeley Fire Code Local Amendments

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt the second reading of Ordinance No. 7,959-N.S. (Attachment 1) which proposes to amend certain portions of Section 19.48.020 of the Berkeley Municipal Code (“Amendments to the California Fire Code”).

FISCAL IMPACTS OF RECOMMENDATION

The proposed Fire Code modifications will require a substantial investment of City staff time and resources for implementation. Key tasks will include updating all public-facing documents and web content, modifying the City’s inspection software, revising inspection guides and forms, public education and messaging, and conducting staff training to align with the updated code.

Additionally, significant expenditures are anticipated within the city’s Wildland Urban Interface (WUI) program to support the implementation and operationalization of these changes. The following WUI-related costs are projected for FY26 and are expected to support fire prevention, inspection, public engagement, and vegetation management efforts associated with the code modifications:

- Personnel Salary and Benefits: \$1,495,000
- Vegetation Management Program: \$1,000,000
- Resident Assistance Program: \$1,000,000
- Safe Passages Program: \$200,000
- Public Education/Marketing: \$50,000
- Vehicle Maintenance & Replacement: \$ 33,415

Collectively, the total projected expenditure associated with WUI initiatives amounts to \$3,778,415. All of these funds are budgeted within the Fire Department’s baseline budget – there are no new funding request at this time.

CURRENT SITUATION AND ITS EFFECTS

On April 15, 2025 the City Council voted 9-0 to adopt the first reading of the “Modification and Adoption of Berkeley Fire Code Local Amendments” and scheduled the public hearing for May 6, 2025.

BACKGROUND

The Berkeley City Council unanimously declared wildfire prevention and safety a top priority on October 15, 2019. This declaration helped establish this issue as one of the key priorities of the 2020 Measure FF tax.

On December 6, 2022 the Berkeley City Council adopted the current edition of the Berkeley Fire Code (BFC), which was based on the State of California adoption of the 2022 California Fire Code.

On June 4, 2024 the City Council adopted mid-cycle amendments that were issued by the State of California to the 2022 California Fire Code. These new amendments took effect on July 1, 2024.

On February 11, 2025 at a Special Meeting, the Council referred the following proposals to Staff; (1) Create a new Fire Zone within the Fire Code to include – at minimum - the areas between Wildcat Canyon Rd. to the east, Grizzly Peak Blvd to the west, and the Berkeley City Limits to the south and north; and (2) Repeal the Berkeley Fire Code (BMC Chapter 19.48) and reenact BMC Chapter 19.48 to include an Ember Resistant Zone (Zone 0) and other defensible space best practices and schedule a Public Hearing for the first reading on April 15, 2025 pursuant to state law.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Wildfires that transition to a structure-to-structure conflagration have acute and far-reaching consequences, not only for the environment and climate but also for the stability and well-being of impacted communities. These fires release large amounts of pollutants into the air, including soot and carbon dioxide, which contribute to climate change and degrade air quality. Additionally, toxic byproducts from burning structures, vehicles, and other synthetic material can pose significant health risks to residents and responders.

The water used to combat these fires is often sourced from the city's potable water supply. Once used, it can become contaminated with chemicals, ash, and debris, potentially polluting groundwater and local waterways.

The destruction of homes, businesses, and critical infrastructure leads to substantial economic burdens that jeopardize the financial stability of impacted communities. Rebuilding efforts require significant financial investment, as well as the production, transportation, and installation of new materials—all of which generate additional emissions. For individual residents, the loss of a home or business can lead to long-term financial instability, displacement, and increased insurance costs.

Beyond the physical and financial toll, these disasters leave lasting emotional and psychological scars on affected communities. Residents may experience trauma, anxiety, and grief, particularly when lives are lost, homes are destroyed, or

neighborhoods are permanently altered. The social fabric of a community can be disrupted as families and businesses struggle to recover, sometimes forcing relocation and reducing neighborhood cohesion.

Investing in a strong fire code is one tool the city uses to reduce the frequency and severity of fires. Effective fire prevention also contributes to environmental sustainability by reducing emissions, preserving water resources, and minimizing the need for costly rebuilding efforts. A commitment to strong fire safety regulations ultimately benefits the entire community—protecting public health, safeguarding financial resources, and ensuring a resilient and sustainable future.

RATIONALE FOR RECOMMENDATION

A city, county, or city and county may establish more restrictive building standards as reasonably necessary because of local climatic, geological or topographical conditions. The City's adoption of stringent fuel mitigation and exterior hazard abatement standards is designed to decrease the risk of structure fires spreading to adjacent vegetation and the risk of vegetation fires spreading to structures. The Council bases these standards, in part, upon its finding that the climatic, vegetative, geological, and topographical conditions within the City create a grave risk of wildfire and resulting loss of life and property.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

David Sprague, Fire Chief (510) 981-3473

Attachments:

1: Ordinance – “Amendment of Section 19.48.020 of the Berkeley Municipal Code (“Amendments to The California Fire Code”)

2: Public Hearing Notice – May 6, 2025

ORDINANCE NO. 7,959–N.S.

REPEALING AND RE-ENACTING BERKELEY MUNICIPAL CODE CHAPTER 19.48
(BERKELEY FIRE CODE)

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 19.48 is hereby repealed and reenacted as to read as follows:

Chapter 19.48

BERKELEY FIRE CODE*

Sections:

19.48.010 Adoption of the California Fire Code including Appendix B – Fire-Flow Requirements for Buildings and Appendix L – Requirements for Fire Fighter Air Replenishment Systems

19.48.020 Amendments to the California Fire Code

19.48.030 Validity

Section 19.48.010 Adoption of the California Fire Code

- A. The California Fire Code, 2022 edition, as adopted in Title 24, Part 9 of the California Code of Regulations, including Chapter 1 (excluding Section 103), Chapter 3, Section 503 of Chapter 5, Sections 1103.5.6 through 1103.5.6.3 (new sections as created by BMC 19.48.020, Amendments to the California Fire Code), Appendix Chapters D, E, F, L (as amended by BMC 19.48.020, Amendments to the California Fire Code) and O published by the International Code Council not included in the California Building Standards Code, are adopted by this reference into this Chapter, and are hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth this ordinance. One copy of this Code is on file in the office of the City Clerk of the City of Berkeley.
- B. This chapter shall be known as the "Berkeley Fire Code" and shall be referred to in this chapter as "this code".
- C. This Chapter will become effective on June 1, 2025.

Section 19.48.020 Amendments to the California Fire Code

The following additions, changes and deletions to the 2022 California Fire Code, as detailed below, are adopted as part of the Berkeley Fire Code.

Chapter 1 of the California Fire Code is adopted in its entirety subject to the modifications thereto which are set forth below.

CHAPTER 1 – SCOPE AND ADMINISTRATION

SECTION 101 SCOPE AND GENERAL REQUIREMENTS

[A] Section 101.1 Title. These regulations shall be known as the Berkeley Fire Code shall be known as the *Fire Code* of, shall be known as the Berkeley Fire Code, hereinafter referred to as "this code."

SECTION 102 APPLICABILITY

[A] 102.6 Historic buildings. The provisions of this code relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local jurisdiction as historic buildings where such buildings or structures do not constitute a distinct hazard to life or property. Fire protection in designated historic buildings shall be provided with an approved fire protection plan as required in Section 1103.1.1 in accordance with the 2022 California Historical Code.

SECTION 104 DUTIES AND POWERS OF THE FIRE CODE OFFICIAL

Section 104.13. Authority to arrest and issue citations. The Fire Chief, or their designee shall have authority to arrest or to cite any person who violates any provision of this Chapter involving the International Fire Code or the California Building Standards Code regulations relating to fire and panic safety as adopted by the State Fire Marshal, in the manner provided for the arrest or release on citation and notice to appear with respect to misdemeanors or infractions, as prescribed by Chapters 5, 5c and 5d of Title 3, Part 2 of the California Penal Code, including Section 853.6, or as the same hereafter may be amended. It is the intent of the City Council that the immunities provided in Penal Code Section 836.5 are applicable to aforementioned officers and employees exercising their arrest or citation authority within the course and scope of their employment pursuant to this Chapter.

Section 104.14 Authority to abate fire nuisance [Additional subsection]. The Fire Chief or the Fire Chief's designee shall have the authority to order the abatement of fire nuisances.

SECTION 105 PERMITS

105.5.18 Flammable and combustible liquids. An operational permit is required:

1. To use or operate a pipeline for the transportation within facilities of flammable or combustible liquids. This requirement shall not apply to the offsite transportation in pipelines regulated by the Department of Transportation (DOT) nor does it apply to piping systems.
2. To store, handle or use Class I liquids in excess of 5 gallons (19 L) in a building or in excess of 10 gallons (37.9 L) outside of a building, except that a permit is not required for the following:

- 2.1 The storage or use of Class I liquids in the fuel tank of a motor vehicle, aircraft, motorboat, mobile power plant or mobile heating plant, unless such storage, in the opinion of the fire code official, would cause an unsafe condition.
- 2.2 The storage or use of paints, oils, varnishes or similar flammable mixtures where such liquids are stored for maintenance, painting or similar purposes for a period of not more than 30 days.
3. To store, handle or use Class II or Class IIIA liquids in excess of 25 gallons (95 L) in a building or in excess of 60 gallons (227 L) outside a building, except for fuel oil used in connection with oil-burning equipment.
4. To store, handle or use Class IIIB liquids in excess of 110 gallons in containers, or in tanks or portable tanks for fueling motor vehicles at motor fuel-dispensing facilities or where connected to fuel-burning equipment.

Exception: Fuel oil and used motor oil used for space heating or water heating.

5. To remove Class I or II liquids from an underground storage tank used for fueling motor vehicles by any means other than the approved, stationary on-site pumps normally used for dispensing purposes.
6. To operate tank vehicles, equipment, tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used.
7. To place temporarily out of service (for more than 90 days) an underground, protected above-ground or above-ground flammable or combustible liquid tank.
8. To change the type of contents stored in a flammable or combustible liquid tank to a material that poses a greater hazard than that for which the tank was designed and constructed.
9. To manufacture, process, blend or refine flammable or combustible liquids.
10. To engage in the dispensing of liquid fuels into the fuel tanks of motor vehicles at commercial, industrial, governmental or manufacturing establishments in accordance with Section 5706.5.4 or to engage in on-demand mobile fueling operations in accordance with Section 5707.
11. To utilize a site for the dispensing of liquid fuels from tank vehicles into the fuel tanks of motor vehicles, marine craft and other special equipment at commercial, industrial, governmental or manufacturing establishments in accordance with Section 5706.5.4 or, where required by the fire code official, to utilize a site for on-demand mobile fueling operations in accordance with Section 5707.

Section 105.5.55 Christmas tree sales lot. An operational permit is required to operate a Christmas tree sales lot.

Section 105.5.56 Escort convoy service. Police and/or Fire Department convoy service is required for vehicle transportation of extremely hazardous materials.

Section 105.5.57 Fire Fighter Air Replenishment System (FARS). An annual operational permit is required to maintain a FARS system in accordance with Appendix L.

Section 105.5.58 General use permit. For any activity or operation not specifically described in this code, which the fire code official reasonably determines, may produce conditions hazardous to life or property.

Section 105.5.59 Parking facility, special events] An operational permit is required to use buildings or structures for vehicle parking, including parking for special events (i.e. football games, etc.).

Section 105.6.25 Fire fighter air replenishment system (FARS). A building permit is required for installation of or modification to a FARS system in accordance with Appendix L.

Section 105.6.26 Window bars, operational constraints and opening control devices. A building permit is required to install window bars or other equipment which imposes operational constraints and opening controls on emergency escape and rescue openings on exterior doors or windows of any sleeping rooms in accordance with fire code Section 1031.2.1 of this code.

SECTION 107 FEES

Section 107.2 Schedule of permit fees. Where a permit is required, a fee for each permit shall be paid as required, in accordance with the schedule ~~as established by the applicable governing body.~~ of fees for permits and inspections as set forth by the City Council by resolution.

Section 107.4 Work commencing before permit issuance. A person who commences any work, activity or operation regulated by this code before obtaining the necessary permits shall be subject to a fee ~~established by the applicable governing authority, which shall be in addition to the required permit fees.~~ equivalent to three times the amount of the required fees to obtain a permit for that work, activity or operation regulated by this code.

Section 107.7. Expense of securing emergencies. The expense of securing any emergency that is within the responsibility for enforcement of the fire code official as given in Sections 104.1 or 104.11 is a charge against the person who caused the emergency. Damages and expenses incurred by any public agency having jurisdiction or any public agency assisting the agency having jurisdiction shall constitute a debt of such person and shall be collectible by the fire code official for proper distribution in the same manner as in the case of an obligation under contract expressed or implied. Expenses as stated above shall include, but not be limited to, equipment and personnel committed and any payments required by the public agency to outside business firms requested by the public agency to secure the emergency, monitor remediation, and clean up.

SECTION 111 MEANS OF APPEALS

Section 111.1 Board of appeals established. Appeals Procedure ~~In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the applicable governing authority and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the fire code official. an appeal therefore may be taken to the City Council by the applicant or permit holder. Notice of the appeal must be filed with the City Clerk of the City of Berkeley within ten days from the date of mailing of the fire code official's decision to the applicant or permit holder. The notice of appeal shall contain a statement of the reasons for the appeal. The City Clerk shall forward one copy thereof to the fire code official. Within thirty days after the filing of the notice of appeal, the fire code official shall transmit to the City Council all their records pertaining to the decision appealed from.~~

Section 111.1.1 Stay of Proceedings ~~The filing of the notice of appeal shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until determination of the appeal as hereinafter provided, unless the fire code official determines that such a stay could result in an imminent threat to public safety.~~

Section 111.3 Qualifications. ~~The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to hazards of fire, explosions, hazardous conditions or fire protection systems, and are not employees of the jurisdiction.~~ **Decisions:** The City Council shall review the action of the fire code official and shall do any one of the following:

- a. Refer the matter back to the fire code official.
- b. If the facts stated in or ascertainable from the application, the Notice of Appeal, the written statement of the fire code official setting forth the reason for their decision, and the other papers, if any, constituting the record do not, in the opinion of the City Council, warrant further hearing, the City Council may affirm the decision of the fire code official. Such decision shall be final.
- c. If, in the opinion of the City Council, said facts warrant further hearing, the City Council shall set the matter for hearing and shall give notice of the time and place of said hearing by mailing a copy of such notice by certified mail to the address of the applicant as stated in the Notice of Appeal, at least ten (10) days before the time fixed for the hearing. The City Council may continue the hearing from time to time.
- d. Following such hearing, the City Council shall reverse, affirm wholly or partly modify any decision of the fire code official, or make any other decisions or determinations or impose such conditions as the facts warrant. Such decision or determination shall be final.
- e. If none of the above actions have been taken by the City Council within thirty (30) days from the date the appeal first appears on the City Council agenda, then the decision of the fire code official shall be deemed affirmed and the appeal shall be deemed dismissed.

- f. If the appeal is set for hearing but the disposition of the appeal has not been determined within ninety (90) days from the date the appeal first appears on the City Council agenda, then the decision of the fire code official shall be deemed affirmed and the appeal deemed dismissed.

111.4 Administration. The fire code official shall take immediate action in accordance with the decision of the Board City Council .

SECTION 112 VIOLATIONS

Section 112.1 Unlawful acts [Amended subsection]. It shall be unlawful for a person, firm or corporation to erect, construct, alter, repair, remove, demolish or utilize a building, occupancy, premises or system regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code, or to create, maintain or allow to continue any fire hazard.

Section 112.4 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a ~~[SPECIFY OFFENSE], punishable by a fine of not more than [AMOUNT] dollars or by imprisonment not exceeding [NUMBER OF DAYS], or both such fine and imprisonment~~ misdemeanor, but may be cited or charged, at the election of the enforcing officer or City Attorney, as infractions, subject to an election by the defendant under Penal Code Subsection 17 (d). Each day that a violation continues after due notice has been served shall be deemed a separate offense. In addition to all other legal remedies, civil or criminal (as set forth above), any violation of this code constitutes a public nuisance in accordance with B.M.C Chapter 1.26, and is subject to all provisions of B.M.C. Chapter 1.26, as well as abatement under B.M.C. Chapter 1.24, "Abatement of Nuisances". All such violations are also subject to the issuance of an administrative citation in accordance with B.M.C Chapter 1.28 at the discretion of the enforcing officer or the City Attorney.

SECTION 114 UNSAFE STRUCTURES OR EQUIPMENT

Section 114.7 Summary abatement. Where conditions exist that are deemed hazardous to life and property, the fire code official or fire department official in charge of the incident is authorized to abate summarily such hazardous conditions that are in violation of this code. Where the owner does not comply with an abatement order under Section 114.4 within the period specified, the City of Berkeley may perform or cause to be performed the necessary work. The costs incurred shall be recoverable under the procedures in Section 114.7.1

Section 114.7.1 Abatement process [Additional subsection] The abatement process shall be conducted in accordance with the notice and hearing requirements of the nuisance abatement provisions of Berkeley Municipal code chapter 1.24, including summary abatements of structures or premises determined by the City of Berkeley to constitute an imminent hazard or emergency condition.

Chapter 2 of the California Fire Code is adopted in its entirety subject to the modifications thereto which are set forth below.

CHAPTER 2 – DEFINITIONS

SECTION 202 GENERAL DEFINITIONS

Section 202 Definitions – BBERKELEY MARINA. The area shall mean all those, parts of the City of Berkeley west of the Interstate 80 Freeway

Section 202 (Definitions — F). FIRE HAZARD. Anything or act which increases or could cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in preventing, suppressing or extinguishing fire or anything or act which could obstruct, delay, hinder or interfere with the operations of the fire department or the egress of occupants in the event of fire. Fire hazards as defined herein are hereby declared to be public nuisances subject to abatement by the City of Berkeley.

Section 202 (Definitions — F). FIRE NUISANCE. Anything or act, which is annoying, unpleasant, offensive or obnoxious because of fire.

Section 202 (Definitions – J). JURISDICTION. The City of Berkeley. ~~The governmental unit that has adopted this code.~~

Section 202 (Definitions — W). WASTE OIL is a Class III-B waste liquid resulting from the use of Class III-B combustible liquids such as waste motor oil, hydraulic oil, lubricating oil, brake fluids and transmission fluids.

Chapter 5 of the California Fire Code is adopted in its entirety subject to the modifications thereto which are set forth below.

CHAPTER 5 – FIRE SERVICE FEATURES

SECTION 504 ACCESS TO BUILDING OPENINGS AND ROOFS

Section 504.1.1 Marking of Exterior Building Openings. Where exterior doorways are not otherwise marked with identification such as building addresses, room/suite numbers or business names which identify the area(s) they provide access to, or a functional description for the space, such opening shall be provided with signs or labels indicating the areas they serve. Doorways to be marked shall include but are not limited to doors serving building circulation (such as stairwells/exit passageways), potential hazards (such as trash rooms), and building service and utility spaces (such as electrical, gas, HVAC and elevator machine rooms). Signs/labels shall be permanent, weather and sunlight resistant with lettering not less than ¾" high with a 1/16" width stroke on a contrasting background. Such signs or labels shall be affixed to the door frame or wall above the door. Such signs and labels shall be maintained.

Exception: Doors associated with private dwellings, the main entrance to normally occupied spaces or when determined to be unnecessary by the fire code official.

Chapter 7 of the California Fire Code is adopted in its entirety subject to the modifications thereto which are set forth below.

CHAPTER 7 – FIRE AND SMOKE PROTECTION FEATURES

SECTION 705 DOOR AND WINDOW OPENINGS

Section 705.2.5 Smoke - and heat-activated doors. Smoke-activated doors shall be maintained to self-close or automatically close upon detection of smoke. Existing fusible-link-type automatic-door closing devices are permitted if the fusible-link rating does not exceed 135°F (57°C). Doors required for fire and smoke separation for interior exit stairways and floor separation in R-1 or R-2 occupancies shall not be maintained in an open position with fusible links.

Chapter 9 of the California Fire Code is adopted in its entirety subject to the modifications thereto which are set forth below.

CHAPTER 9 – FIRE PROTECTION AND LIFE SAFETY SYSTEMS SECTION 903 AUTOMATIC SPRINKLER SYSTEMS

Section 903.2.10.1 Commercial parking garages. An automatic sprinkler system shall be provided throughout buildings used for storage of commercial motor vehicles ~~where the fire area exceeds 5,000 square feet (464 m²).~~

Section 903.2.11.1 Stories without openings. An automatic sprinkler system shall be installed throughout all buildings having stories, including basements, ~~of all buildings where the floor area exceeds 1,500 square feet (139.4 m²)~~ and where the story does not comply with the following types of exterior wall openings:

1. Openings below grade that lead directly to ground level by an exterior stairway complying with Section 1011 or an outside ramp complying with Section 1012. Openings shall be located in each 50 linear feet (15 240 mm), or fraction thereof, of exterior wall in the story on not fewer than one side. The required openings shall be distributed such that the lineal distance between adjacent openings does not exceed 50 feet (15 240 mm).
2. Openings entirely above the adjoining ground level totaling not less than 20 square feet (1.86 m²) in each 50 linear feet (15 240 mm), or fraction thereof, of exterior wall in the story on not fewer than one side. The required openings shall be distributed such that the lineal distance between adjacent openings does not exceed 50 feet (15 240 mm) The height of the bottom of the clear opening shall not exceed 44 inches (1118 mm) measured from the floor.

Section 903.2.11.2. Rubbish, Recycling and linen chutes. An automatic sprinkler system shall be installed at the top of rubbish and linen chutes and in their terminal rooms. Chutes shall have additional sprinkler heads installed at alternate floors and at the lowest intake. Where a rubbish chute extends through a building more than one floor below the lowest intake, the extension shall have sprinklers installed that are recessed from the drop area of the chute and protected from freezing in accordance with Section 903.3.1.1. Such sprinklers shall be installed at alternate floors, beginning with the second level below the last intake and ending with the floor above the discharge. Access to sprinklers in chutes shall be provided for servicing. Activation of any fire sprinkler in a chute shall activate a separate water flow switch to indicate waterflow in the chute. All fire sprinklers in the chute shall be controlled by a separate, electrically supervised control valve with tamper switch.

Section 903.2.22 Structures in the Berkeley Marina Area. An automatic sprinkler system shall be installed in all structures located in the Berkeley Marina Area in accordance with NFPA 13 standards.

Exceptions: Gear lockers not designed to permit human entry, municipal restrooms unattached to other structures, the existing City of Berkeley Harbor Master's office, and any temporary construction site structures.

Section 903.2.23 Public Self-Storage Buildings. An automatic sprinkler system shall be installed in any building erected or existing building that was converted and/or subdivided for public self-storage use on or after August 19, 1982, in accordance with NFPA 13 standards.

Section 903.2.24 Environmental Safety - Residential District. Reserved

Section 903.3.1.2 NFPA 13R sprinkler systems. Automatic sprinkler systems in Group R occupancies shall be permitted to be installed throughout in accordance with NFPA 13R *as amended in Chapter 80*.

1. Four stories or less above grade plane.
2. The floor level of the highest story is 30 feet (9144mm) or less above the lowest level of fire department vehicle access.
3. The floor level of the lowest story is 30 feet (9144mm) or less below the lowest level of fire department access.

The number or stores of Group R occupancies constructed in accordance with Sections 510.2 and 510.4 of the *California Building Code* shall be measured from grade plane.

Exception: Sprinkler systems in residential / commercial mix-use buildings are to be in accordance with NFPA 13.

Section 903.3.9 Floor control valves. Floor control valves and waterflow detection assemblies shall be installed at each floor where any of the following occur:

1. Buildings where the floor level of the highest story is located ~~more than~~ or more above the lowest level of fire department vehicle access.
2. Buildings that are ~~four~~ three or more stories in height.
3. Buildings that are two or more stories below the highest level of fire department vehicle access.

Exception: In Group R-3 and R-3.1 occupancies, floor control valves and waterflow detection assemblies shall not be required.

Section 907.2 Where required—new buildings and structures. An approved fire alarm system installed in accordance with the provisions of this code and NFPA 72 shall be provided in new buildings and structures in accordance with Sections 907.2.1 through 907.2.29 and provide occupant notification in accordance with Section 907.5, unless other requirements are provided by another section of this code.

Not fewer than one manual fire alarm box shall be provided in an approved location to initiate a fire alarm signal for fire alarm systems employing automatic fire detectors or water-flow detection devices. ~~Where an automatic and manual, or a manual fire alarm system is required by this code or Berkeley local ordinance, other sections of this code allow elimination of fire alarm boxes is prohibited. due to sprinklers or automatic fire alarm systems,~~ a single fire alarm box shall be installed at a location approved by the enforcing agency.

Exceptions:

- ~~1. The manual fire alarm box is not required for fire alarm control units dedicated to elevator recall control, supervisory service and fire sprinkler monitoring.~~
- ~~2. The manual fire alarm box is not required for Group R-2 occupancies unless required by the fire code official to provide a means for fire watch personnel to initiate an alarm during a sprinkler system impairment event. Where provided, the manual fire alarm box shall not be located in an area that is open to the public.~~
- ~~3. The manual fire alarm box is not required to be installed when approved by the fire code official.~~

Section 907.2.1 Group A. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group A occupancies where the occupant load due to the assembly occupancy is 300 or more, or where the Group A occupant load is more than 100 persons above or below the lowest level of exit discharge. Group A occupancies not separated from one another in accordance with Section 707.3.10 of the *California Building Code* shall be considered as a single occupancy for the purposes of applying this section. Portions of Group E occupancies occupied for assembly purposes *with an occupant load of less than 1000* shall be provided with a fire alarm system as required for the Group E occupancy.

~~**Exception:** Manual fire alarm boxes are not required where the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 and the occupant notification appliances will activate throughout the notification zones upon sprinkler water flow.~~

Every Group A building used for educational purposes shall be provided with a manual or automatic fire alarm system. This provision shall apply to, but shall not necessarily be limited to, every community college and university.

Exception: *Privately owned trade or vocational schools or any firm or company which provides educational facilities and instruction for its employees.*

Section 907.2.2 Group B. A manual fire alarm system, which activates the occupant notification system in accordance with Section 907.5, shall be installed in Group B occupancies where one of the following conditions exists:

1. The combined Group B occupant load of all floors is 500 or more.
2. The Group B occupant load is more than 100 persons above or below the lowest level of exit discharge.
3. The fire area contains an ambulatory care facility.
4. *For Group B occupancies containing educational facilities, see Section 907.2.2.2.*

~~**Exception:** Manual fire alarm boxes are not required where the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 and the occupant notification appliances will activate throughout the notification zones upon sprinkler water flow.~~

Section 907.2.4 Group F. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group F occupancies where both of the following conditions exist:

1. The Group F occupancy is two or more stories in height.
2. The Group F occupancy has a combined occupant load of 500 or more above or below the lowest level of exit discharge.

~~**Exception:** Manual fire alarm boxes are not required where the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 and the occupant notification appliances will activate throughout the notification zones upon sprinkler water flow.~~

Section 907.2.7 Group M. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group M occupancies where one of the following conditions exists:

1. The combined Group M occupant load of all floors is 500 or more persons.
2. The Group M occupant load is more than 100 persons above or below the lowest level of exit discharge.

Exceptions:

1. A manual fire alarm system is not required in covered or open mall buildings complying with Section 402 of the *California Building Code*.
2. ~~Manual fire alarm boxes are not required where the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 and the occupant notification appliances will automatically activate throughout the notification zones upon sprinkler water flow.~~

Section 907.2.8.1 Manual Fire alarm system. A manual and automatic fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group R-1 occupancies.

Exceptions:

1. ~~A manual fire alarm system is not required in buildings not more than two stories in height where all individual sleeping units and contiguous attic and crawl spaces to those units are separated from each other and public or common areas by not less than 1-hour fire partitions and each individual sleeping unit has an exit directly to a public way, egress court or yard.~~
2. ~~Manual fire alarm boxes are not required throughout the building where all the following conditions are met:~~
 - 2.1. ~~The building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.~~
 - 2.2. ~~The notification appliances will activate upon sprinkler water flow.~~
 - 2.3. ~~Not fewer than one manual fire alarm box is installed at an approved location.~~

Section 907.2.8.2 Manual and Automatic fire alarm systems ~~smoke detection system.~~ ~~An A manual and automatic smoke detection~~ fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed throughout all interior corridors and common areas of Group R-1 occupancies. The detection device for this purpose shall be a smoke detector (or heat detector as approved), which is system connected and electronically supervised ~~serving sleeping units.~~

Exception: ~~An automatic smoke detection system is not required in buildings that do not have interior corridors serving sleeping units and where each sleeping unit has a means of egress door opening directly to an exit or to an exterior exit access that leads directly to an exit.~~

Section 907.2.9.1 Automatic and Mmanual fire alarm system. An automatic and manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group R-2 occupancies where any of the following conditions apply:

1. The building is three or more stories in height and Any any dwelling unit or sleeping unit is located ~~three or more stories above~~ the lowest level of exit discharge.
2. Any dwelling unit or sleeping unit is located more than one story below the highest level of exit discharge of exits serving the dwelling unit or sleeping unit.
3. The building contains more than 16 dwelling units or sleeping units.
4. *Congregate residences with more than 16 occupants.*

Exceptions:

1. A fire alarm system is not required in buildings not more than two stories in height where all dwelling units or sleeping units and contiguous attic and crawl spaces are separated from each other and public or common areas by not less than 1-hour fire partitions and each dwelling unit or sleeping unit has an exit directly to a public way, egress court or yard.

2. ~~Manual fire alarm boxes are not required where the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 and the occupant notification appliances will automatically activate throughout the notification zones upon a sprinkler water flow.~~
3. 2. A fire alarm system is not required in buildings that do not have interior corridors serving dwelling units and are protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, provided that dwelling units either have a means of egress door opening directly to an exterior exit access that leads directly to the exits or are served by open-ended corridors designed in accordance with Section 1027.6, Exception 3.

Section 914.3.9 Fire Fighter Air Replenishment Systems. New high-rise buildings shall install an approved Fire Fighter Air Replenishment System (FARS) or equivalent equipment or systems as determined by the fire code official to provide a breathing air supply for firefighting self-contained breathing air tanks. Such system or equipment shall provide adequate pressurized breathing air supply through a permanent piping system or other means acceptable to the fire code official for the replenishment of portable life sustaining air equipment carried by fire department, rescue and other personnel in the performance of their duties. Design, installation, testing and maintenance of such air replenishment systems shall be made in accordance with Appendix Chapter F of the California Plumbing Code. Each property owner shall be responsible for maintaining such equipment or systems including annual air sampling and testing.

Exceptions:

1. Buildings equipped with Firefighter Access Elevators as required by Berkeley Building Code section 403.6.1
2. Where an alternate method of supplying breathing air replenishment is approved by the fire code official.

Chapter 11 of the California Fire Code is adopted in its entirety subject to the modifications thereto which are set forth below.

CHAPTER 11 – CONSTRUCTION REQUIREMENTS FOR EXISTING BUILDINGS

SECTION 1103 FIRE SAFETY REQUIREMENTS FOR EXISTING BUILDINGS

Section 1103.5 Sprinkler systems. An automatic sprinkler system shall be provided in existing buildings in accordance with Section 1103.5.1 through 1103.5.5-6.3

SECTION 1103.5.6 AUTOMATIC SPRINKLER REQUIREMENTS FOR EXISTING HOTELS

Section 1103.5.6.1 Definitions. For the purposes of this Section, the following terms shall be defined as follows:

1. "Hotel" shall mean any building, including motels, dormitories, rooming houses, fraternity houses and sorority houses, which contain six or more rooms which were intended or designed to be used, or which are used, for the purposes of renting, hiring or letting to residential occupants for sleeping purposes but shall not include apartment buildings as defined in this code.
2. "Story" is as defined in the Berkeley Building Code.
3. "First Story" is as defined in the Berkeley Building Code.
4. "Basement" is as defined in the Berkeley Building Code.
5. "Balcony, Exterior Exit" shall mean a landing or porch projecting from the wall of a building which serves as a required exit. The long side shall be at least 50 percent directly open to the exterior, and the open area above the guardrail shall be so configured as to prevent the accumulation of smoke or toxic gases.

Application: This section shall apply to every hotel in which the rooms used for sleeping are rented or let above the ground floor, if the hotel was built prior to 1992, and also meets one of the following two conditions:

The height of the hotel is three or more stories or two stories plus an inhabited basement, which is used for purposes other than exclusively servicing the maintenance and other needs of the building; or the hotel contains 20 or more rooms, or regularly accommodates 20 or more residential occupants.

Exception: No hotel in which the exits from sleeping rooms lead either to the outside of the building either directly or via approved exit balconies with approved exterior stairways(s) in accordance with the requirements of the Berkeley Building Code is required to comply with this section.

Section 1103.5.6.2 Types of Fire Sprinklers. In the sleeping units of the building, only residential or quick response sprinkler heads shall be used.

Section 1103.5.6.3 Supervision of fire sprinkler systems. All automatic sprinkler systems installed under this subsection shall be monitored for supervision and alarms in accordance with Section 903.4.

Section 1103.7 Fire Alarm Systems. An approved fire alarm system shall be installed in existing buildings and structures in accordance with Sections 1103.7.1 through 1103.7.6 and provide occupant notification in accordance with Section 907.5 unless other requirements are provided by other sections of this code. Existing high-rise buildings shall comply with Section 1103.7.9. Where an automatic and manual or a manual fire alarm system is required by this code or Berkeley local ordinance, elimination of fire alarm boxes in buildings equipped with an approved sprinkler system is prohibited.

Exception: Occupancies with an existing, previously approved fire alarm system.

Section 1103.7.5.1 Group R-1 hotels, and motels, and congregate residences manual and automatic fire alarm system. A manual and automatic fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in existing Group R-1 hotels, and motels, and congregate residences ~~more than~~ with three or more stories or with ~~more than~~ 20 or more sleeping units.

Exceptions:

1. ~~A manual fire alarm system is not required in buildings less than two stories in height where all sleeping units, attics and crawl spaces are separated by 1-hour fire-resistance-rated construction and each sleeping unit has direct access to a public way, egress court or yard.~~
2. ~~A manual fire alarm system is not required in buildings not more than three stories in height with not more than 20 sleeping units and equipped throughout with an automatic sprinkler system installed in accordance with Sections 903.3.1.1 or 903.3.1.2.~~
3. ~~Manual fire alarm boxes are not required throughout the building where the following conditions are met:~~
 - 3.1. ~~The building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.~~
 - 3.2. ~~The notification appliances will activate upon sprinkler water flow.~~
 - 3.3. ~~Not less than one manual fire alarm box is installed at an approved location.~~

Section 1103.7.6 Group R-2. A manual and automatic fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in existing Group R-2 occupancies three or more stories in height or with 16 or more dwelling or sleeping units. Congregate residences shall retrofit existing manual-only fire alarm systems with manual and automatic fire detection. Other types of R-2 occupancies (such as apartment buildings) shall retrofit existing manual-only fire alarm systems with manual and automatic fire detection when the existing fire alarm control unit is replaced for any reason. Automatic detection shall be accomplished by use of a smoke detector (or heat detector as approved), which is system connected and electronically supervised. Detectors shall be installed in all interior corridors and common areas.

Exceptions:

1. Where each living unit is separated from other contiguous living units by fire barriers having a fire-resistance rating of not less than 3/4 hour, and where each living unit has either its own independent exit or its own independent stairway or ramp discharging at grade.
2. ~~A separate fire alarm system is not required in buildings that are equipped throughout with an approved supervised automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 and having a local alarm to notify all occupants.~~
3. A fire alarm system is not required in buildings that do not have interior corridors serving dwelling units and are protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, provided that dwelling units either have a means of egress door opening directly to an exterior exit access that leads directly to the exits or are served by open ended corridors designed in accordance with Section 1027.6, Exception 3.
4. A fire alarm system is not required in buildings that do not have interior corridors serving dwelling units, do not exceed three stories in height and comply with both of the following:
 - 4.1. Each dwelling unit is separated from other contiguous dwelling units by fire barriers having a fire-resistance rating of not less than ¾ hour.
 - 4.2. Each dwelling unit is provided with smoke alarms complying with the requirements of Section 907.2.11.

Section 1103.7.10 Monitoring of Group R Occupancies. All existing R occupancies that are required to provide both a fire alarm and fire suppression system shall have the system monitored by a central station, remote supervising station, or proprietary supervising station.

Chapter 49 of the California Fire Code is adopted in its entirety subject to the modifications thereto which are set forth below.

CHAPTER 49 – REQUIREMENTS FOR WILDLAND-URBAN INTERFACE FIRE AREAS

SECTION 4902 DEFINITIONS

Section 4902.1 General. *For the purpose of this chapter, certain terms are defined as follows:*

DIRECTOR. Director of the California Department of Forestry and Fire Protection (CAL FIRE).

FIRE PROTECTION PLAN. A document prepared for a specific premises, project or development, either existing or proposed for a Wildland-Urban Interface (WUI) area. It describes ways to minimize and mitigate potential for loss from wildfire exposure.

FIRE HAZARD SEVERITY ZONES. Geographical areas designated pursuant to California Public Resources Codes, Sections 4201 through 4204 and classified as Very High, High, or Moderate in State Responsibility Area or as Local Agency Very High Fire Hazard Severity Zones designated pursuant to California Government Code, Sections 51175 through 51189.

The California Code of Regulations, Title 14, Section 1280 entitles the maps of these geographical areas as "Maps of the Fire Hazard Severity Zones in the State Responsibility Area of California."

FLATLANDS MITIGATION AREA (ZONE 1) encompasses the entire City of Berkeley except for areas in the Hills Mitigation Area, Panoramic Mitigation Area and Grizzly Peak Mitigation Area.

FUEL BREAK. A natural or human caused change in fuel characteristics which affects fire behavior so that fires burning into them can be more readily controlled (NWCG PMS 205).

FIRE-RESISTANT VEGETATION. Plants, shrubs, trees and other vegetation that exhibit properties, such as high moisture content, little accumulation of dead vegetation, and low sap or resin content, that make them less likely to ignite or contribute heat or spread flame in a fire than native vegetation typically found in the region.

[Note: The following sources contain examples of types of vegetation that can be considered fire-resistant vegetation (Fire-resistant Plants for Home Landscapes, A Pacific Northwest Extension publication; Home Landscaping for Fire, University of California Division of Agriculture and Natural Resources; Sunset Western Garden Book)].

GRIZZLY PEAK MITIGATION AREA (ZONE 4) encompasses those areas of the city east of Grizzly Peak Boulevard to the city boundary.

Homes addressed on, or with a structural frontage on either side of Grizzly Peak Boulevard are included in the area.

The Grizzly Peak Mitigation Area is designated as a Very-High Fire Hazard Severity Zone.

HILLS MITIGATION AREA (ZONE 2) encompasses those areas designated as Very High or High Fire Hazard Severity Zones that are not included in the Grizzly Peak Mitigation Area or Panoramic Mitigation Area.

This area includes areas of the City east / north east of the line formed by these roads. Homes addressed on, or with a structural frontage on either side of these road segments are included in the zone:

- a. The Arlington Avenue from the Kensington Border to Marin Avenue
- b. Sutter Street from the Southern portal of the Northbrae Tunnel to Eunice Street
- c. Eunice Street from Sutter Street to Spruce Street
- d. Spruce Street from Eunice Street to Hearst Avenue
- e. Gayley Road from Hearst Avenue to Stadium Rim Way
- f. Piedmont Avenue from Stadium Rim Way to Dwight Way
- g. Warring Street from Dwight Way to Derby Street
- h. Belrose Avenue from Derby Street to Garber Street
- i. Claremont Boulevard from Garber Street to Claremont Avenue
- j. Claremont Avenue from Claremont Boulevard to the Oakland Border
- k. Tunnel Road from Ashby Avenue to the Oakland Border

IGNITION-RESISTANT MATERIAL. A type of building material that complies with the requirements in Section 704A.2 in the ~~California~~-Berkeley Building Code.

LOCAL RESPONSIBILITY AREAS (LRA). Areas of the state in which the financial responsibility of preventing and suppressing fires is the primary responsibility of a city, county, city and county, or district.

PANORAMIC MITIGATION AREA (ZONE 3) encompasses those areas of the city bounded by the line formed by these roads and by the City Limit to the east.

The entirety of the Panoramic Mitigation Area is designated as a Very High Fire Hazard Severity Zone. Homes addressed on, or with a structural frontage on either side of these road segments are included in the zone:

- a. Canyon Road from the Oakland border to Stadium Rim Way
- b. Stadium Rim Way from Canyon Road to Bancroft Way
- c. Bancroft Way from Stadium Rim Way to Prospect Street
- d. Prospect Street from Bancroft Way to Bancroft Steps
- e. Bancroft Steps from Prospect Street to Warring Street

- f. Bancroft Way from Warring Street to Piedmont Avenue
- g. Piedmont Avenue from Bancroft Way to Dwight Way
- h. Dwight Way from Piedmont Avenue to the Oakland border

STATE RESPONSIBILITY AREA (SRA). Lands that are classified by the Board of Forestry pursuant to Public Resources Code Section 4125 where the financial responsibility of preventing and suppressing wildfires is primarily the responsibility of the state.

WILDFIRE. Any uncontrolled fire spreading through vegetative fuels that threatens to destroy life, property, or resources as defined in Public Resources Code, Sections 4103 and 4104.

WILDFIRE EXPOSURE. One or a combination of radiant heat, convective heat, direct flame contact and burning embers being projected by vegetation fire to a structure and its immediate environment.

WILDLAND-URBAN INTERFACE (WUI). A geographical area identified by the state as a "Fire Hazard Severity Zone" in accordance with the Public Resources Code, Sections 4201 through 4204, and Government Code, Sections 51175 through 51189, or other areas designated by the enforcing agency to be at a significant risk from wildfires.

SECTION 4903 PLANS

Section 4903.3 Submittal, approval and fees. When required to submit a Fire Protection Plan or Vegetation Management Plan for any reason the responsible party shall prepare or cause to be prepared a Fire Protection Plan in accordance with the latest standards of the Berkeley Fire Department. The Fire Protection Plan shall be submitted to, reviewed and approved by the Berkeley Fire Department and shall be enforced and maintained by the responsible party or their designated agent. The Berkeley Fire Department may charge an appropriate fee for the review, approval and processing of the Fire Protection Plan in accordance with the hourly rate established by City Council resolution.

SECTION 4905 WILDFIRE PROTECTION BUILDING CONSTRUCTION

Section 4905.2 Construction methods and requirements within established limits. Within the limits established by law, construction methods intended to mitigate wildfire exposure shall comply with the wildfire protection building construction requirements contained in the ~~California Building Standards Code~~ Berkeley Building Code and Berkeley Residential Code, including the following:

1. ~~California Building Code, Chapter 7A.~~ Chapter 7A of the Berkeley Building Code (B.B.C), Berkeley Municipal Code Section 19.28.030.
2. ~~California Residential Code Section R337 of the Berkeley Residential Code (B.R.C.), Berkeley Municipal Code Section 19.29.050.~~
3. California Referenced Standards Code, Chapter 12-7A.

SECTION 4907 DEFENSIBLE SPACE

Property owners are not required or authorized by this code to enter the properties of another person to implement the requirements of this Section.

Section 4907.3 Requirements.

5. The Fire Code Official may require a property owner to perform hazardous vegetation and fuel management on their land to maintain defensible space up to 100 feet from structures located on adjacent properties.

Section 4907.4 Mitigations Required.

A person who owns, leases, controls, operates, or maintains lands shall at all times maintain:

3. Zone 1: 5 to 30 feet from any structure:
 - a. Remove any privacy hedges or contiguous vegetation that will create a pathway for fire to reach a Structure.
 - b. Maintain 6 feet of vertical clearance between branches and all other parts of trees overhanging the roof or other portion of any Structure or attached deck.
 - c. Maintain any tree, shrub, or other plant adjacent to or overhanging any Structure or attached deck free of dead branches, dead limbs, or other Combustible Material.
 - d. Maintain the roof and roof gutters of any structure, and the surface of any attached deck free of leaves, needles, or other vegetative materials.
 - e. Maintain trees to remove Ladder Fuels so that foliage, twigs, or branches are greater than 8 feet above the ground or surface fuels.
 - f. Remove all branches within 10 feet of any chimney or stovepipe outlet.
 - g. Storage of firewood, lumber, or other Combustible Material is not permitted.
 - h. Keep low-growing shrubs, no higher than 6 feet in height, spaced apart or in small groupings of no more than 3 shrubs with a maximum aggregate diameter of 10 feet. Shrub groupings must be separated from other shrubs or shrub groupings by 15 feet such that no continuous path of vegetation is created. Where shrubs are located below or within a tree's drip line, the lowest tree branch shall be a minimum of three times the height of the understory shrubs or 10 feet, whichever is greater.
 - i. If there are multiple structures, such as a shed, hot tub, and playset, ensure these structures are spaced at least 10 feet apart. Have at most three (3) of these structures within 30 feet of a building or structure .
 - j. Relocate exposed firewood piles outside of Zone 1 unless they are completely covered in a fire-resistant material.

4. Zone 2: 30 to 100 feet from any structure:
 - a. All exposed wood piles must have a minimum of ten feet (10 ft.) of clearance, down to bare mineral soil, in all directions.
 - b. Create horizontal and vertical spacing among shrubs and trees using the “Fuel Separation” method, the “Continuous Tree Canopy” method or a combination of both to achieve defensible space clearance requirements. Further guidance regarding these methods is contained in the State Board of Forestry and Fire Protection’s, “General Guidelines for Creating Defensible Space, February 8, 2006,” incorporated herein by reference.
5. For both Zones 1 and 2:
 - a. Remove vegetative and combustible material capable of transmitting fire to a structure as determined by the Fire Code Official.
 - b. Dead and dying woody surface fuels and aerial fuels shall be removed. Loose surface litter, normally consisting of fallen leaves or needles, twigs, bark, cones, and small branches, shall be permitted to a maximum depth of three inches (3 in.).
 - c. Cut annual grasses and forbs down to a maximum height of four inches (4 in.).
 - d. Non-irrigated brush is not permitted.
 - e. Vertical Spacing: Limb trees by removing hanging bark, debris and branches that are within six feet (6 ft.) of the ground, or three times the height of the understory vegetation, whichever is greater. Where a tree is not adaptable to limbing to the height described above, use a combination of limbing and/or modify and remove fuels adjacent to and underneath the tree to provide clearance above grade that is equivalent to three times the height of the tallest understory fuel.
 - f. Maintain horizontal spacing between shrubs:
 - i. Flat or mild slope (less than 20%): Two times the height of the shrub.
 - ii. Mild to moderate slope (20-40%): Four times the height of the shrub
 - iii. Moderate to steep slope (greater than 40%): Six times the height of the shrub
 - g. Maintain space between tree canopies:
 - i. Flat or mild slope (less than 20%): 10 feet.
 - ii. Mild to moderate slope (20-40%): 20 feet.
 - iii. Moderate to steep slope (greater than 40%): 30 feet.
 - h. New trees shall be planted and maintained so that the tree’s drip line at maturity is a minimum of 10 feet from any structure or the canopy of other trees.

Section 4907.6 Specific requirements. Effective January 1, 2026 the Grizzly Peak Mitigation Area and Panoramic Mitigation Area shall be subject to 4907.6 instead of 4907.4.

A person who owns, leases, controls, operates, or maintains lands shall at all times maintain:

1. Zone 0: 0 to 5 feet from any structure:

- a. Maintain all areas within five (5) horizontal feet of any structure, outbuildings, attached deck or stairs, and the area under attached decks and stairs free of vegetative and non-vegetative combustible material.
 - i. This includes but is not limited to shrubs, vegetative ground cover, climbing vines, combustible boards, timbers, firewood, debris, synthetic lawn, wood mulch products, playsets, plastic trash and recycle cans, trellises, pergolas, shade coverings, planters, attached window boxes, privacy walls, boats, RVs, and other material that could be ignited by embers, radiant heat, or direct flame.
 - ii. Hardscape materials, such as gravel, pavers, concrete, and other noncombustible mulch materials are permitted.
 - iii. Exception: Plants in pots are allowable if they are in areas that are not directly beneath, above, or adjacent to a window or eave; are kept in an unaffixed, non-combustible pot or container that is no larger than 5-gallon capacity; and set apart by 1.5 times the height of the plant or 12 inches, whichever is greater, from the structure and each other. These plants shall be no greater than 18 inches in height. Dead or dying material on, around and under the plants shall be removed.
 - iv. Exception: Hot tubs may be installed within five (5) horizontal feet of a structure, provided they comply with all Zone 0 clearance requirements applicable to structures.
- b. No trees are permitted in Zone 0.
 - i. Exception: If the bole of a tree is present within Zone 0, that tree is permitted if it is taller than the adjacent Building or Structure's roof ridgeline, does not have any dead and dying branches;
 - ii. All live tree branches shall be kept:
 1. Ten feet (10') above the adjacent building or structure's roof ridgeline;
 2. Ten feet (10') away from chimneys and stovepipe outlets; and
 3. Five feet (5') away from the sides of any Building, Structure, attached deck or stairs, and hot tubs within five (5) feet of a structure.
- c. The roof and rain gutters of a Building or Structure shall be kept clear of leaves, needles, and vegetative material.

- d. Existing fences that are directly attached to a Building or Structure shall have a five foot (5 ft) non-combustible span at the point of attachment. After the effective date of this regulation, no new sections of combustible fence (parallel or perpendicular) are permitted within 5 feet of a building or structure including an attached deck.
 - e. Outbuildings are not permitted in Zone 0, unless constructed according to the standards in Chapter 7A (commencing with Section 701A.1) of Part 2 of Title 24 of the California Code of Regulations. Outbuildings that meet these standards shall be considered part of the Building or Structure.
2. Zone 1: 5 to 30 Feet from any structure:
- a. Remove any privacy hedges or contiguous vegetation that will create a pathway for fire to reach a Structure.
 - b. Keep low-growing shrubs, no higher than 6 feet in height, spaced apart or in small groupings of no more than 3 shrubs with a maximum aggregate diameter of 10 feet. Shrub groupings must be separated from other shrubs or shrub groupings by 15 feet such that no continuous path of vegetation is created. Where shrubs are located below or within a tree's drip line, the lowest tree branch shall be a minimum of three times the height of the understory shrubs or 10 feet, whichever is greater.
 - c. If there are multiple structures, such as a shed, hot tub, and playset, ensure these structures are spaced at least 10 feet apart. Have at most three (3) of these structures within 30 feet of a building or structure.
 - d. Relocate exposed firewood piles outside of Zone 1 unless they are completely covered in a fire-resistant material.
3. Zone 2: 30 to 100 feet from any structure:
- a. All exposed wood piles must have a minimum of ten feet (10 ft.) of clearance, down to bare mineral soil, in all directions.
 - b. Create horizontal and vertical spacing among shrubs and trees using the "Fuel Separation" method, the "Continuous Tree Canopy" method or a combination of both to achieve defensible space clearance requirements. Further guidance regarding these methods is contained in the State Board of Forestry and Fire Protection's, "General Guidelines for Creating Defensible Space, February 8, 2006," incorporated herein by reference.
4. For both Zones 1 and 2:
- a. Remove vegetative and combustible material capable of transmitting fire to a structure as determined by the Fire Code Official.
 - b. Dead and dying woody surface fuels and aerial fuels shall be removed. Loose surface litter, normally consisting of fallen leaves or needles, twigs, bark, cones, and small branches, shall be permitted to a maximum depth of three inches (3 in.).
 - c. Cut annual grasses and forbs down to a maximum height of four inches (4 in.).

- d. Non-irrigated brush is not permitted.
- e. Vertical Spacing: Limb trees by removing hanging bark, debris and branches that are within six feet (6 ft.) of the ground, or three times the height of the understory vegetation, whichever is greater. Where a tree is not adaptable to limbing to the height described above, use a combination of limbing and/or modify and remove fuels adjacent to and underneath the tree to provide clearance above grade that is equivalent to three times the height of the tallest understory fuel.
- f. Maintain horizontal spacing between shrubs:
 - i. Flat or mild slope (less than 20%): Two times the height of the shrub.
 - ii. Mild to moderate slope (20-40%): Four times the height of the shrub
 - iii. Moderate to steep slope (greater than 40%): Six times the height of the shrub
- g. Maintain space between tree canopies:
 - i. Flat or mild slope (less than 20%): 10 feet.
 - ii. Mild to moderate slope (20-40%): 20 feet.
 - iii. Moderate to steep slope (greater than 40%): 30 feet.
- h. New trees shall be planted and maintained so that the tree's drip line at maturity is a minimum of 10 feet from any structure or the canopy of other trees.

Section 4907.5 Corrective Actions. The fire department is authorized to take enforcement actions as necessary to achieve compliance with Chapter 49 of this code, including but not limited those actions specified in Sections 104.13 ("Authority to arrest and issue citations"), 112.4 ("Violation penalties") and 114.7 ("Summary abatement") of this code, and as authorized by Berkeley Municipal Code, Chapter 1.24, "Abatement of Nuisances", and in accordance with all other applicable portions of the Berkeley Municipal Code. Corrective actions may also include the use of abatement warrants and the imposition of property liens as appropriate and in accordance with law.

Section 4912 SUPPRESSION AND CONTROL OF HAZARDS IN WILDLAND-URBAN INTERFACE AREAS]

Section 4912.1 Permit. The fire code official is authorized to stipulate conditions for permits. Permits shall not be issued when public safety would be at risk, as determined by the fire code official.

Section 4912.2 Restricted Entry. The fire code official shall determine and publicly announce when Wildland-Urban Interface areas shall be closed to entry and when such areas shall again be opened to entry. Entry on and occupation of Wildland-Urban Interface areas, except public roadways, inhabited areas or established trails and camp sites which have not been closed during such time when the Wildland-Urban Interface areas are closed to entry, is prohibited.

Exceptions:

1. Residents and owners of private property within Wildland-Urban Interface areas and their invitees and guests going to or being upon their lands;
2. Entry, in the course of duty, by peace officers, and other duly authorized public officers, members of a fire department and members of the United States Forest Service

Section 4912.3 Trespassing on Posted Property

Section 4912.3.1 General. When the fire code official determines that a specific area within a Wildland-Urban Interface Areas presents an exceptional and continuing fire danger because of the density of natural growth, difficulty of terrain, proximity to structures or accessibility to the public, such areas shall be closed until changed conditions warrant termination of closure. Such areas shall be posted as hereinafter provided.

Section 4912.3.2 Signs. Approved signs prohibiting entry by unauthorized persons and referring to this section shall be placed on every closed area.

Section 4912.3.3 Trespassing. Entering and remaining within areas closed and posted is prohibited.

Exception: Owners and occupiers of private or public property within closed and posted areas, their guests or invitees, and local, state and federal public officers and their authorized agents acting in the course of duty.

Section 4912.4 Smoking. Lighting, igniting or otherwise setting fire to or smoking tobacco, cigarettes, pipes or cigars in Wildland-Urban Interface areas are prohibited.

Exception: Places of habitation or within the boundaries of established smoking areas or campsites as designated by the fire code official.

Section 4912.5 Spark Arresters. Chimneys used in conjunction with fireplaces, barbecues, incinerators or heating appliances in which solid or liquid fuel is used, upon buildings, structures or premises located within Wildland-Urban Interface areas shall be provided with a spark arrester. See Berkeley Building Code Section 705A.5 for specifications.

Section 4912.6 Tracer Bullets, Tracer Charges, Rockets and Model Aircraft. Tracer bullets and tracer charges shall not be possessed, fired or caused to be fired into or across Wildland-Urban Interface areas. Rockets, model planes, gliders and balloons powered with an engine, propellant or other feature liable to start or cause fire shall not be fired or projected into or across Wildland-Urban Interface Areas.

Section 4912.7 Explosives and Blasting. Explosives shall not be possessed, kept, stored, sold, offered for sale, given away, used, discharged, transported or disposed of within Wildland-Urban Interface areas except by permit from the fire code official.

Section 4912.8 Fireworks. Fireworks shall not be used or possessed in Wildland-Urban Interface areas. The fire code official is authorized to seize, take, remove or cause to be removed fireworks in violation of this section.

Exception: Fireworks allowed by the fire code official under permit when not prohibited by applicable local or state laws, ordinances and regulations.

Section 4912.9 Apiaries. Lighted and smoldering material shall not be used in connection with smoking bees in or upon Wildland-Urban Interface areas except by permit from the fire code official.

Section 4912.10 Open-Flame Devices. See Berkeley Fire Code Sections 308.1.6 Open Flame Devices and 308.1.6.1 Signals and Markers.

Section 4912.11 Outdoor Fires. Outdoor fires shall not be built, ignited or maintained in or upon Wildland-Urban Interface areas, except by permit from the fire code official.

Exception: Outdoor fires within habited premises or designated campsites, where such fires are built in a permanent barbecue, portable barbecue, outdoor fireplace, incinerator or grill and are a minimum of 30 feet (9144 mm) from a grass-, grain-, brush or forest-covered area.

Permits shall incorporate such terms and conditions, which will reasonably safeguard public safety and property.

Outdoor fires shall be prohibited in or upon Wildland-Urban Interface areas under the following conditions:

1. When red flag conditions exist as defined by the National Oceanic and Atmospheric Administration,
2. When a person age 17 or over is not present at all times to watch and tend such fire, or
3. When public announcement is made that open burning is prohibited. Permanent barbecues, portable barbecues, outdoor fireplaces, fire pits or grills shall not be used if solid or liquid fueled.

Section 4912.12 Incinerators and Fireplaces. Incinerators, outdoor fireplaces, fire pits, permanent barbecues and grills shall not be built, installed or maintained in Wildland-Urban Interface areas without prior approval of the fire code official. Existing incinerators, outdoor fireplaces, fire pits, permanent barbecues and grills shall be maintained in good repair and in a safe condition at all times. Openings in such appliances shall be provided with an approved spark arrester, screen or door.

Exception: When approved, unprotected openings in barbecues and grills necessary for proper functioning shall be allowed.

Section 4912.13 Dumping. Garbage, cans, bottles, papers, ashes, refuse, trash, rubbish or combustible waste material shall **not** be placed, deposited or dumped in or upon Wildland-Urban Interface areas or in, upon or along trails, roadways or highways in Wildland-Urban Interface areas.

Exception: Approved public and private dumping areas.

Section 4912.14 Disposal of Ashes. Ashes and coals shall not be placed, deposited or dumped in or upon Wildland-Urban Interface areas.

Exceptions:

1. In the hearth of an established fire pit, camp stove or fireplace;

2. In a noncombustible container with a tight-fitting lid, which is kept or maintained in a safe location not less than 10 feet (3048mm) from combustible vegetation or structures;
3. Where such ashes or coals are buried and covered with 1 foot (304.8mm) of mineral earth not less than 25 feet (7620 mm) from combustible vegetation or structures.

Section 4912.15 Use of Fire Roads and Firebreaks. Motorcycles, motor scooters and motor vehicles shall not be driven or parked upon, and trespassing is prohibited upon, fire roads or firebreaks beyond the point where travel is restricted by a cable, gate or sign, without the permission of the property owner(s). Vehicles shall not be parked in a manner, which obstructs the entrance to a fire road or firebreak.

Exception: Public officers acting within their scope of duty. Radio and television aerials, guy wires thereto, and other obstructions shall not be installed or maintained on fire roads or fire breaks unless located 16 feet (4877 mm) or more above such fire road or firebreak.

Section 4912.16 Use of Motorcycles, Motor Scooters and Motor Vehicles. Motorcycles, motor scooters and motor vehicles shall not be operated within Wildland-Urban Interface areas, without a permit by the fire code official, except upon clearly established public or private roads. Permission from the property owner(s) shall be presented when requesting a permit.

Section 4912.17 Tampering with Fire Department Locks, Barricades and Signs. Locks, barricades, seals, cables, signs and markers installed within Wildland-Urban Interface areas, by or under the control of the fire code official, shall not be tampered with, mutilated, destroyed or removed. Gates, doors, barriers and locks installed by or under the control of the fire code official shall not be unlocked.

Section 4912.18 Liability for Damage. The expenses of fighting fires and securing emergencies, which result from a violation of this code, Chapter 6.15.030 of the Berkeley Municipal Code (“Unauthorized barbecues and fire on public property”), Sections 13000-13011 of the California Health and Safety Code, Sections 4421-4446 of the California Public Resources Code, or Sections 451, 451.5, 452 or 455 of the California Penal Code is a charge against the person(s) whose violation of the code section(s) caused the fire. Damages caused by such fires shall constitute a debt of such person(s) and shall be collectable by the fire code official in accordance with Section 107.7 of the BMC.

Chapter 50 of the California Fire Code is adopted in its entirety subject to the modifications thereto which are set forth below.

CHAPTER 50 – HAZARDOUS MATERIALS – GENERAL PROVISIONS

SECTION 5001 GENERAL

Section 5001.7 Hazardous materials transportation restrictions. No vehicle containing hazardous materials, including a hazardous materials transportation tank truck, trailer, semi-trailer or tank wagon containing flammable or combustible liquids, hazardous chemicals, liquefied petroleum gases, poisonous gases, or cryogenic fluids, shall be operated on any city street without a permit from the fire code official. A map showing the proposed route of the vehicle shall accompany applications for such permits. If a permit is granted, the map shall be carried at all times in the vehicle and the vehicle shall not deviate from the approved route as shown on the map. Such a permit may contain conditions, including restrictions on the hours within which certain routes may be used and limitations on the size of the vehicle allowed to travel the approved route. No route shall be approved that includes passage over or adjacent to subway entry or vent structures, through the Northbrae Tunnel, in any area designated an environmental safety residential district by the City of Berkeley's Zoning Ordinance, or in an area which may be designated as a hazardous fire area. Departure from the approved route, travel outside the permitted hours, and violation of any vehicle size limitation imposed, or failure to carry a map showing route approval shall constitute a violation of this Code. The transportation of extremely hazardous materials may, in the discretion of the fire code official, require both a permit and accompaniment by a Fire Department or Police Department convoy. The following streets contain purge chamber openings which lead directly into the subway section of the Bay Area Rapid Transit (BART) System in Berkeley and their use by tank vehicles or trailers for transportation or delivery of flammable or combustible liquids, hazardous chemicals, liquefied petroleum gases, poisonous gases, or cryogenic fluids is prohibited and a violation of this Code:

- a. On Addison Street between Martin Luther King Jr. Way and Oxford Street;
- b. On Shattuck Avenue between University Avenue and Dwight Way;
- c. On Virginia Street between Franklin and Sacramento Streets;
- d. On Sacramento Street between Virginia Street and Hearst Avenue;
- e. On Hearst Avenue between McGee Avenue and Milvia Street;
- f. On Adeline Street between Ward and Stuart Streets; and
- g. On Adeline Street between Ashby Avenue and Woolsey Street

CHAPTER 56 – EXPLOSIVES AND FIREWORKS

SECTION 5601 GENERAL

5601.1.3 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks, including fireworks which are classified as Safe and Sane fireworks by the California State Fire Marshal's Office, are prohibited within the City of Berkeley.

Exceptions:

- ~~1. Storage and handling of fireworks as allowed in Section 5604.~~
- ~~2. Manufacture, assembly and testing of fireworks as allowed in Section 5605 and Health and Safety Code Division 11.~~

31. The use of fireworks for fireworks displays, *pyrotechnics before a proximate audience and pyrotechnic special effects in motion pictures, television, theatrical or group entertainment productions as allowed in Title 19, Division 1, Chapter 6 Fireworks reprinted in Section 5608 and Health and Safety Code Division 11 when stored, transported, handled and used under the required fire department permit(s) and in accordance will all applicable requirements of Chapter 56.*
42. The possession, storage, sale, handling and use of specific types of Division 1.4G fireworks where allowed by applicable laws, ordinances and regulations, provided that such fireworks and facilities comply with NFPA 1124, CPSC 16 CFR Parts 1500 and 1507, and DOTn 49 CFR Parts 100– 185, as applicable for consumer fireworks *and Health and Safety Code Division 11.*

Section 5604.1 General. The storage and handling of explosives within City of Berkeley limits is prohibited. ~~Storage of explosives and explosive materials, small arms ammunition, small arms primers, propellant-actuated cartridges and smokeless propellants in magazines shall comply with the provisions of this section~~

Exception: Where expressly permitted by applicable laws, ordinances or regulations provided such storage and handling of explosives and explosive materials, small arms ammunition, small arms primers, propellant-actuated cartridges and smokeless propellants in magazines is conducted in accordance with Section 5604 and all applicable provisions of Chapter 56.

CHAPTER 57 – FLAMMABLE AND COMBUSTABLE LIQUIDS

SECTION 5701 GENERAL

Section 5701.4.1 Transfer of flammable and combustible liquids. Transfer to or from containers or mobile tanks, above ground or underground tanks of flammable and combustible liquids shall not be made from or on the street or public way except by written approval by the fire code official.

Exceptions:

1. Transfer of not more than 5 gallons flammable or combustible liquids using a listed or approved portable fuel container of not more than 5 gallons capacity.
2. The transfer of combustible liquids to or from approved, fixed mechanical or electrical system equipment such as a Standby or Emergency electric power generator when the transfer is completed by a commercial fuel vendor using approved dispensing equipment via a previously approved, fixed tank filling port which met code requirements at the time of installation.

SECTION 5704 STORAGE

Section 5704.2.11.1.1 Restrictions on underground storage tanks. The storage of flammable and combustible liquids in underground tanks is prohibited in all areas zoned solely for residential occupancies, closely built commercial properties, and any other area deemed unsafe by the fire code official.

Section 5704.2.13.1.4 Tanks abandoned in place. Tanks may be abandoned only under permit and following City of Berkeley Fire Department procedures. The owner shall demonstrate to the satisfaction of the City of Berkeley Toxics Management Division (TMD) that no unauthorized release has occurred. If the soil is contaminated, mitigation must be completed to the satisfaction of the Toxics Management Division (TMD). A notice shall be placed in the deed to the property. This notice shall describe the precise location of the closed underground storage tank, the hazardous substances that it contained, and the closure method. Tanks abandoned in place shall be as follows:

1. Flammable and combustible liquids shall be removed from the tank and connected piping.
2. The suction, inlet, gauge, vapor return and vapor lines shall be disconnected.
3. The tank shall be filled completely with an approved inert solid material.
4. Remaining underground piping shall be capped or plugged.
5. A record of tank size, location and date of abandonment shall be retained.
6. All exterior above-grade fill piping shall be permanently removed when tanks are abandoned or removed.

Section 5704.2.14 Removal and disposal of tanks. Removal and disposal of tanks shall comply with Sections 5704.2.14.1 and 5704.2.14.2. Removal of all tanks shall be authorized under a fire permit, abiding by City of Berkeley Fire Department procedures. The applicant shall submit the following:

1. **A site plan showing the location of the tanks.**
2. **A detailed description of the scope of work.**
3. **A site safety plan.**
4. **A vicinity map to the closest hospital, in an event of an emergency.**
5. **Proof of workers compensation insurance.**

The owner shall demonstrate to the satisfaction of the City of Berkeley Toxics Division that no unauthorized release has occurred. If the soil is contaminated, mitigation must be completed to the satisfaction of the Toxics Division or the California Water Board.

CHAPTER 61 – LIQUIFIED PETROLEUM GASES

SECTION 6104 LOCATION OF LP-GAS CONTAINERS

Section 6104.1.1 Restrictions on storage of LP-gas containers. It shall be unlawful to store any liquefied petroleum gas cylinder with a capacity greater than 2-1/2 lbs. water capacity or a portable tank within any structure or building with an occupancy classification of A, R-1, R-2 or R-4, unless specifically authorized by this Code.

APPENDIX B – FIRE FLOW REQUIREMENTS FOR BUILDINGS

Section B105.2 (Appendix B), Table B105.2, “Required Fire-Flow for Buildings Other Than One- And Two-Family Dwellings, Group R-3 And R-4 Buildings And Townhouses” [Amended Table]

**TABLE B105.2
REQUIRED FIRE-FLOW FOR BUILDINGS
OTHER THAN ONE- AND
TWO-FAMILY DWELLINGS, GROUP R-3 AND R-4
BUILDINGS AND TOWNHOUSES**

AUTOMATIC SPRINKLER SYSTEM (Design Standard)	MINIMUM FIRE-FLOW (gallons per minute)	FLOW DURATION (hours)
No automatic sprinkler system	Value in Table B105.1(2)	Duration in Table B105.1(2)
Section 903.3.1.1 of the <i>California Fire Code</i>	2550% of the value in Table B105.1(2) ^a	Duration in Table BI 05.1(2) at the reduced flow rate
Section 903.3.1.2 of the <i>California Fire Code</i>	2550% of the value in Table B105.1(2) ^b	Duration in Table BI05.1(2) at the reduced flow rate

For SI: 1 gallon per minute= 3.785 Lim.

- a. The reduced fire-flow shall be not less than 1,000 gallons per minute.
- b. The reduced fire-flow shall be not less than 1,500 gallons per minute.

APPENDIX L – REQUIREMENTS FOR FIRE FIGHTER AIR REPLENISHMENT SYSTEMS

SECTION L104 DESIGN AND INSTALLATION

Section L104.5.1 Stored pressure air supply. A stored pressure air supply shall be designed based on Appendix Chapter F of the California Plumbing Code Chapter 24 of NFPA 1901 except that the provisions applicable only to mobile apparatus or not applicable to system design shall not apply. A stored pressure air supply shall store not less than 5,000 Standard Cubic Feet (SCF) of air or be capable of refilling not less than 50 empty breathing air cylinders of a size and pressure used by the fire department, whichever is greater.

Section 19.48.030 Validity. Should any section, paragraph, sentence or word of this Chapter or of the Code or Standards be declared invalid, all other portions of this Chapter shall remain in effect.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a special meeting of the Council of the City of Berkeley held on April 15, 2025, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Blackaby, Humbert, Kesarwani, Lunaparra, O'Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: None.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**ADOPTION OF LOCAL AMENDMENTS TO THE BERKELEY FIRE
CODE - BASED ON THE CALIFORNIA INTERVENING CODE
ADOPTION CYCLE FOR THE 2022 CALIFORNIA FIRE CODE**

The public may participate in this hearing by remote video or in-person.

Notice is hereby given that on **May 6, 2025 at 6:00 P.M.** the City Council will conduct a public hearing to consider the adoption of amendments to Section 19.48.020 (“Amendments to the California Fire Code”) as proposed by the Berkeley Fire Department.

The hearing will be held in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City’s website at <https://berkeleyca.gov/> as of April 24, 2025. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact **Colin Arnold**, Assistant Fire Chief, Berkeley Fire Department at (510) 981-3473.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council 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 the City Council, 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. 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 City Clerk at (510) 981-6900 or clerk@berkeleyca.gov for further information.

Published: April 18 and April 25, 2025 – The Berkeley Voice

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on April 24, 2025.

\_\_\_\_\_  
Mark Numainville, City Clerk



Office of the City Manager

PUBLIC HEARING  
May 6, 2025

To: Honorable Mayor and Members of the City Council  
From: Paul Buddenhagen, City Manager  
Submitted by: Jordan Klein, Director, Planning & Development Department  
Subject: ZAB Appeal: 1048 Keith Avenue, Use Permit ZP2024-0014

RECOMMENDATION

Conduct a public hearing, and upon conclusion adopt a Resolution denying the appeal and affirming the Zoning Adjustment Board (ZAB) decision approving a Use Permit to demolish a 2,760 square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600 square-foot single-family dwelling. The project includes a reduction of the rear building setback from 20 feet to 15 feet, two unenclosed off-street parking spaces within the front setback, the construction of a trellis within the front setback, and the installation of a fence and retaining wall along the lot line.

SUMMARY

On January 9, 2025, the ZAB approved Use Permit #ZP2024-0014 to demolish an existing 2,760-square-foot single-family dwelling and construct a new two-story, 25-foot-tall, 3,600-square-foot single-family residence. The approval was based on findings that the project would not be detrimental to the general welfare of the City, aligns with the purposes of the zoning district, and is compatible with surrounding uses and structures.

On January 25, 2025, the ZAB’s decision was appealed by neighboring residents, who raised concerns that the approved project would encroach on their property and subsequently impact multiple neighboring properties due to shifting lot lines.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On January 11, 2024, the applicant submitted a Use Permit application for the proposed project.

On September 12, 2024, after the project was deemed complete and reviewed for compliance and consistency with the Municipal Code, 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 at three nearby locations within the neighborhood.

On September 26, 2024, the Zoning Adjustment Board (ZAB) held a public hearing and received public comments. Neighbors raised concerns about the proposed project's impact on property boundaries and questioned the accuracy of the site survey. As a result, the ZAB continued the project to the October 10, 2024 hearing to allow the applicant additional time to update the site survey.

On October 10, 2024, the ZAB continued the project to a date uncertain, to allow the applicant additional time to submit a revised survey for staff review.

On October 15, 2024, the applicant submitted a revised survey prepared by Moran Engineering, dated October 10, 2024, that confirmed the accuracy of property boundaries to within an inch, based on three site survey monuments. Staff from the City's Public Works Department and Building and Safety Division reviewed the revised survey and confirmed that it meets surveying standards.

On December 19, 2024, 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 at three nearby locations within the neighborhood.

On January 9, 2025, the ZAB held a public hearing for the Use Permit and received additional public comments. See Attachment 3 for the staff report submitted for ZAB consideration. Neighbors expressed both support and opposition to the project. Supporters noted the conscientious design and the accuracy of the updated surveys, while opponents raised concerns regarding potential impacts on property privacy, views, and boundaries. The ZAB voted to approve the project with a 6-1-2-0 vote (Moved Allen, Second Kashani. Ayes: Kashani, Duffy, Gaffney, Allen, Kahn, Yung; Noes: Sanderson; Abstain: Thompson, Jersey; Absent: None.).

On January 25, 2025, the ZAB's decision was appealed by neighboring residents, who raised concerns that the approved project would encroach on their property at 1050 Keith Avenue, and subsequently impact multiple neighboring properties due to shifting lot lines.

## BACKGROUND

The project site is located in the northern Berkeley Hills within the R-1H Single-Family Residential – Hillside Overlay District. The neighborhood consists primarily of one- to three-story single-family homes on generally rectangular lots, with some irregularities due to the area's natural slopes and curved roadways. The terrain slopes downward from the northeast to the southwest, offering west-facing views of the San Francisco Bay.

The 7,800-square-foot lot is rectangular, situated on the south side of Keith Avenue, and oriented northwest to southeast. It features a 20-foot downward slope from the street to a level section in the middle and rear portions. The property has 50 feet of frontage along Keith Avenue and a depth of approximately 128 feet. It is currently developed with a one-story, 2,760-square-foot single-family residence. Existing vegetation on the site includes various trees, such as Plum, Red Fir, Loquat, and Yucca, as well as dense shrubbery.

The proposed project would demolish the existing residence and construct a two-story (25 feet tall), 3,600 square-foot single-family dwelling. The project includes a reduction of the rear building setback from 20 feet to 15 feet (permissible with an administrative use permit (AUP) in the Hillside Overlay Zone), whereas the existing residence is set back approximately 17 feet from the rear lot line. Additionally, the proposal includes unenclosed off-street parking within the front setback, the construction of a trellis within the front setback, and the installation of a fence more than 6 feet in height and retaining wall along the lot line.

#### RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's letter (Attachment 2) and staff's responses follow. For the sake of brevity, the appeal issues are not re-stated in their entirety.

#### **Issue 1: Property Encroachment and Survey Accuracy**

**The appellant claims that the proposed project encroaches approximately 20 feet into their property at 1050 Keith Avenue, reducing property width and impacting neighboring properties. The appellant further claims that the survey conducted by Moran Engineering is inaccurate.**

Response: The applicant was required to provide a boundary and topographic survey prepared and stamped by a licensed surveyor. The initial survey submitted acknowledged that historic land movement in the area could create some uncertainty in establishing exact property boundaries. In response to concerns, the applicant worked with their surveyor on an updated survey with a more precise basis of bearings. The updated survey submitted on October 15, 2024, confirmed the property boundaries within an inch of the property line, though variations could occur when referencing more distant markers. The updated survey was reviewed and verified for accuracy by staff from the Public Works Department and the Building and Safety Division.

The proposed project does not alter or modify existing lot lines, and staff finds no evidence to support the appellant's claim of encroachment.

#### **Issue 2: Impact on Neighboring Properties**

**The appellant states that the project creates a lot line adjustment, which would shift property lines across multiple adjacent properties and create legal and logistical complications.**

Response: The proposed project does not include a lot line adjustment. The updated boundary survey, reviewed and confirmed by staff from the Public Works Department and the Building and Safety Division, verifies that property boundaries remain unchanged. The proposed single-family dwelling complies with the established setbacks of the R-1H Zoning District, except for the allowable encroachment into the rear setback, and does not alter or shift any property lines.

### **Issue 3: Survey Accuracy & Need for Comprehensive Review**

**The appellants assert that a broader survey of surrounding properties is necessary to ensure equitable lot line adjustments.**

Response: Development applications are evaluated based on site-specific conditions to determine feasibility and compliance. The scope of review does not extend to assessing adjacent properties, as each development is considered independently. This project has been reviewed for its compatibility with neighboring properties and its overall impact on the community.

### **Issue 4: Lack of Consideration for Neighbor Concerns**

**The appellants expressed concern that the ZAB approved the project despite opposition from affected neighbors. By not promoting property boundary adjustments, the appellants argue that this decision forces private property owners to resolve disputes individually, creating inconsistent outcomes.**

Response: The ZAB held two public hearings and determined the project to be consistent with the public health, safety, peace, morals, comfort, and general welfare of the surrounding neighborhood. The project has been evaluated for its compatibility with adjacent properties and its potential impacts on the community. The project was found to balance reasonable development with maintaining the character of area. Further, the ZABs decision was within its appropriate responsibilities and quasi-judicial powers. Lot line adjustments and parcel map adjustments would be outside the responsibilities and powers of the ZAB.

### **Issue 5: Infrastructure and Utility Concerns**

**The appellants claim that the proposed project relocates the structure over existing sewer and storm drainage systems for 1050 Keith Avenue, without providing a relocation plan in the project documents.**

Response: Staff reviewed the boundary survey and the Alameda County Assessor Parcel Map for any recorded sewer or storm drain easements, and found no such easements affecting the property and no infrastructure conflicts related to sewer or storm drainage systems. Additionally, there is a standard Condition of Approval which requires that if underground utilities leading to adjacent properties are uncovered or damaged during construction, the contractor must immediately notify the Public Works Department and the Building & Safety Division and take corrective action as needed.

**Issue 6: Disputed Property Boundaries and Request**

**The appellants allege that the applicant demolished a shared fence on March 6, 2024 and subsequently demolished structures on disputed property including an animal sanctuary, pet burial sites and mature trees. The appellants also raise concerns over ongoing property boundary disputes and request the City of Berkeley to adjust property boundaries based on deeded square footage.**

Response: The City of Berkeley does not have jurisdiction over property line disputes, as these are private civil matters between property owners. Adjustment of lot lines falls outside the scope of this project proposal.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23.410.040(G), the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed project aligns with Berkeley's sustainability goals by incorporating energy-efficient design, water conservation measures, and compliance with Berkeley's Green Building Code. Additionally, the site is located in an established residential area and leverages existing infrastructure, thereby limiting new utility infrastructure. These measures ensure the project supports the City's climate action objectives while minimizing environmental impacts.

The proposed project is categorically exempt from the provisions pursuant to CEQA Guidelines Section 15303 ("New Construction or Conversions of Small Structures") and would not result in significant environmental effects.

CONTACT PERSON

Jordan Klein, Director, Planning & Development Department, (510) 981-7534  
Anne Hersch, Land Use Planning Manager, (510) 981-7411  
Robert Rivera, Senior Planner, (510) 981-7480

## Attachments:

- 1: Draft Resolution
  - Exhibit A: Findings and Conditions, January 9, 2025
  - Exhibit B: Project Plans, dated December 9, 2025
- 2: ZAB Decision Appeal Letter, received January 25, 2025
- 3: ZAB Packet (Staff Report and attachments), dated January 9, 2025
- 4: Public Hearing Notice
- 5: Index to Administrative Record
- 6: Administrative Record

RESOLUTION NO. ##,###-N.S.

DENY THE APPEAL AND AFFIRM THE ZONING ADJUSTMENT BOARD DECISION TO APPROVE USE PERMIT #ZP2024-0014 TO DEMOLISH A 2,760 SQUARE-FOOT SINGLE-FAMILY DWELLING, AND CONSTRUCT A TWO-STORY (25 FEET TALL), 3,600 SQUARE-FOOT SINGLE-FAMILY DWELLING. THE PROJECT INCLUDE PARKING PAD WITHIN THE FRONT SETBACK, A REDUCTION IN THE REAR SETBACK FROM 20 FEET TO 15 FEET, CONSTRUCTION OF AN UNENCLOSED STRUCTURE WITHIN THE FRONT SETBACK, AND CONSTRUCTION OF A FENCE AND RETAINING WALL MORE THAN SIX FEET IN HEIGHT ON A LOT LINE

WHEREAS, on January 11, 2024 Lindsay Newman (“applicant”) submitted a Use Permit Application (ZP2024-0014) to demolish a 2,760 square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600 square-foot single-family dwelling, parking pad within the front setback, reduced rear setbacks, construction of an unenclosed structure within the front setback, and construction of a fence and retaining wall more than six feet in height on a lot line; and

WHEREAS, on September 12, 2024 the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at three locations within the immediate vicinity of the subject site; and

WHEREAS, on September 26, 2024, the ZAB conducted a public hearing for the Use Permit application (ZP2024-0014). After considering the staff report, the administrative record, and hearing comments from staff, the applicant, and the members of the public, the ZAB continued the project to a later date; and

WHEREAS, on October 10, 2024, the ZAB conducted a public hearing for the Use Permit application (ZP2024-0014). After considering the staff report, the administrative record, and hearing comments from staff, the applicant, and the members of the public, the ZAB continued the project to a later date; and

WHEREAS, on December 18, 2024, the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at three locations within the immediate vicinity of the subject site; and

WHEREAS, on January 09, 2025, the ZAB conducted a public hearing for the Use Permit application (ZP2024-0014). After considering the staff report, the administrative record, and hearing comments from staff, the applicant, and the members of the public, the ZAB approved the project by a vote of 6-1-2-0; and

WHEREAS, on January 27, 2025, neighbors of the proposed project (“appellants”) submitted an appeal of the ZAB decision to the City Clerk; and

WHEREAS, on or before April 22, 2025 staff posted the public hearing notice at the site and three nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal; and

WHEREAS, on May 6, 2025, the Council held a public hearing to consider the ZAB's decision, and in the opinion of this Council, the facts stated in, or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley hereby affirms the decision made by ZAB to approve a Use Permit #ZP2024-0014; adopts the Findings and Conditions of Approval in Exhibit A; and adopts the project plans in Exhibit B.

Exhibits

A: Findings and Conditions

B: Project Plans, dates December 9, 2025

Attachment 1, Exhibit A

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# Findings and Conditions

JANUARY 9, 2025

## 1048 Keith Avenue

**Use Permit #ZP2024-0014 to demolish a 2,760-square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600-square-foot single-family dwelling within the rear setback and parking pad in the front setback.**

### ZONING PERMITS REQUIRED

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- Use Permit, pursuant Berkeley Municipal Code (BMC) Section 23.326.030(B)(1) to demolish a dwelling unit
- Use Permit, pursuant to BMC Section 23.202.020(A) to construct a single-family dwelling unit
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C)(4), to reduce the building setbacks in the Hillside Overlay Zone
- Administrative Use Permit, pursuant to BMC Section 23.322.080(E)(2)(b), to allow unenclosed off-street parking within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.070(C)(1) to construct an unenclosed structure (trellis) within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.080(A), to construct a fence more than 6 ft in height on lot line

### I. CEQA FINDINGS

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- A.** The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”).

### II. FINDINGS FOR APPROVAL

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- A.** As required by Section 23.406.040(E) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or 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 for the reasons outlined below:

1. Shadows: Shadow studies submitted by the applicant documented sun angles at different times throughout the day, and during the summer and winter solstice. Although the project will create new shadows on neighboring residences, the projected impacts will only occur during certain times of the day at certain times of the year. Thus, the shadow impacts from the project on adjacent residences will be reasonable and not detrimental;
2. Air: The construction of the new residence will be consistent with the existing development and building-to-building separation pattern – or air – in this R-1H zoned neighborhood. The new residence’s rear building wall that encroaches into the required 20-foot rear setback is sited on the flatter portion of the lot to suit the site conditions while maintaining appropriate separation and air with neighboring residences;
3. Privacy: A rear primary bedroom with new window, door openings and a deck are proposed on the second story. The second-story rear deck and openings will not result in privacy concerns with any neighboring residences. In addition, to mitigate any potential privacy concerns, the project will incorporate fencing along the eastern, western, and southern lot lines and screening trees along the southeastern portion of the property, ensuring adequate visual separation from neighboring properties. Thus, the proposed project will not be detrimental regarding privacy;
4. Views: The proposed two-story residence will replace the existing one-story residence. The overall height will increase by eight feet. Although, the proposed residence will contribute to an already diminished view of the San Francisco Bay it will not completely obstruct it. Therefore, the proposed dwelling will not result in a significant impact to views in the area;
5. The project will be subject to the City’s standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, which will ensure that the project will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or 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.

**B.** Pursuant to BMC Section 23.304.070 (B), unenclosed accessory structures require an AUP if placed on the ground within a required setback.

1. The project proposes installing a new 8-foot-tall unenclosed entry trellis strategically located on the southern end of the proposed parking pad within the required 20-foot front setback.
2. The trellis will be used as a provide access to the entry deck to the front of the proposed residence south of Keith Avenue and will be used as a privacy screen and will provide access to the entry deck to access the residence from the northern side of the property.
3. Its open design, scale, and use of wood materials align with nearby residences, ensuring compatibility with the neighborhood character, as well as minimizes potential impacts within its location of the required front setback.

- C. Pursuant to BMC Section 23.304.080(A), an AUP is required for fences more than 6 ft in height and on lot line or within required lot line setbacks for main building.
1. The project proposes a 12-foot fence along the eastern lot line, consisting of a 6-foot wood fence atop two 3-foot staggered concrete retaining walls – measuring 6 feet, that will be used for privacy screening for the main residence and the adjacent property at 1050 Keith Avenue.  
The wood fence and concrete retaining walls will not contain barbed or razor wire, sharp or jagged glass, sharp or jagged metal components, or similar hazardous materials, adhering to the construction material restrictions in BMC Section 23.304.080(C).

### III. OTHER FINDINGS FOR APPROVAL

- D. Pursuant to BMC Section 23.326.030(B), the Zoning Adjustments Board (ZAB) may approve a Use Permit to eliminate or demolish a dwelling unit only upon finding that eliminating the dwelling unit will not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley.
1. The proposed project will replace an existing dwelling unit with a newly constructed dwelling unit.
  2. The Rent Stabilization Board had reviewed that the existing residence has confirmed that the residence has not been removed from the rental market under the Ellis Act in the past five years, and there is no evidence of harassment or any threatened or actual illegal eviction over the past three years.
  3. The dwelling proposed for demolition was vacated in July of 2024, and is not subject to tenant relocation provisions under BMC Chapter 23.326, and it does not involve the displacement of any tenants.
- E. Per BMC Section 23.210.020(C)(4), the minimum required main building lot line setbacks in the underlying base district can be reduced upon finding that the reduction is consistent with BMC 23.210.020(A), Purpose of the Hillside Overlay.

The purpose of the Hillside Overlay district is to:

- Implement General Plan policies for hillside development;
  - Protect the safety and health of residents where steep topography, unusual street conditions and proximity to the wildland-urban interface create severe risk from wildfire;
  - Protect the character of Berkeley’s hillside areas and their immediate environs;
  - Give reasonable protection to views yet allow appropriate development of all property;
  - Allow modifications in standard setback and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the hillside areas.
1. The proposed two-story residence will be constructed and will encroach 5 feet into the required 20-foot required rear setback. The site is lot that has an irregular shape, and features a steep drop from the street down to a more level area, characteristics which limit the placement options for the residence and the parking pad.

2. The proposed residence is sited on the relatively flat area of the site, while the parking pad is placed within the front setback, close to the street, to eliminate the need for a steep driveway, (and its associated costs).
3. Consistent with the purpose of the Hillside Overlay district, the residence's design will allow for the structure to adhere to the aesthetic and character of the Berkeley hillside areas, through maintaining reasonable setbacks and by limiting the height to 23.5 feet, below the 35-foot maximum.

F. Pursuant to BMC Section 23.322.080(E)(2), no portion of an off-street parking space may be located in a required front, street side, or rear setback area unless: The Zoning Adjustments Board, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.

1. The proposed project will enlarge the 12-foot driveway and construct a 16 1/4-foot-wide by 18-foot long two car parking pad within the required front setback, in order to minimize additional site grading.
2. A 2-foot-wide by 18-foot long landscaped buffer will be included to provide visual screening.
3. Residences along the southern frontages off Keith Avenue also include off-street parking within in the front setback due to limiting site conditions.
4. The proposed parking is authorized, as it was determined by the City's Traffic Engineer that the proposed parking pad, driveway approach, and increased curb cut do not present any traffic engineering concerns.

#### IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. **Conditions Shall be Printed on Plans.** The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *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.
2. **Compliance Required (BMC Section 23.102.050).** All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and 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.
3. **Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060(B)(1) and (2)):**
  - A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
  - B. 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 re-establish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.
4. **Conformance to Approved Plans (BMC Section 23.404.060(B)(4)).** All work performed under an approved permit shall comply with the approved plans and any conditions of approval.
5. **Exercise and Expiration of Permits (BMC Section 23.404.060(C)):**
  - 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 ZAB 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 must apply for and receive City approval of a new permit.
6. **Permit Remains Effective for Vacant Property (BMC Section 23.404.060(D)).** 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 Condition #5 above.

- 7. **Permit Modifications (BMC Section 23.404.070).** No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board’s policy adopted on May 24, 1978, which reduce the size of the project.
- 8. **Permit Revocation (BMC Section 23.404.080).** **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. However, 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 (ZAB), or City Council referral.**
- 9. **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.

**V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD**

Pursuant to BMC 23.404.050(H), the Zoning Adjustments Board attaches the following additional conditions to this Permit:

**Prior to Submittal of Any Building Permit:**

**10. Project Liaison.** The applicant shall include in all building permit plans and post onsite the name 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 #

- 11. 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 Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and, except for new buildings on vacant lots, entered into the City’s database after the building permit is issued but prior to final inspection.

### **Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)**

- 12. Demolition.** Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
- 13. Construction and Demolition Diversion.** Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 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.
- 14. Toxics.** The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
- A. Phase I and Phase II 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 developments for: all new commercial, industrial and mixed-use developments and 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 \(arcgis.com\)](#)
  - B.** Depending on the findings in the Phase I, a Phase II or additional investigation may be necessary. Any available soils and groundwater analytical data available for projects listed in this section must also be submitted to TMD.
  - C. Environmental Site Clearance.** The applicant shall provide environmental screening clearance from either the San Francisco Bay Regional Water Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC), or the Alameda County Department of Environmental Health’s Local Oversight Program (LOP). Clearance from one of these regulatory agencies will ensure that the property meets development investigation and cleanup standards for the specific use proposed on the property. Environmental screening clearance shall be submitted to the City of Berkeley’s Toxics Management Division prior to issuance of any building permits.
  - D. Soil and Groundwater Management Plan.** A site-specific Soil and Groundwater Management Plan (SGMP) shall be submitted to Toxics Management Division (TMD) for all non-residential projects, and residential or mixed-use projects with more than four dwelling units, that: (1) are in the Environmental Management Area (EMA), as shown on the most recent City of Berkeley EMA map, and (2) propose any excavations deeper than 5 feet below grade or if significant soils removal is anticipated. The SGMP shall be submitted to the TMD with the project’s building permit application and shall be approved by TMD prior to issuance of the building permit.

The SGMP shall comply with the hazardous materials and waste management standards required by BMC Section 15.12.100, the stormwater pollution prevention requirements of San Francisco Bay Regional Water Quality Control Board's Order No. R2-2009-0074, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) 66260 et seq.), and the East Bay Municipal Utility District's Ordinance 311, and shall include the following:

- i. procedures for soil and groundwater management including identification of pollutants and disposal methods;
- ii. procedures to manage odors, dust and other potential nuisance conditions expected during development;
- iii. notification to TMD within 24 hours of the discovery of any previously undiscovered contamination; and
- iv. the name and phone number of the individual responsible for implementing the SGMP and who will respond to community questions or complaints.

TMD may require additional information or impose additional conditions as deemed necessary to protect human health and the environment. All requirements of the approved SGMP shall be deemed conditions of approval.

**E. Demolitions & Renovations – Building Materials Survey.** A hazardous materials survey for building materials and plans on hazardous materials and hazardous waste removal and disposal is required and must be prepared by qualified professionals, and submitted to the Toxics Management Division (TMD) prior to issuance of the building permit.

- i. The survey shall include 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.
- ii. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center. Contractors must 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.)
- iii. 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.
- iv. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition.

Please note, the PCB Screening Form required by Public Works, Engineering, is a separate requirement and does not address the PCB identification requirement of the Toxics Management Division.

**F. Hazardous Materials Business Plan.** A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 and California Health & Safety Code, Chapter 6.95 Div. 20, shall be submitted to the Toxics Management Division through the California Environmental Reporting System: <http://cers.calepa.ca.gov/> for chemicals used or stored on site during construction that exceed reporting thresholds. The reporting is required if your facility stores or handles hazardous materials in aggregate quantities equal to or greater than 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet of compressed gases, or generates any quantity of hazardous waste. This includes welding gases, emergency generator fuel, paints, etc.

Additionally, the business occupant must submit an HMBP within 30 days of starting operations.

**G. Petroleum Storage.** An (SPCC) Plan is required to be prepared and implemented for facilities with any one of the following:

- i. aggregate aboveground petroleum storage capacities of 1,320 gallons or more stored in aboveground storage containers, tanks, oil-filled equipment, or
- ii. one or more tank(s) in an underground area (TIUGA) with petroleum storage capacities of 55 gallons or greater. More information on TIUGAs can be found here: <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/tank-in-an-underground-area-tiuga/>

The SPCC plan must be prepared prior to beginning operations and you must submit facility information to Toxics Management Division (TMD) through the California Environmental Reporting System: <http://cers.calepa.ca.gov/>. The SPCC plan will be reviewed during the site inspection and shall not be submitted in CERS or to the TMD.

### **Prior to Issuance of Any Building (Construction) Permit**

**15. 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.

**16. Solar Photovoltaic (Solar PV) and Battery Energy Storage Systems (ESS).** A solar PV system shall be installed, subject to specific limited exceptions, as specified by the Berkeley Energy Code (BMC Chapter 19.36). Energy storage system (ESS) readiness (new single-family, duplex, and townhouse homes) or ESS installation (new multifamily and most nonresidential buildings) shall be completed as specified by BMC Chapter 19.36. Location of the solar PV system and the ESS, if applicable, shall be noted on the construction plans. (Project required to meet applicable code at time of building permit application, if different from above.)

- 17. Electric Vehicle (EV) Charging.** Each dwelling unit shall install a listed raceway, wiring, and load capacity to allow for future Level 2 (40 amp) plug-in electric vehicle (EV) charging system installation, or any more stringent EV charging requirements as specified by the Berkeley Green Code (BMC Chapter 19.37). Readiness for EV charging and EV charging station installations shall be noted on the construction plans. (Project required to meet applicable code at time of building permit application, if different from above.)
- 18. Recycling and Organics Collection.** Applicant shall provide recycling and organics collection areas for occupants, clearly marked on plans, which comply with the Alameda County Organics Reduction and Recycling Ordinance (2021-02). Contact the Zero Waste Division's Recycling Program Manager, Julia A. Heath, at [jheath@berkeleyca.gov](mailto:jheath@berkeleyca.gov).
- 19. 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.

#### **Prior to Demolition or Start of Construction:**

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- 20. Construction/No Parking Permits.** Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood.

#### **During Construction:**

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- 21. Construction Hours.** Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
- 22. Survey Required.** The height and location of the proposed structure, property lines and spot elevations shall be verified by a licensed surveyor or engineer on site after foundation forms are placed, but before pouring concrete or placing construction material in its permanent position. This verification shall be to the satisfaction of the Zoning Officer.
- 23. Public Works - Implement Bay Area Air Quality Management District (BAAQMD)-Recommended Measures during Construction.** For all proposed projects, BAAQMD 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 Air District's phone number shall also be visible to ensure compliance with applicable regulations.

**24. 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 one of the following measures:

- 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 BAAQMD and OEHHA. 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
- 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.

- 25. Construction and Demolition Diversion.** 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.
- 26. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25 percent. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff. (Project required to meet applicable code at time of building permit application, if different from above.)
- 27. 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 MBTA and CFGC, 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.
- 28. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
  - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.

- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall 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 qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- 29. Human Remains (Ongoing throughout demolition, grading, and/or construction).** 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. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
- 30. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** 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 paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist 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 paleontologist 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.
- 31. Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin 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 City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, 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.
- 32. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of 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 area(s) shall be covered; no other area shall drain onto this area. 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 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.
- 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 conducted prior to the issuance of a Building Permit.
- E.** All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
- F.** All on-site storm drain inlets/catch basins must 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 Dept.
- G.** All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
- H.** Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- I.** All loading areas must be designated to minimize "run-on" or runoff from the area. Accumulated waste water 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.** 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.
- L.** 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.
- 33. Public Works.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
- 34. Public Works.** 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.
- 35. Public Works.** The applicant shall ensure that all excavation accounts for surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 36. Public Works.** 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.
- 37. Public Works.** 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 by 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.
- 38. Public Works.** 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.
- 39. Public Works / Building and Safety.** **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.**

#### **Prior to Final Inspection or Issuance of Occupancy Permit:**

- 40. Compliance with Conditions** The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

**At All Times:**

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- 41. Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.
- 42.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated December 9, 2024.
- 43. 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.
- 44. Drainage Patterns.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
- 45. Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.
- 46. Loading.** All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.
- 47. Residential Electric Vehicle (EV) Charging.** Required Level 2 charging stations and low power Level 2 EV charging receptacles, as specified by the Berkeley Green Code (BMC Chapter 19.37) shall be maintained in good working condition and made available for building resident use. (Project required to meet applicable code at time of building permit application, if different from above.)

**USE PERMIT**

**SHEET INDEX**

|     |                                                       |
|-----|-------------------------------------------------------|
| A1  | GENERAL NOTES & SITE PLAN                             |
| A2  | LANDSCAPE & USEABLE SPACE PLAN & LOT COVERAGE DIAGRAM |
| A3  | EXISTING FIRST FLOOR PLAN & CRAWLSPACE PLAN           |
| A4  | PROPOSED GROUND FLOOR PLAN                            |
| A5  | PROPOSED ROOF AND SECOND FLOOR PLAN                   |
| A6  | EXISTING EAST & WEST ELEVATIONS                       |
| A7  | EXISTING NORTH & SOUTH ELEVATIONS (& PARTIAL E/W)     |
| A8  | PROPOSED EAST & WEST ELEVATIONS                       |
| A9  | PROPOSED NORTH & SOUTH ELEVATIONS (& PARTIAL N/W)     |
| A10 | PROPOSED LONGITUDINAL SECTIONS                        |
| A11 | PROPOSED EAST WEST SECTIONS                           |
| A12 | STREET STRIP ELEVATION                                |
| A13 | BOUNDARY & TOPOGRAPHIC SURVEY                         |
| A14 | GRADING PLAN                                          |
| A15 | STORY POINT PLAN                                      |
| A16 | SHADOW STUDY: EXISTING DWELLING                       |
| A17 | SHADOW STUDY: PROPOSED DWELLING                       |
| A18 | SHADOW STUDY: COMBINED EXISTING & PROPOSED            |

**PROJECT SCOPE**

PROPOSED REAR SETBACK: 15'

1) DEMOLISH 1-STORY, SINGLE FAMILY DWELLING.  
2) BUILD NEW 2-STORY, SINGLE FAMILY DWELLING, MAX HT: 25'

**PROJECT INFORMATION**

OWNERS: JOACHIM KAINZ & LINDSAY NEWMAN  
1044 KEITH AVENUE  
BERKELEY, CA 94708  
P.313.615.9400

OCCUPANCY: RESIDENTIAL RH-3  
CONSTRUCTION TYPE: V-B

**ENERGY CODE & GREEN CODE STATEMENT**

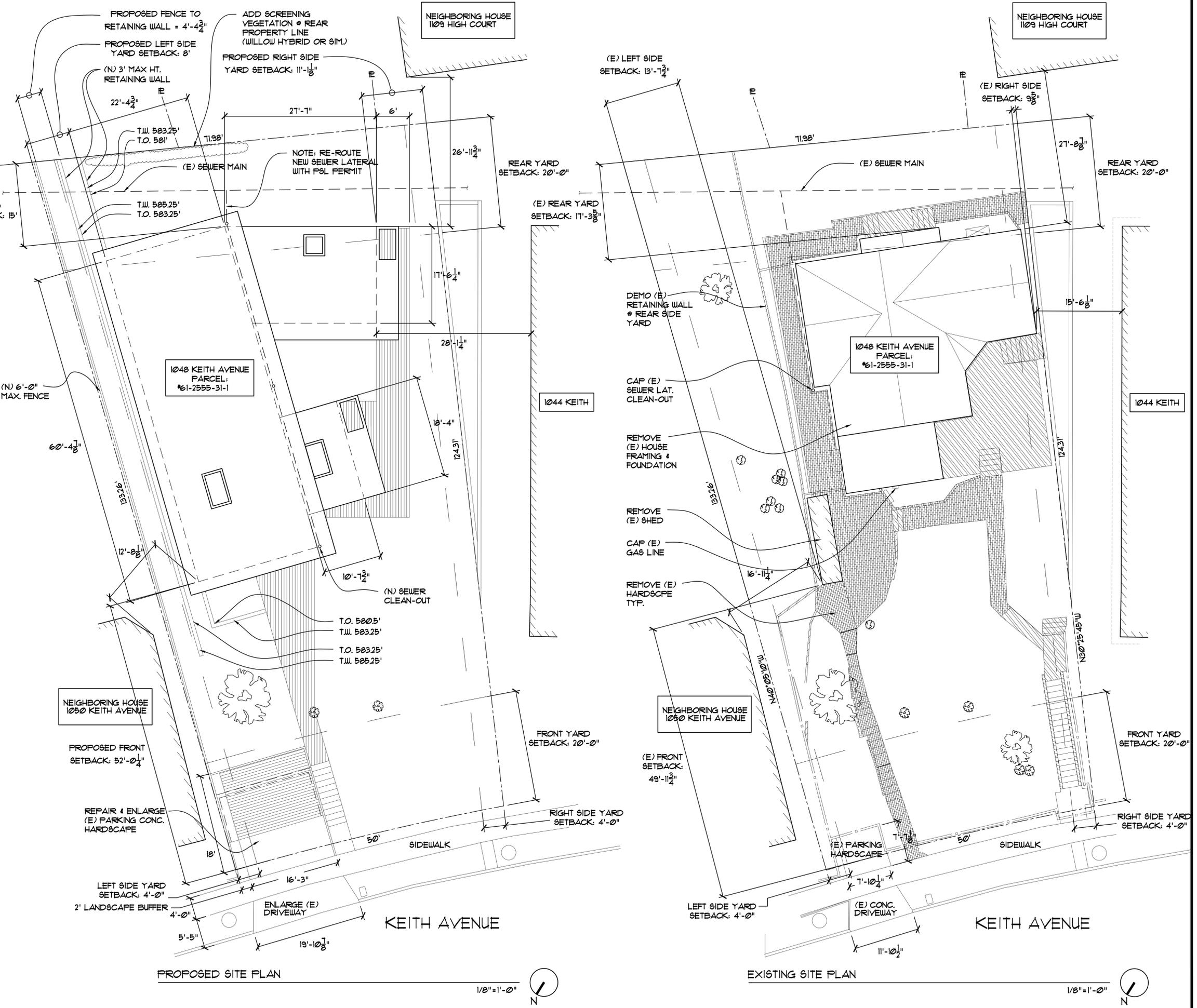
THE PROPOSED PROJECT IS DESIGNED TO COMPLY WITH THE BERKELEY ENERGY CODE (BMC CH. 19.36) & BERKELEY GREEN CODE (BMC CH. 19.37) INCLUDING SOLAR PV SYSTEM, BATTERY ENERGY STORAGE, ELECTRIC VEHICLE CHARGING, & LOW-CARBON CONCRETE REQUIREMENTS. NOTE THAT FOR BUILDING PERMIT SUBMITTAL, QUANTITATIVE VALUES FOR APPLIANCE FUEL EFFICIENCY MUST BE INCLUDED IN RELEVANT BUILDING PERMIT ARCHITECTURAL SHEETS, WINDOW & DOOR SCHEDULES, & ON ARCHITECTURAL, PLUMBING, & MECHANICAL SHEETS, MATCHING THOSE VALUES STIPULATED IN PRESCRIPTIVE OR PERFORMANCE ENERGY COMPLIANCE DOCUMENTS.

**CEQA GUIDELINE NOTES:**

ALL PROJECT CONSTRUCTION EQUIPMENT SHALL HAVE AT LEAST EPA-RATED TIER 3 DIESEL ENGINES.

I have reviewed plans at 1048 Keith Ave for a proposed 2-story single family dwelling.

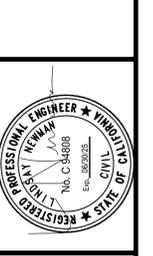
| NAME (PRINTED) | SIGNATURE | ADDRESS        | RENTER OR OWNER | HAVE NO OBJECTIONS | HAVE OBJECTIONS (STATE BRIEFLY) | HAVE NO COMMENT |
|----------------|-----------|----------------|-----------------|--------------------|---------------------------------|-----------------|
|                |           | 1044 KEITH AVE |                 |                    |                                 |                 |
|                |           | 1047 KEITH AVE |                 |                    |                                 |                 |
|                |           | 1049 KEITH AVE |                 |                    |                                 |                 |
|                |           | 1050 KEITH AVE |                 |                    |                                 |                 |
|                |           | 1051 KEITH AVE |                 |                    |                                 |                 |
|                |           | 1109 HIGH CT   |                 |                    |                                 |                 |
|                |           | 1111 HIGH CT   |                 |                    |                                 |                 |
|                |           | 1113 HIGH CT   |                 |                    |                                 |                 |



**REVISIONS**

| NO. | DESCRIPTION | DATE |
|-----|-------------|------|
|     |             |      |
|     |             |      |

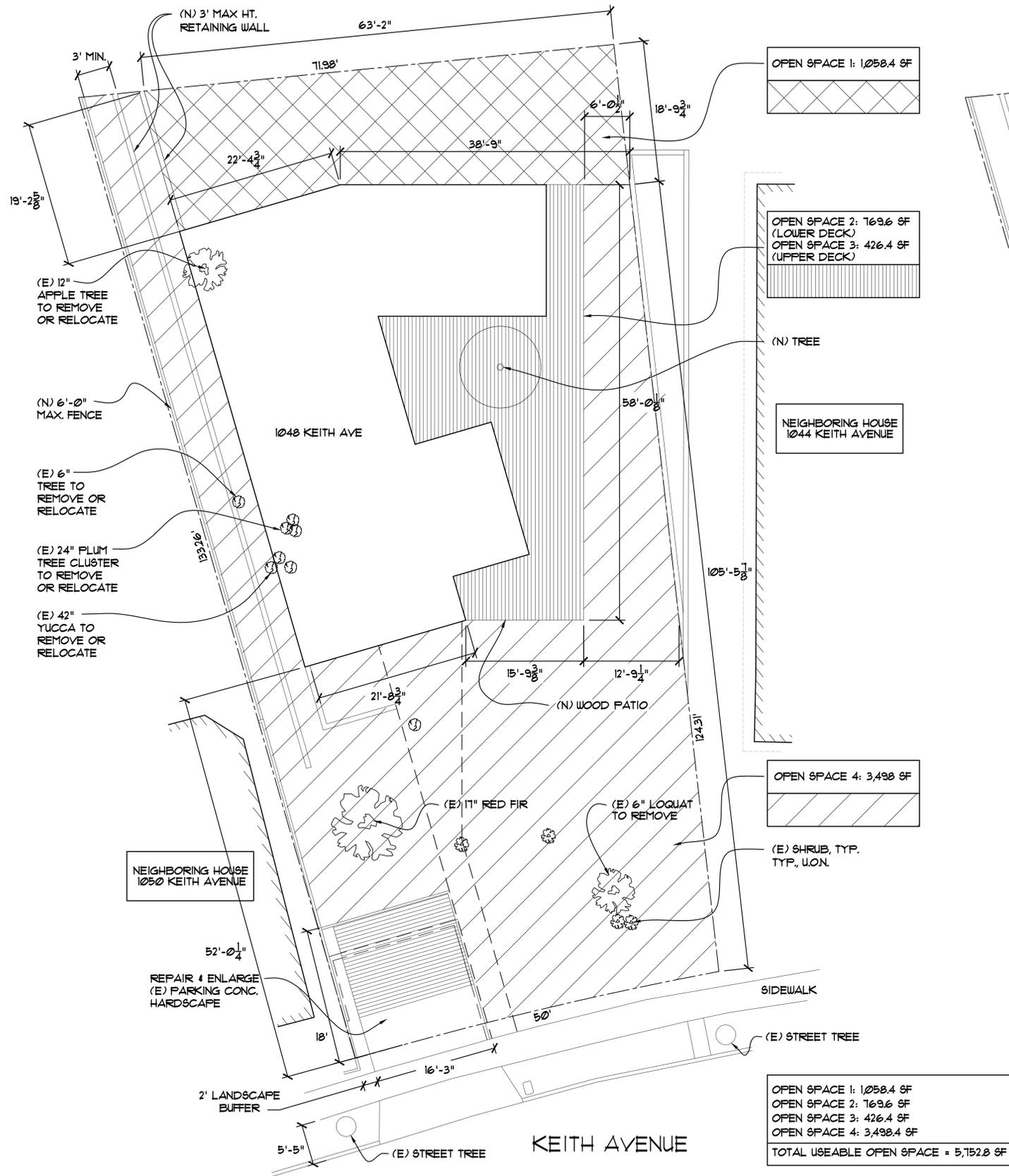
LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P. 313.615.9400  
newmanl26@gmail.com



NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
EXISTING SITE PLAN &  
PROPOSED SITE PLAN

DATE: 12.09.24  
JOB NO: LN-1048  
SCALE: 1/4"=1'-0"  
DRAWN: LN

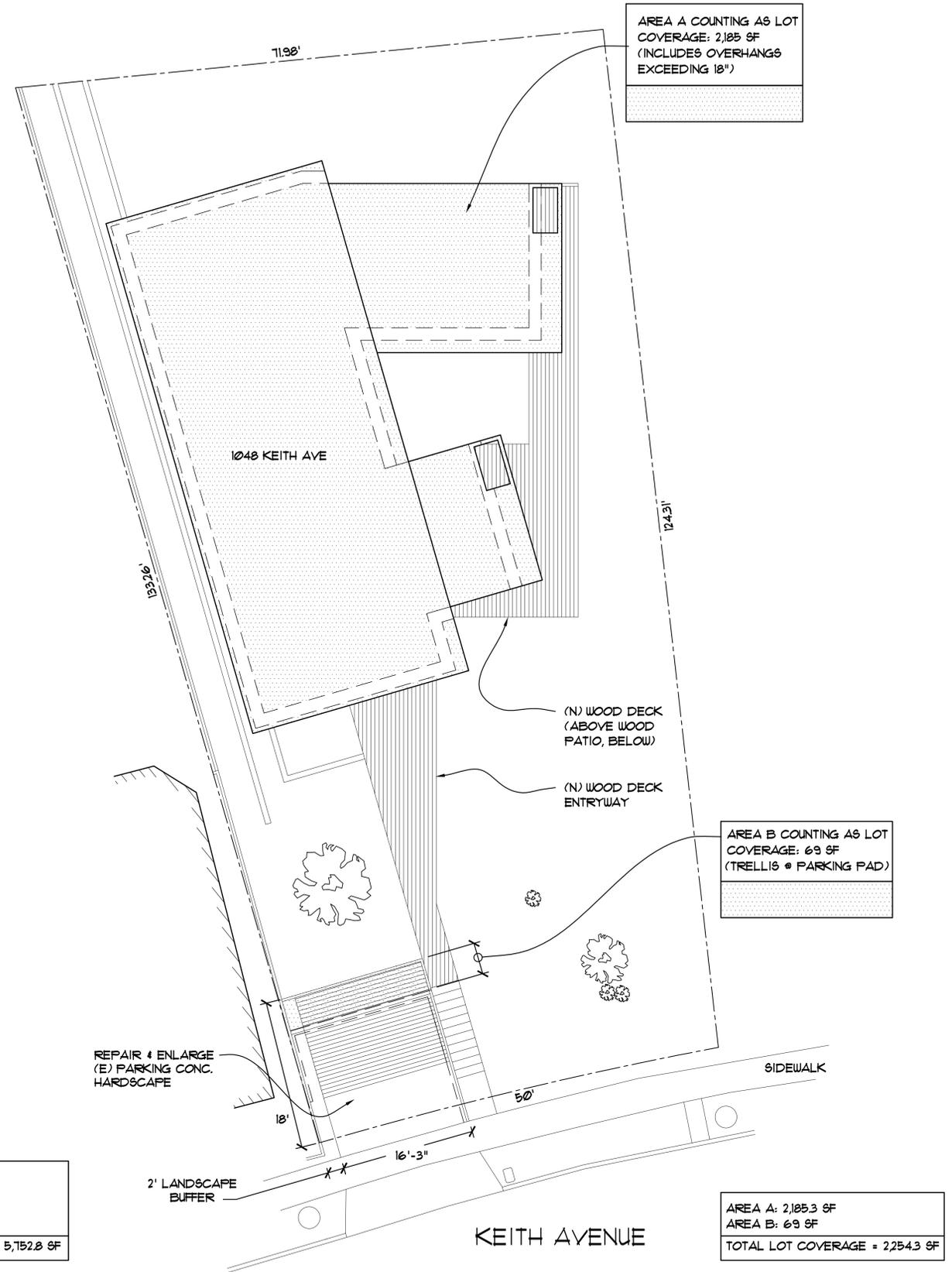


LANDSCAPE & USEABLE OPEN SPACE PLAN

1/8" = 1'-0"



USEABLE OPEN SPACE DEFINED PER BMC CHAPTER 23.502:  
 OUTDOOR SPACE, INCLUDING NATURAL AND LANDSCAPED GROUND AREAS, POOLS, PATIOS, DECKS  
 & BALCONIES DESIGNED FOR ACTIVE OR PASSIVE RECREATIONAL USE AND WHICH IS ACCESSIBLE  
 TO THE OCCUPANTS OF A BUILDING ON THE SAME LOT.



LOT COVERAGE DIAGRAM

1/8" = 1'-0"



LOT COVERAGE DEFINED PER BMC CHAPTER 23.502:  
 ALL THE AREA OF A LOT, AS PROJECTED ON A HORIZONTAL PLANE, WHICH IS:  
 1. ENCLOSED BY THE EXTERIOR WALLS OF BUILDINGS OR ENCLOSED ACCESSORY STRUCTURES, OR  
 2. COVERED BY DECKS, PORCHES, STAIRS AND/OR LANDINGS WHICH COVER AN ENCLOSED SPACE OR PAVED GROUND AREA.

REVISIONS BY

LINDSAY NEWMAN, PE  
 CIVIL ENGINEER  
 P. 313.615.9400  
 newmanli26@gmail.com



NEW SINGLE-FAMILY RESIDENCE  
 1048 KEITH AVENUE  
 BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
 LANDSCAPE & USEABLE OPEN SPACE  
 PLAN & LOT COVERAGE DIAGRAM

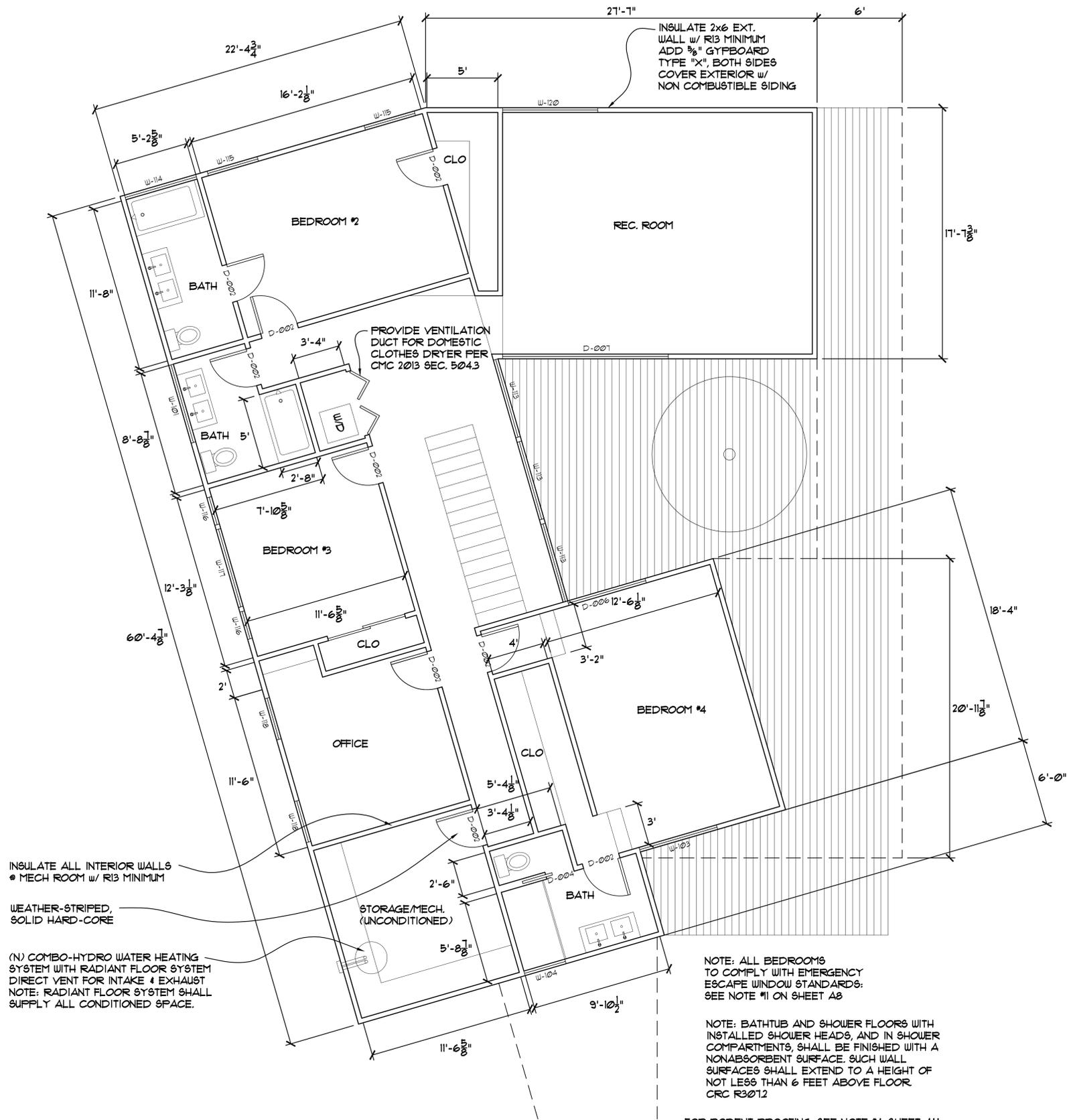
DATE: 12/29/24  
 JOB NO: LN-1048  
 SCALE: 1/4" = 1'-0"  
 DRAWN: LN

A2



LEGEND

(N) 2x4 STUD WALL w/  
3/8" GYP. EA. SIDE, U.O.N.



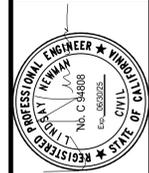
PROPOSED GROUND FLOOR PLAN

1/4" = 1'-0"



REVISIONS BY

LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P. 313.615.9400  
newmanliz26@gmail.com



NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
PROPOSED GROUND FLOOR PLAN

DATE: 12.09.24

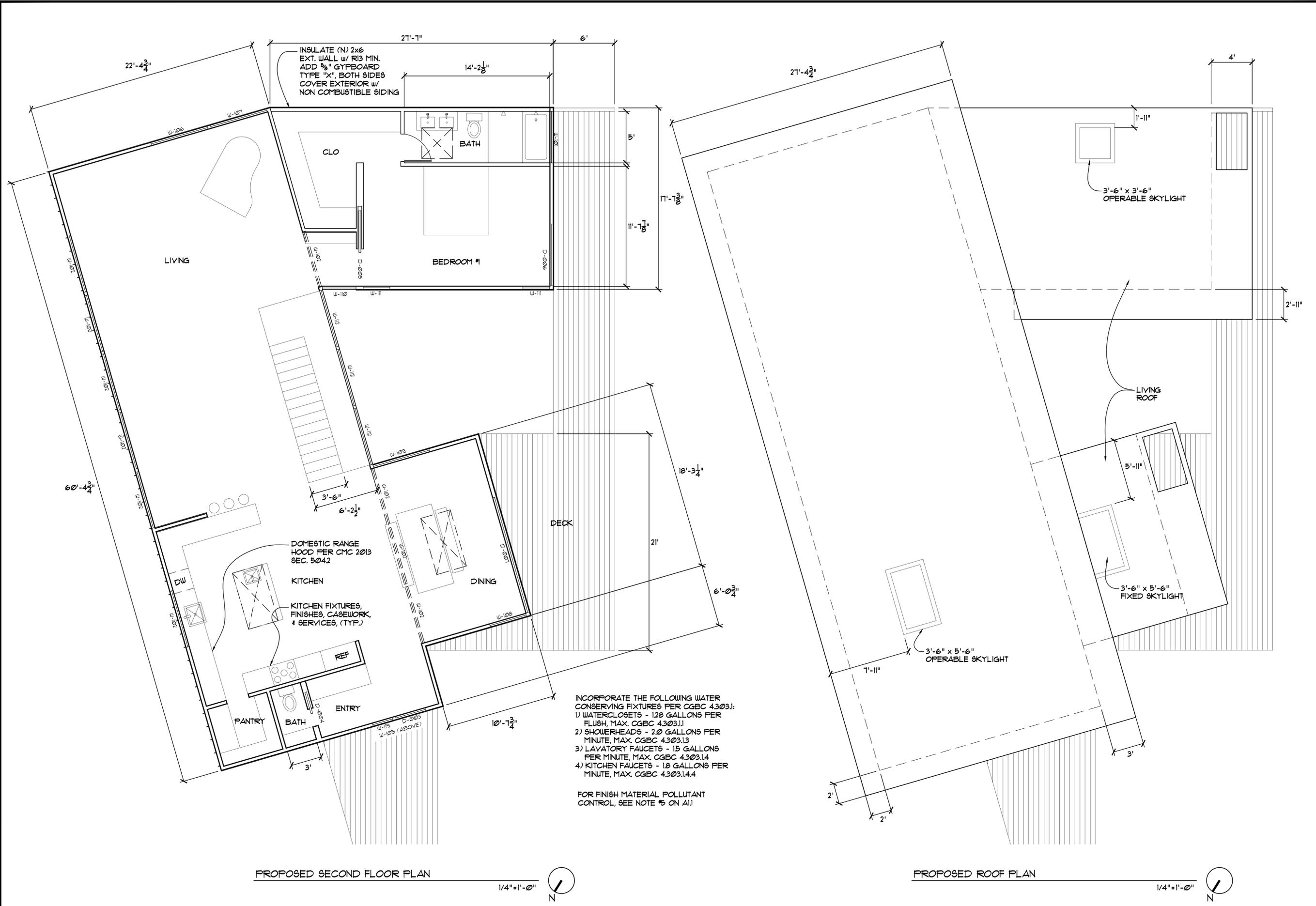
JOB NO: LN-1048

SCALE: 1/4" = 1'-0"

DRAWN: LN



OF 18 SHEETS



| REVISIONS | BY |
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 CIVIL ENGINEER  
 P. 313.615.9400  
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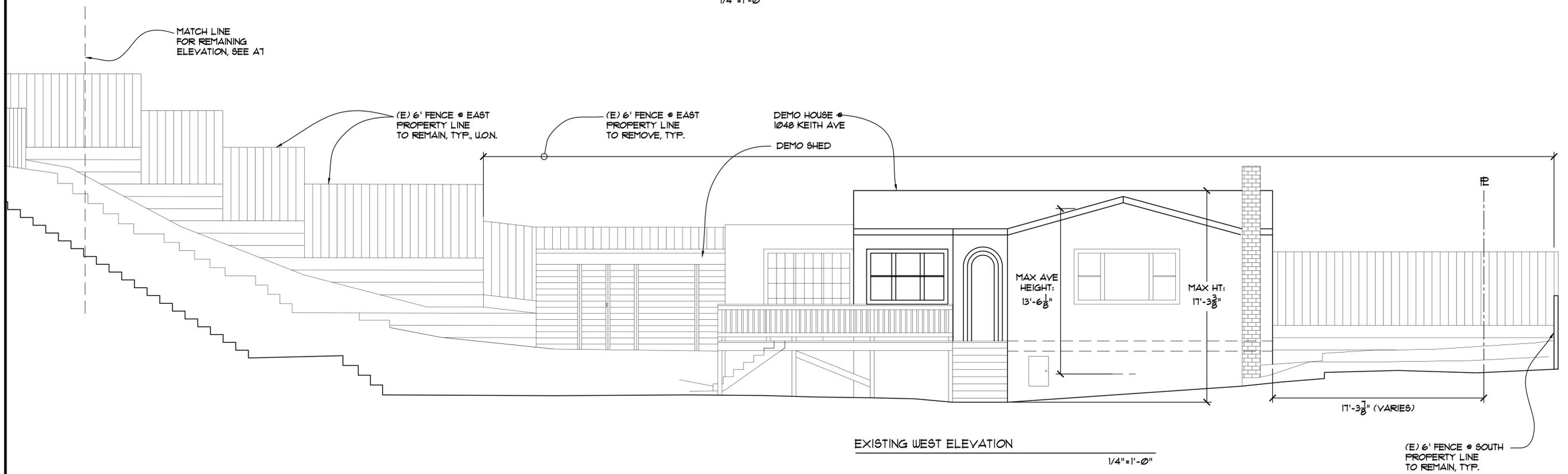
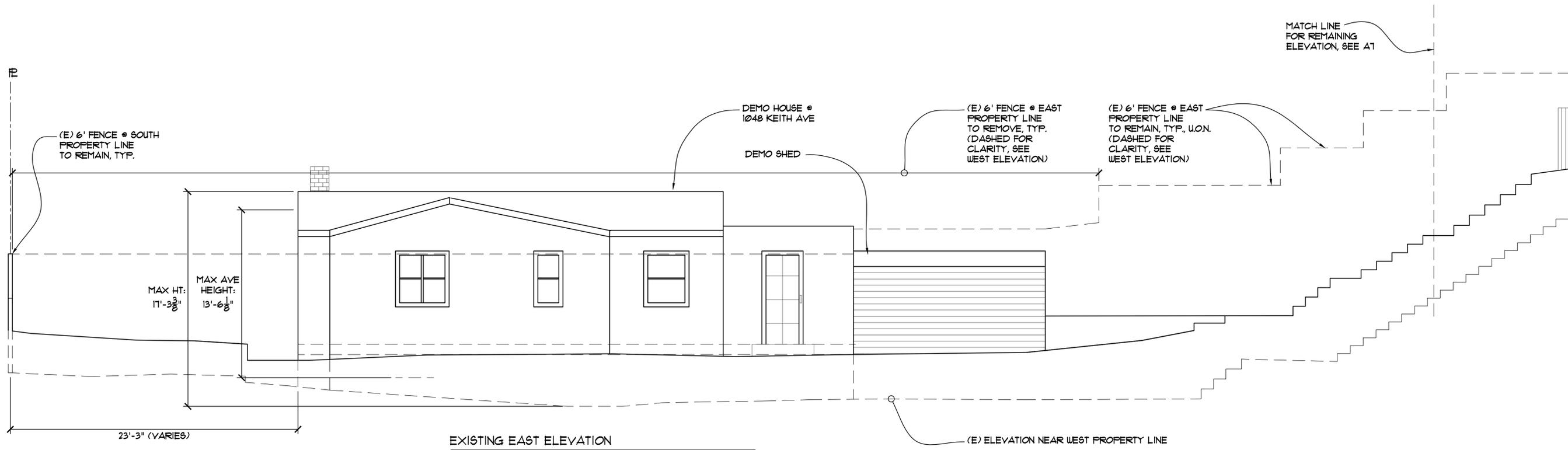


NEW SINGLE-FAMILY RESIDENCE  
 1048 KEITH AVENUE  
 BERKELEY, CA 94708

USE PERMIT PLAN - 1048 KEITH  
 PROPOSED ROOF PLAN  
 & SECOND FLOOR PLAN

DATE: 12.09.24  
 JOB NO: LN-1048  
 SCALE: 1/4" = 1'-0"  
 DRAWN: LN





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LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P. 313.615.9400  
newmanli26@gmail.com

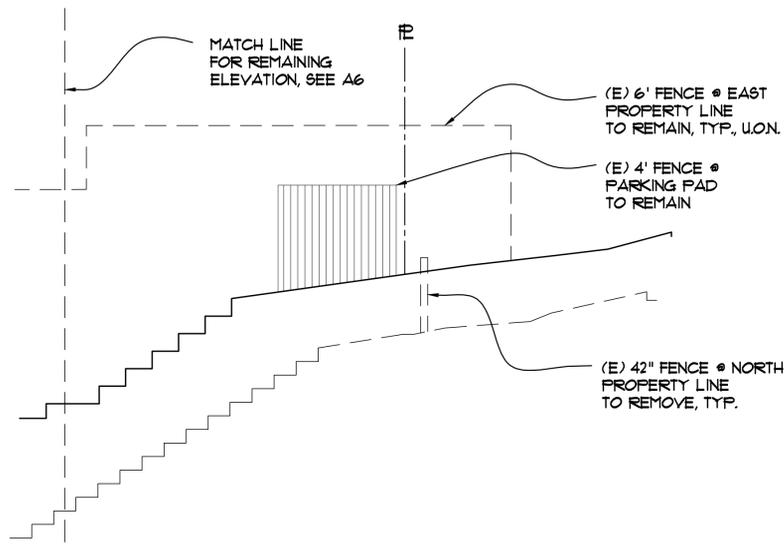


NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

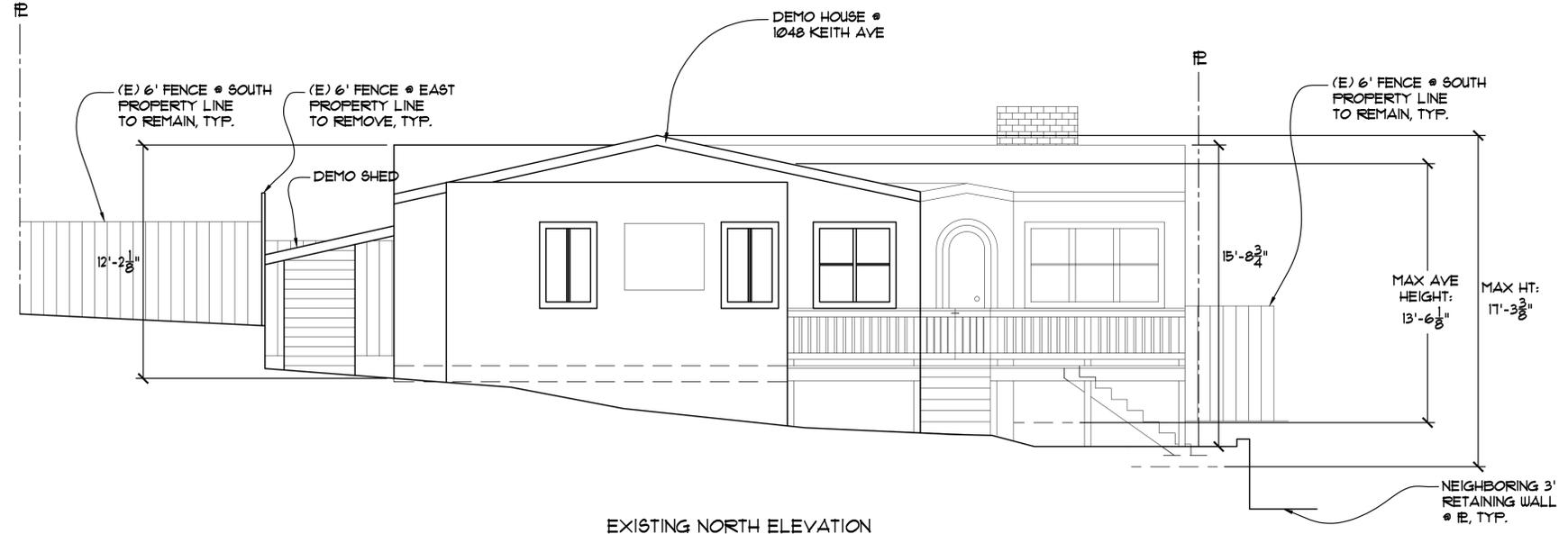
USE PERMIT PLANS - 1048 KEITH  
EXISTING EAST & WEST  
ELEVATIONS

DATE: 12/29/24  
JOB NO: LN-1048  
SCALE: 1/4" = 1'-0"  
DRAWN: LN

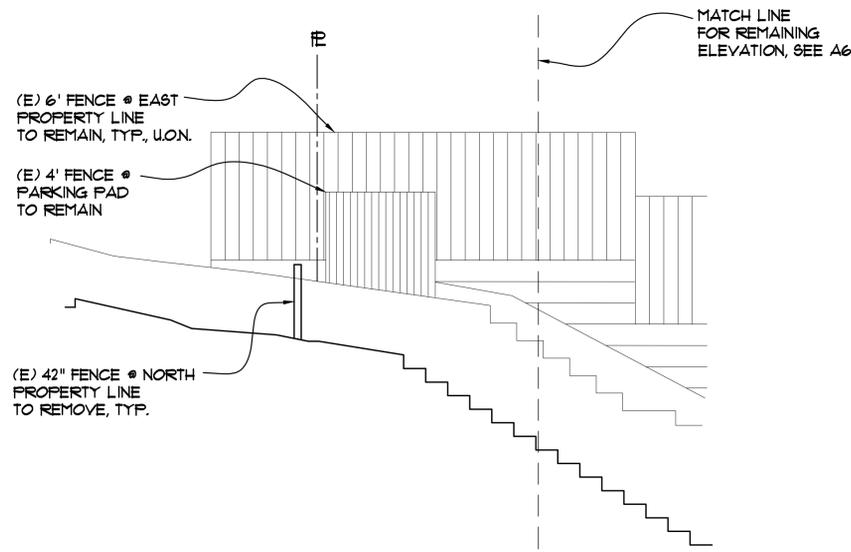
A5  
OF 18 SHEETS



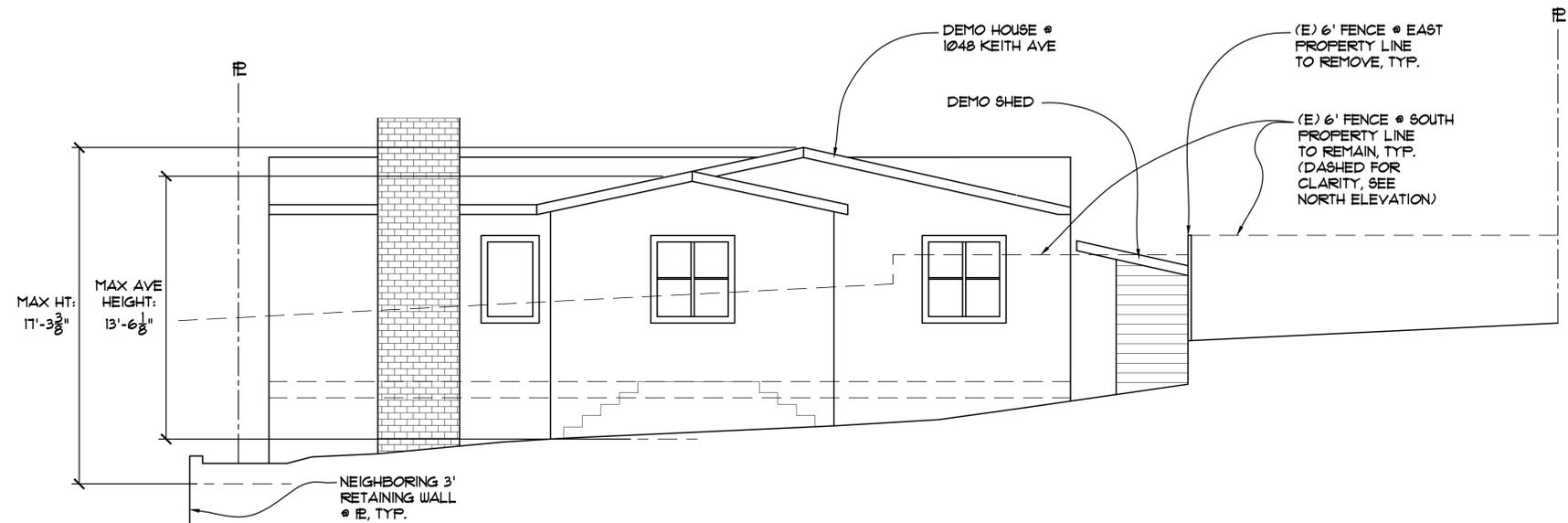
PARTIAL EXISTING EAST ELEVATION (R @ STREET)  
1/4"=1'-0"



EXISTING NORTH ELEVATION  
1/4"=1'-0"



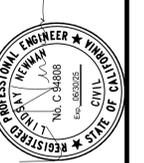
PARTIAL EXISTING WEST ELEVATION (R @ STREET)  
1/4"=1'-0"



EXISTING SOUTH ELEVATION  
1/4"=1'-0"

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LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P. 313.615.9400  
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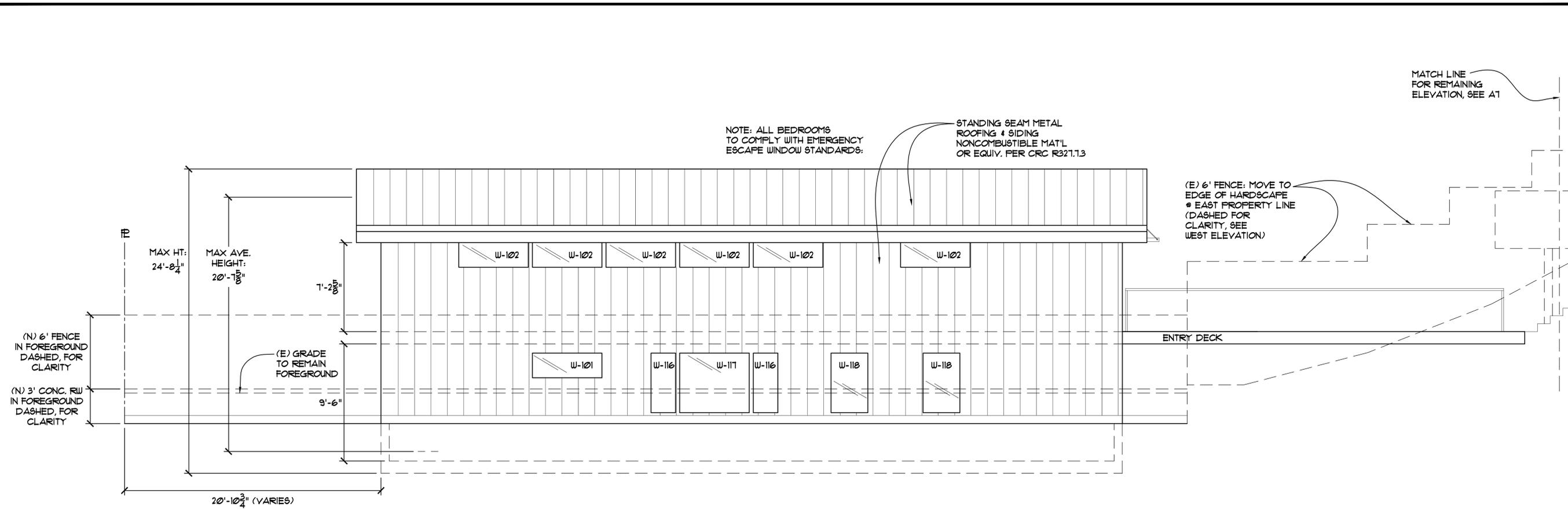


NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

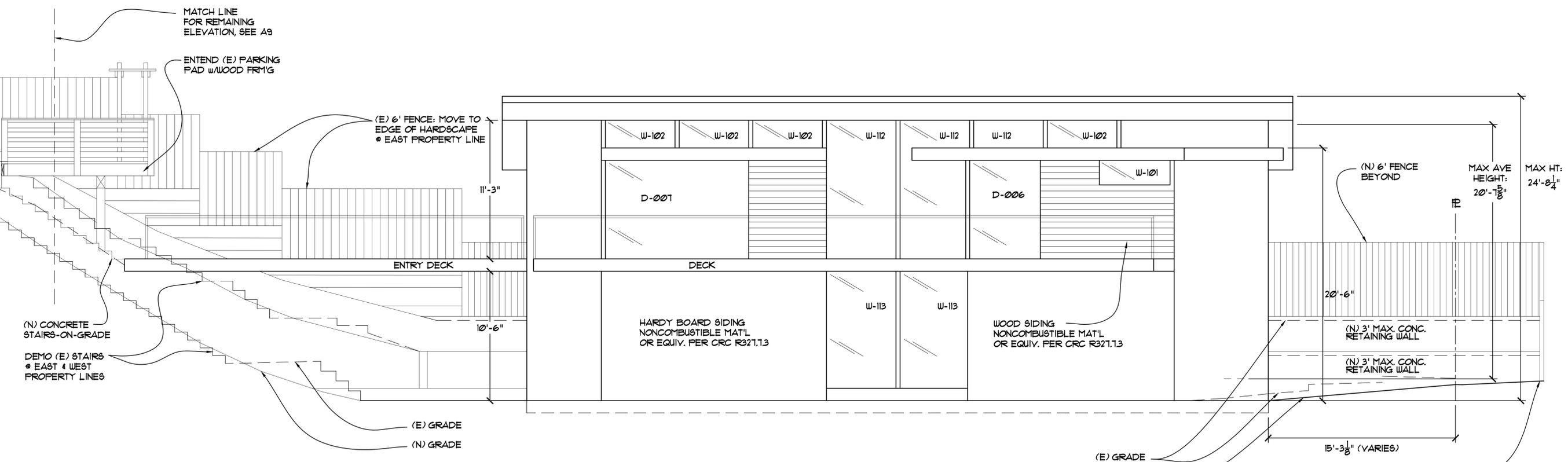
USE PERMIT PLANS - 1048 KEITH  
EXISTING NORTH & SOUTH  
ELEVATIONS (& PARTIAL E/W)

DATE: 12/29/24  
JOB NO: LN-1048  
SCALE: 1/4"=1'-0"  
DRAWN: LN





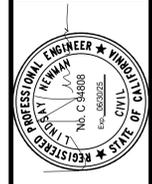
PROPOSED EAST ELEVATION  
1/4"=1'-0"



PROPOSED WEST ELEVATION  
1/4"=1'-0"

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LINDSAY NEWMAN, PE  
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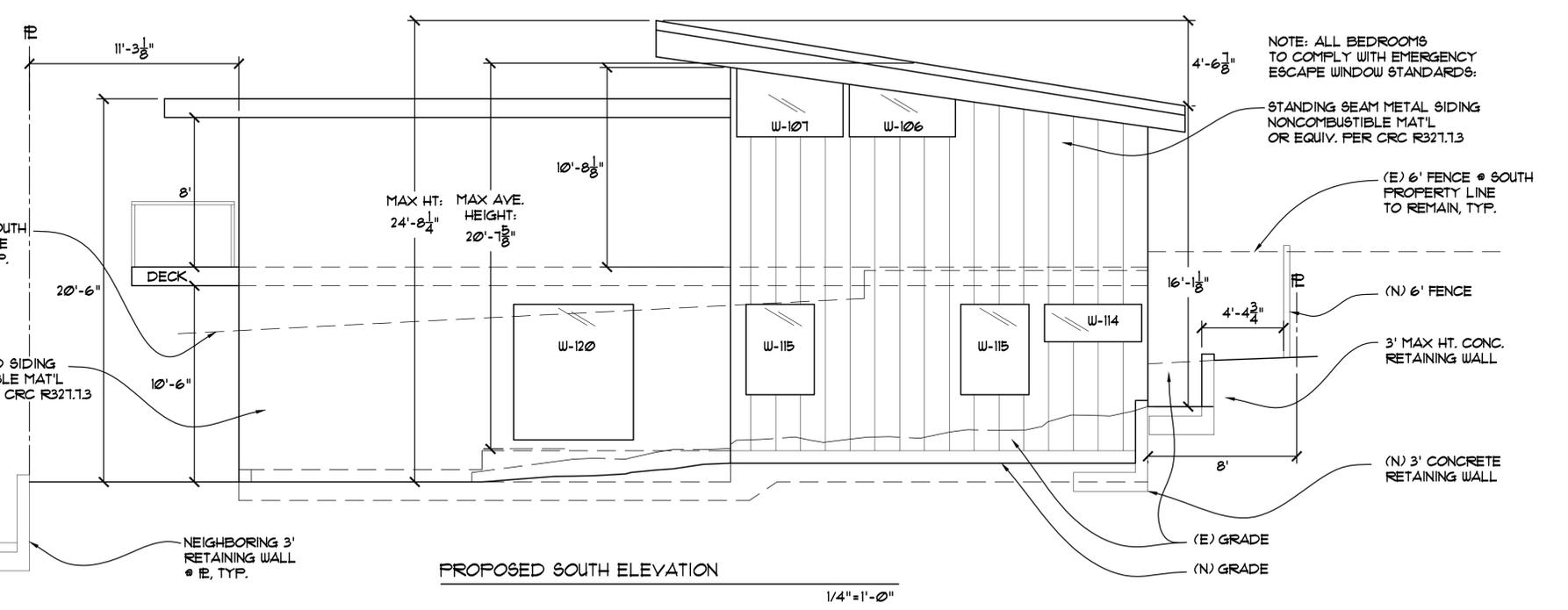
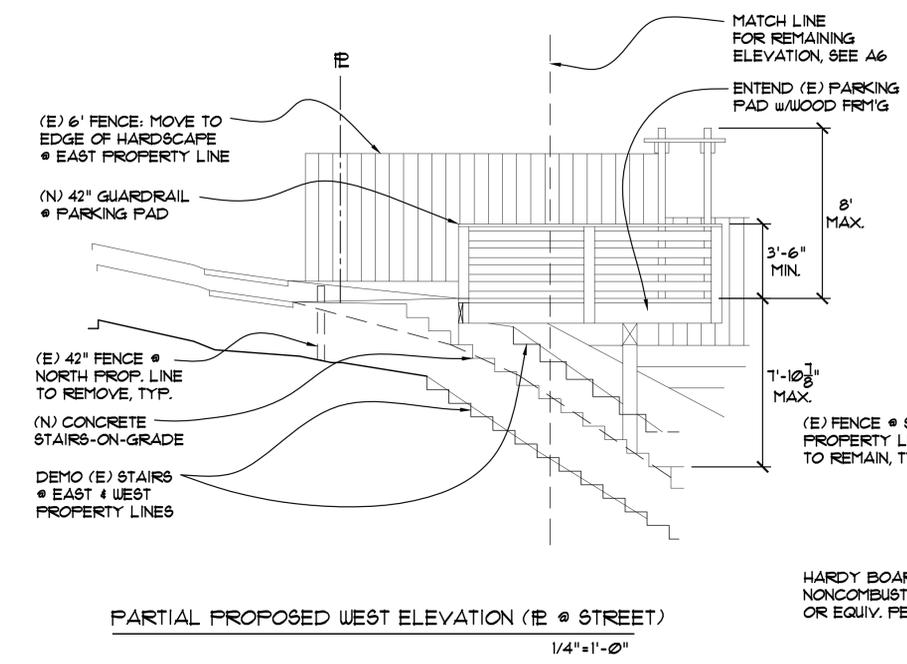
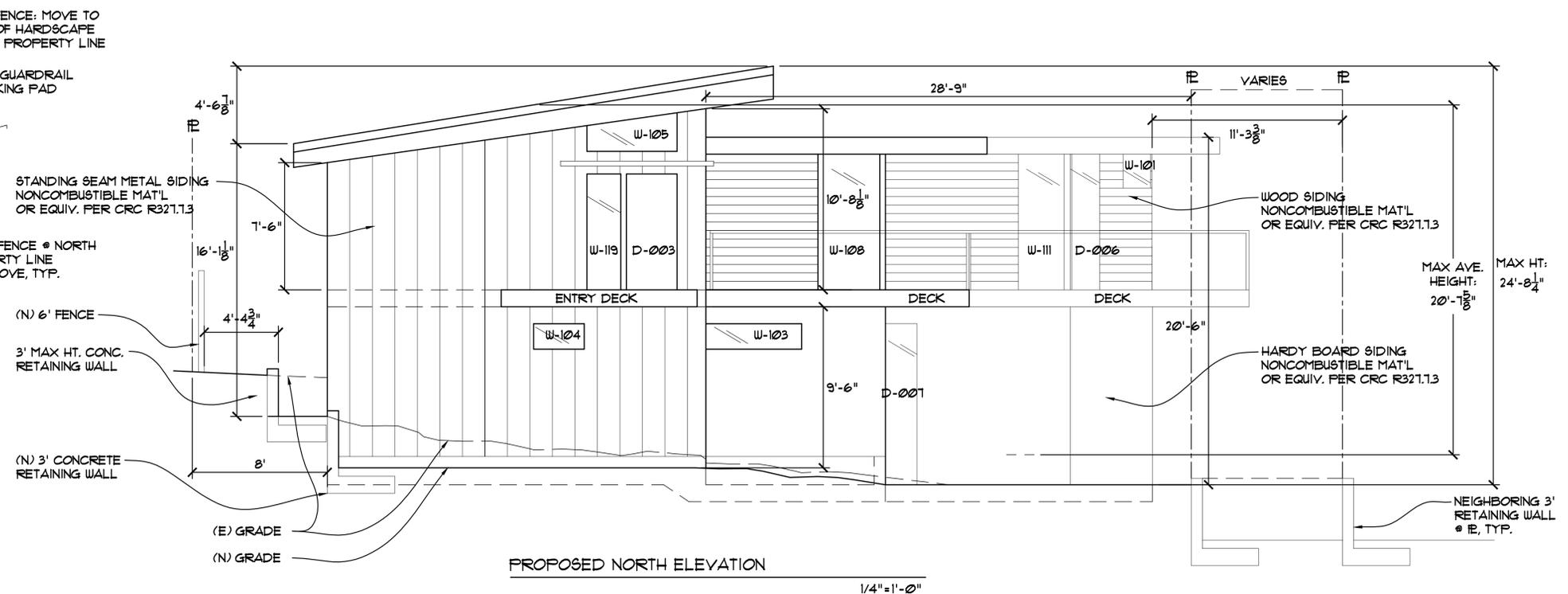
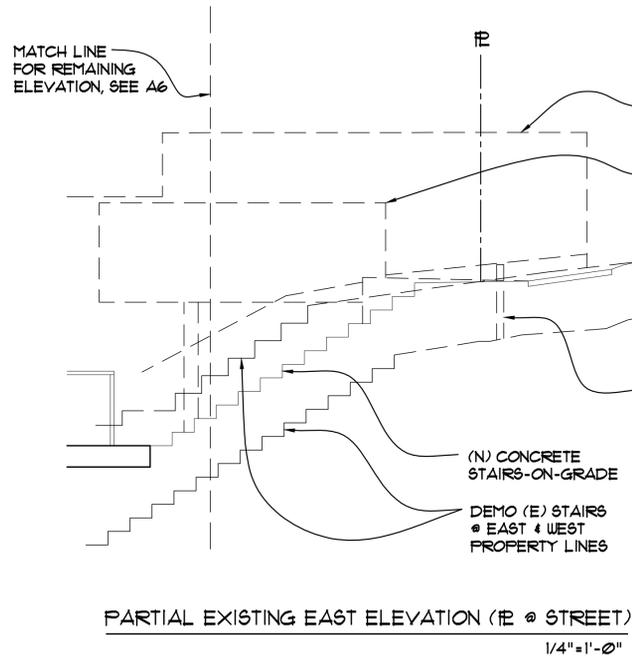


NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
PROPOSED EAST & WEST  
ELEVATIONS

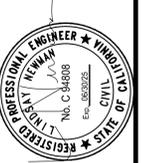
DATE: 12/09/24  
JOB NO: LN-1048  
SCALE: 1/4"=1'-0"  
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OF 18 SHEETS



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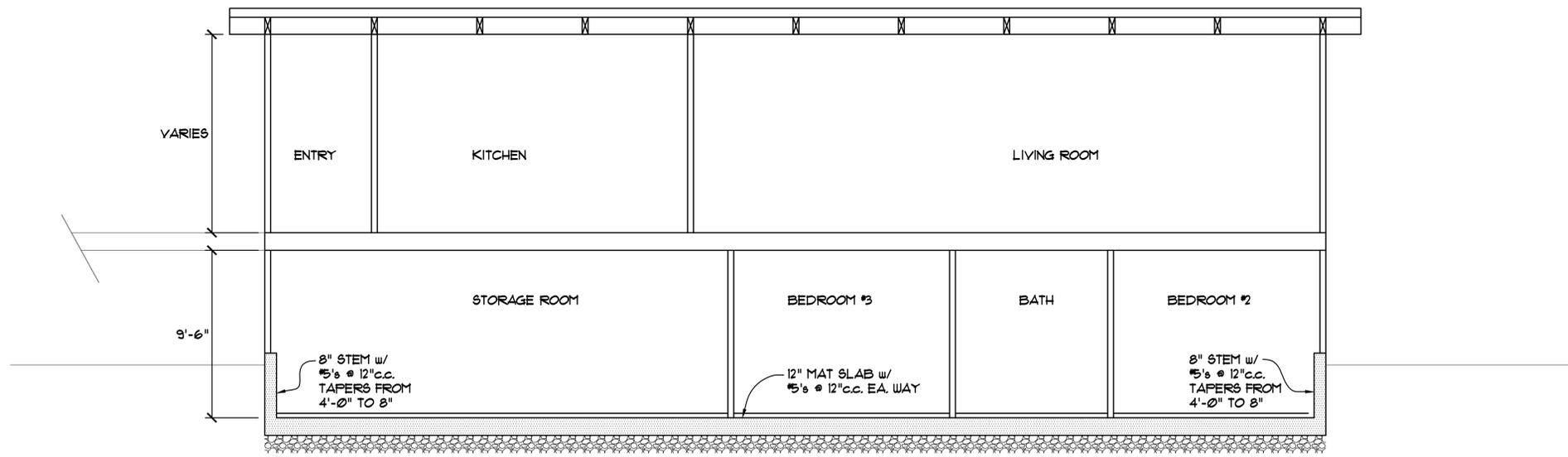
LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P. 313.615.9400  
newmanli26@gmail.com



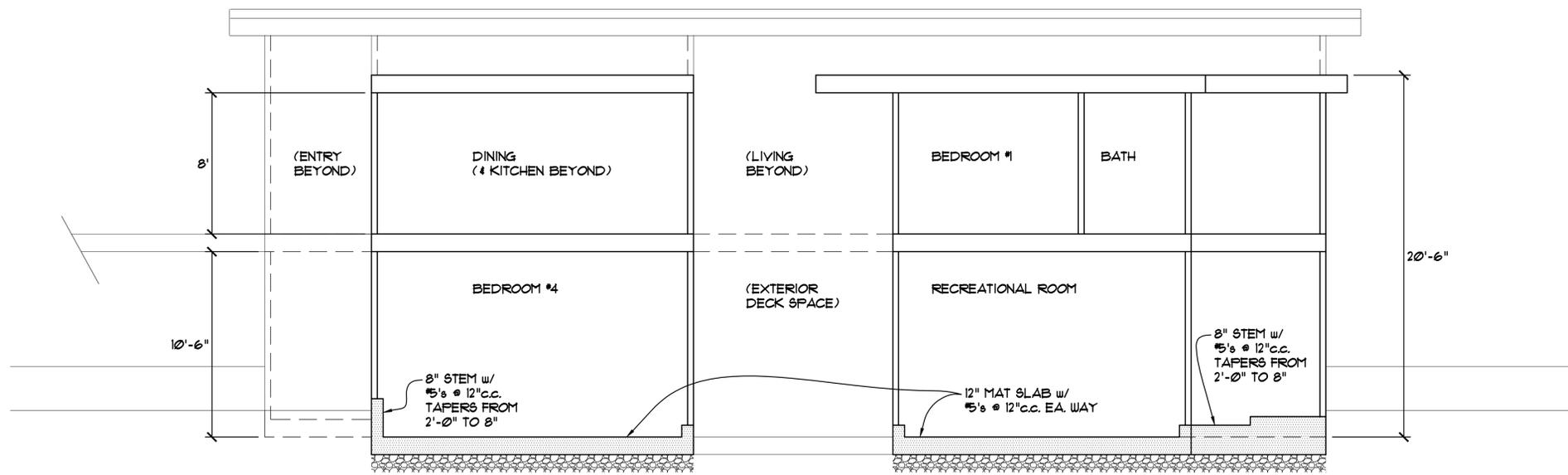
NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
PROPOSED NORTH & SOUTH  
ELEVATIONS (& PARTIAL E/W)

DATE: 12/09/24  
JOB NO: LN-1048  
SCALE: 1/4" = 1'-0"  
DRAWN: LN



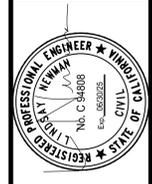
PROPOSED LONGITUDINAL SECTION @ MAIN HOUSE - NORTH TO SOUTH



PROPOSED LONGITUDINAL SECTION @ POP-OUTS - NORTH TO SOUTH

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LINDSAY NEWMAN, PE  
 CIVIL ENGINEER  
 P. 313.615.9400  
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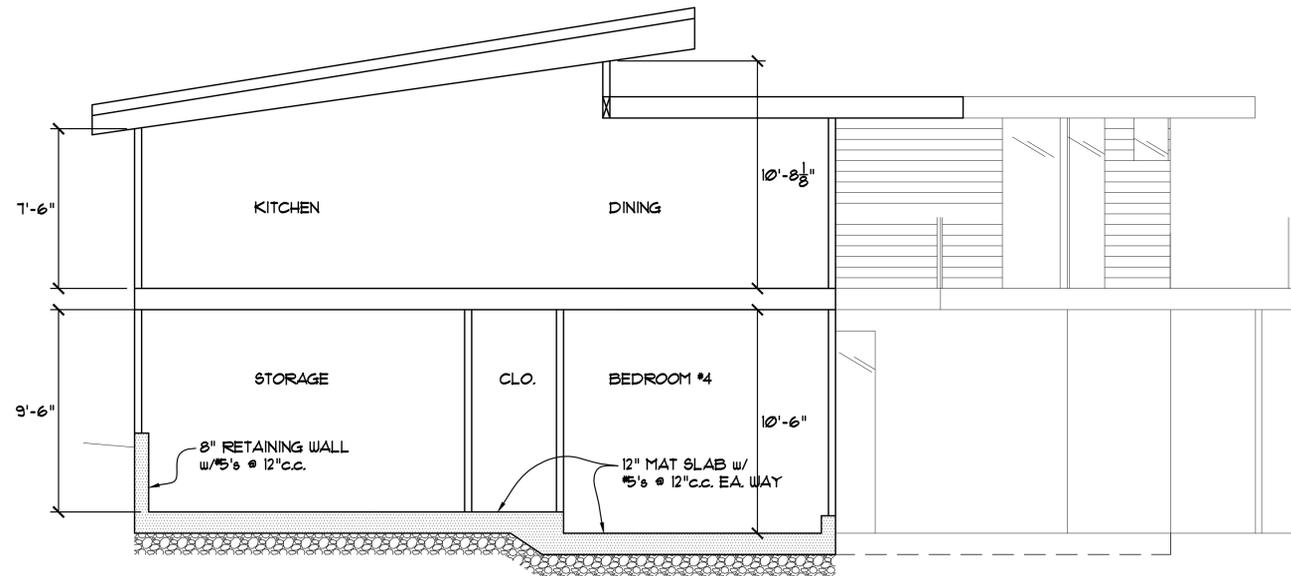


NEW SINGLE-FAMILY RESIDENCE  
 1048 KEITH AVENUE  
 BERKELEY, CA 94708

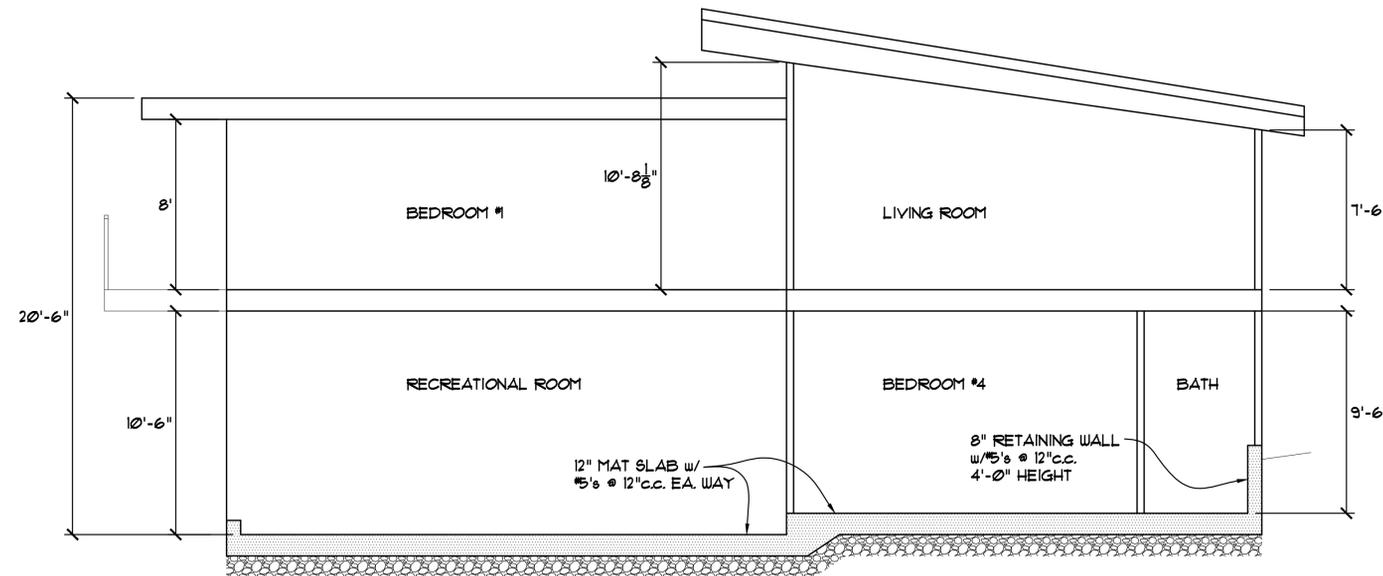
USE PERMIT PLANS - 1048 KEITH  
 PROPOSED LONGITUDINAL  
 SECTIONS

DATE: 12.09.24  
 JOB NO: LN-1048  
 SCALE: 1/4"=1'-0"  
 DRAWN: LN

A10  
 OF 18 SHEETS



PROPOSED SECTION - EAST WEST @ DINING



PROPOSED SECTION - EAST WEST @ BEDROOM #1

| REVISIONS | BY |
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LINDSAY NEWMAN, PE  
 CIVIL ENGINEER  
 P. 313.615.9400  
 newmanli26@gmail.com

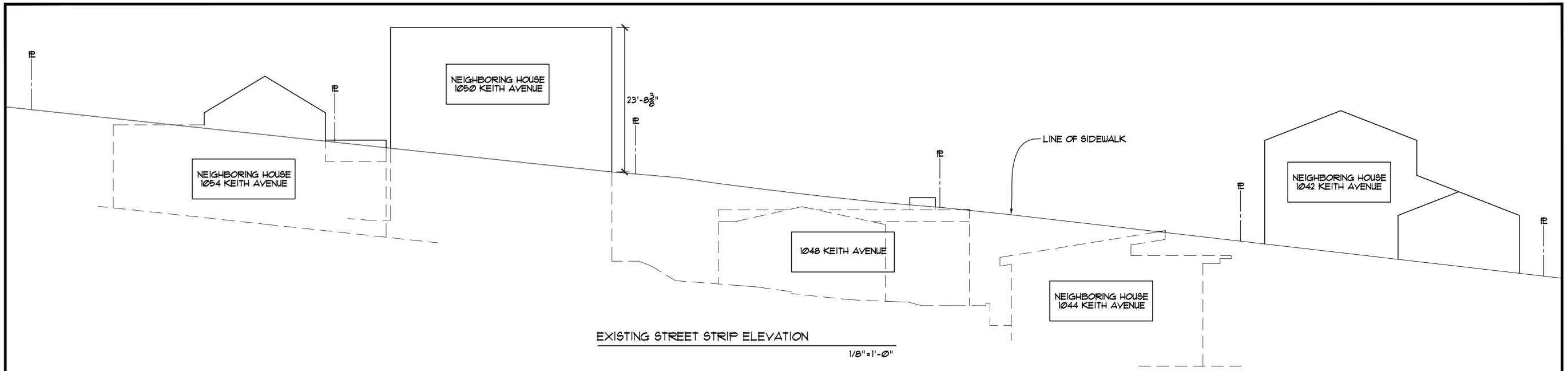


NEW SINGLE-FAMILY RESIDENCE  
 1048 KEITH AVENUE  
 BERKELEY, CA 94708

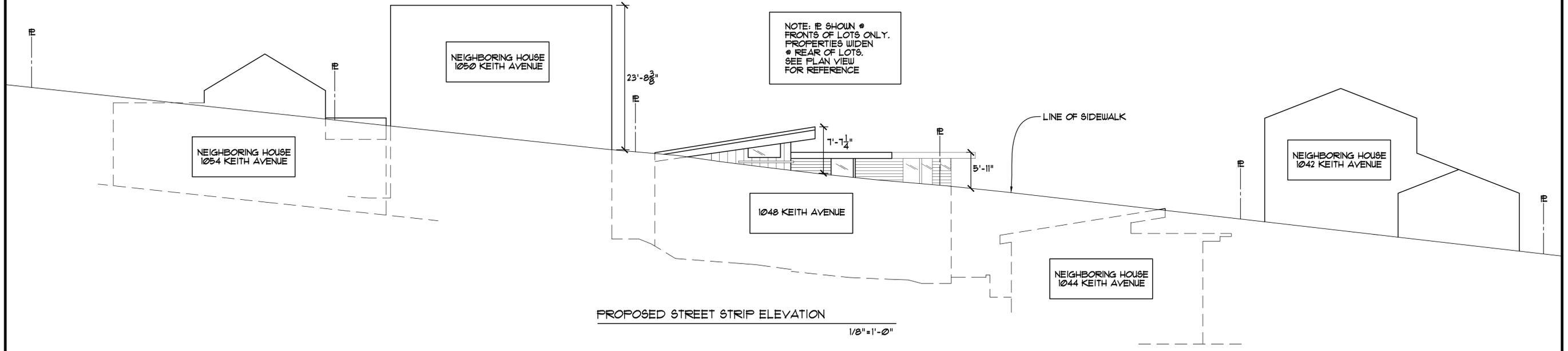
USE PERMIT PLANS - 1048 KEITH  
 PROPOSED EAST WEST SECTIONS

DATE: 12/09/24  
 JOB NO: LN-1048  
 SCALE: 1/4"=1'-0"  
 DRAWN: LN

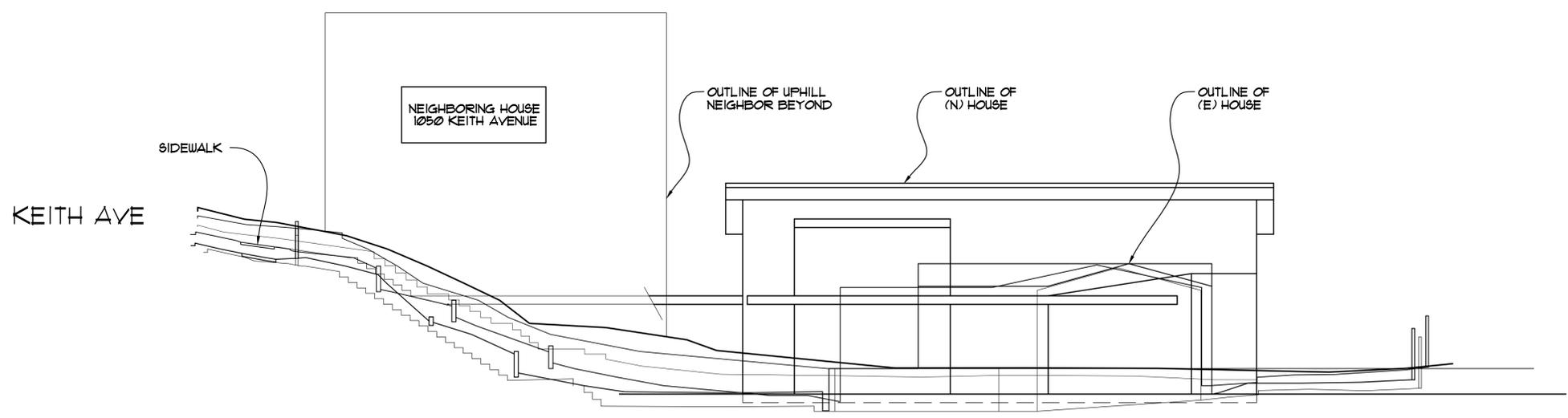
A11  
 OF 18 SHEETS



EXISTING STREET STRIP ELEVATION  
1/8"=1'-0"



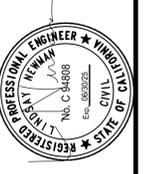
PROPOSED STREET STRIP ELEVATION  
1/8"=1'-0"



COMPILATION OF NORTH-SOUTH SECTIONS WITH UPHILL NEIGHBOR  
1/8"=1'-0"

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LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P. 313.615.9400  
newmanli26@gmail.com



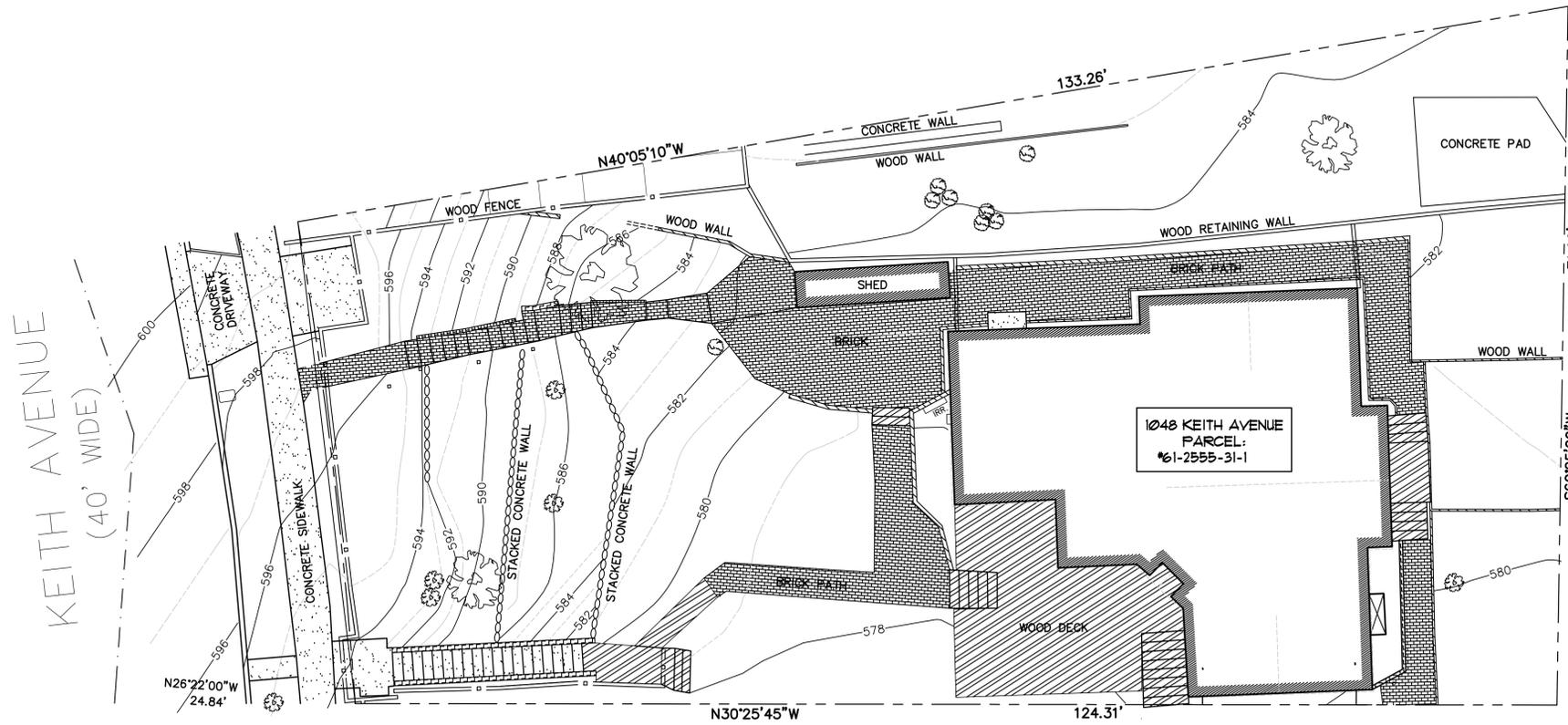
NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
STREET STRIP ELEVATIONS &  
N-S SURVEY SECTION CUT

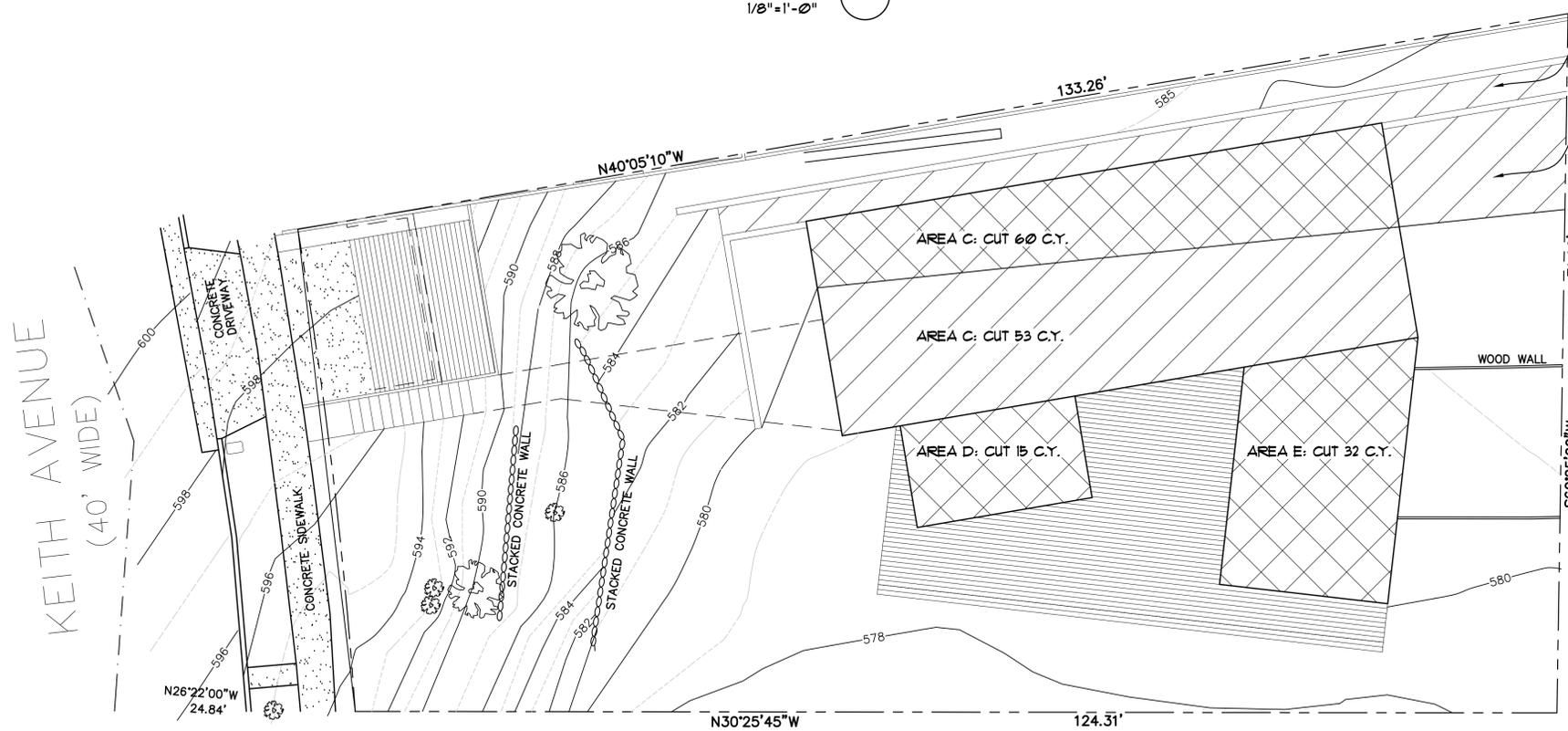
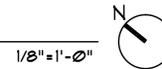
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JOB NO: LN-1048  
SCALE: 1/4"=1'-0"  
DRAWN: LN

A12  
OF 18 SHEETS

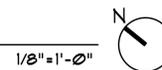




EXISTING GRADING PLAN



PROPOSED GRADING PLAN



AREA A: CUT 48 C.Y.

AREA B: CUT 20 C.Y.

NOTE: FOR ELEVATION VIEW OF CUTS, SEE A6

TOTAL CUT: 228 C.Y.

REVISIONS BY

LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P. 313.615.9400  
newmanliz26@gmail.com



NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
GRADING PLAN

DATE: 12/09/24  
JOB NO: LN-1048  
SCALE: 1/4"=1'-0"  
DRAWN: LN

A14

OF 18 SHEETS

| POLE | BASE GRADE ELEVATION | PROPOSED MAX. ELEV. | STORY POLE HT. FROM B.G. ELEV. |
|------|----------------------|---------------------|--------------------------------|
| 1    | 583.91'              | 598.62'             | 14.65'                         |
| 2    | 582.28'              | 598.62'/602.12'     | 16.34'/19.84'                  |
| 3    | 578.9'               | 598.62'             | 19.72'                         |
| 4    | 592.5'               | 598.62'             | 6.12'                          |
| 5    | 594.25'              | 598.62'/602.12'     | 4.37'/7.87'                    |
| 6    | 593.25'              | 598.62'/602.12'     | 5.37'/8.87'                    |
| 7    | 593.75'              | 598.62'             | 4.87'                          |
| 8    | 578.32'              | 598.62'             | 20.3'                          |
| 9    | 579.52'              | 598.62'/602.12'     | 19.1'/22.6'                    |
| 10   | 579.16'              | 602.12'             | 22.96'                         |
| 11   | 584.66'              | 598.62'             | 13.96'                         |
| 12   | 578.7'               | 589.62'             | 10.92'                         |
| 13   | 578.24'              | 589.62'             | 11.38'                         |

STORY POLE HEIGHT AND LOCATION CERTIFICATION

**Instructions:** The Story Pole Height and Location Certification and Story Pole Data Table must be executed by a registered land surveyor, architect, or civil engineer, directly on a copy of the Story Pole Plan. The completed certification must be submitted to the City prior to the application being deemed complete by staff.

**Required Certification Statement:**

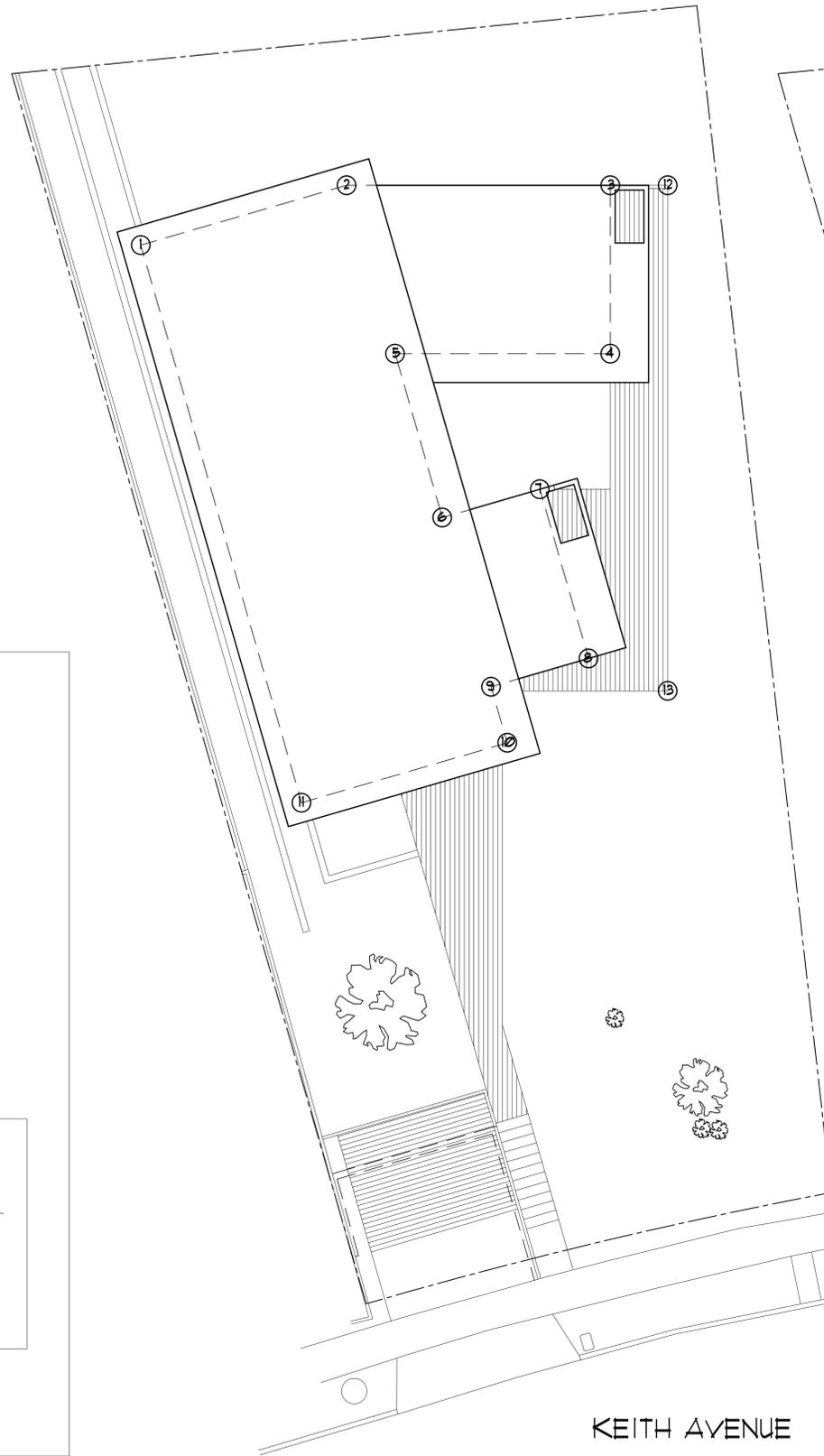
I hereby certify that the story poles located on the referenced site were constructed under my supervision and survey, and the story poles are in conformance with the design, height, and location as shown on the story pole plan. I further certify that 1) the story pole identification numbers, 2) story pole location base grade elevations, 3) story pole heights, and 4) the proposed maximum height elevations are true and correct. I acknowledge and understand that the required project story poles are for the purpose of informing the owner, architect, designer, City staff, Zoning Adjustments Board, and the public as to the accurate location and exterior dimensions of the proposed structure or addition.

*L. Newman*  
 Signature of Architect, Registered Land Surveyor, or Civil Engineer

LINDSAY NEWMAN, PE  
 Name (Printed or typed)

C-94808 / 06.30.2025  
 License No./ Expiration Date

8.21.2024  
 Date



STORY POLE PLAN (PROPOSED HOUSE ONLY)

1/8"=1'-0"



STORY POLE PLAN (SHOWN OVER EXISTING)

1/8"=1'-0"



REVISIONS BY

LINDSAY NEWMAN, PE  
 CIVIL ENGINEER  
 P. 313.615.9400  
 newmanli26@gmail.com



NEW SINGLE-FAMILY RESIDENCE  
 1048 KEITH AVENUE  
 BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
 STORY POLE PLAN

DATE: 12/29/24

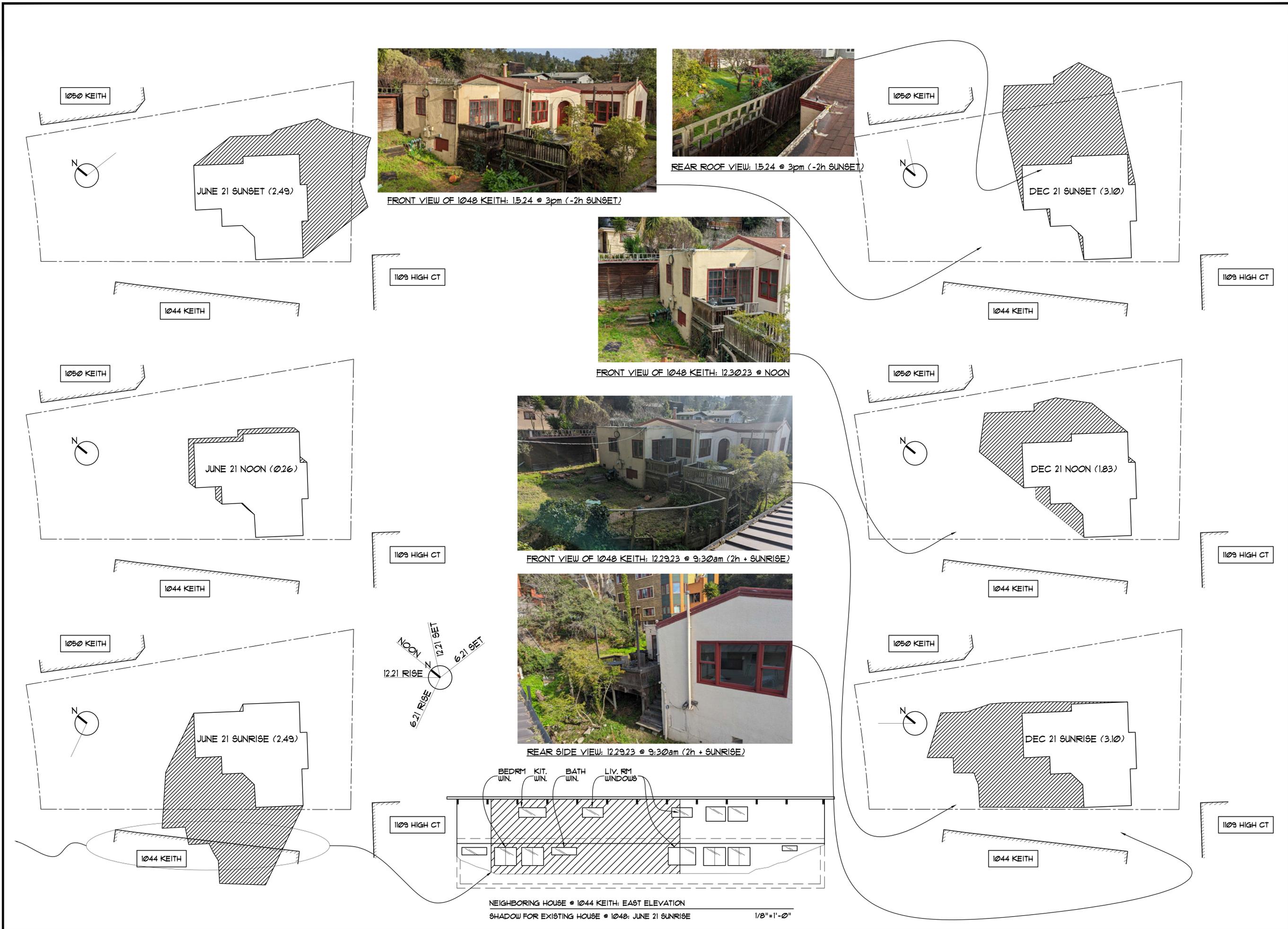
JOB NO: LN-1048

SCALE: 1/4"=1'-0"

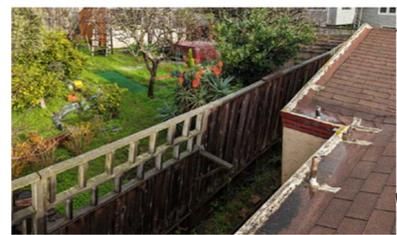
DRAWN:LN

A15

OF 18 SHEETS



FRONT VIEW OF 1048 KEITH: 15.24 @ 3pm (-2h SUNSET)



REAR ROOF VIEW: 15.24 @ 3pm (-2h SUNSET)



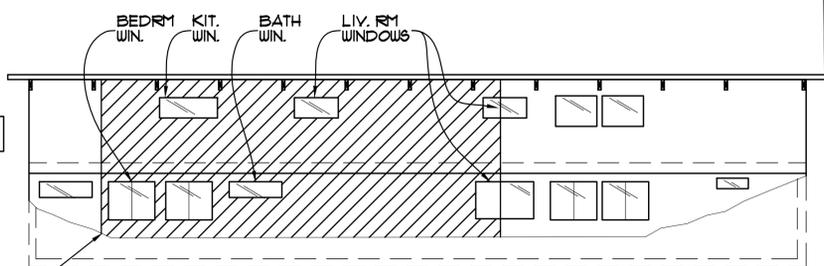
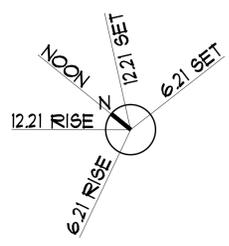
FRONT VIEW OF 1048 KEITH: 12.30 @ NOON



FRONT VIEW OF 1048 KEITH: 12.29.23 @ 9:30am (2h + SUNRISE)



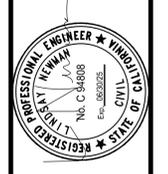
REAR SIDE VIEW: 12.29.23 @ 9:30am (2h + SUNRISE)



NEIGHBORING HOUSE @ 1044 KEITH: EAST ELEVATION  
SHADOW FOR EXISTING HOUSE @ 1048: JUNE 21 SUNRISE 1/8"=1'-0"

| REVISIONS | BY |
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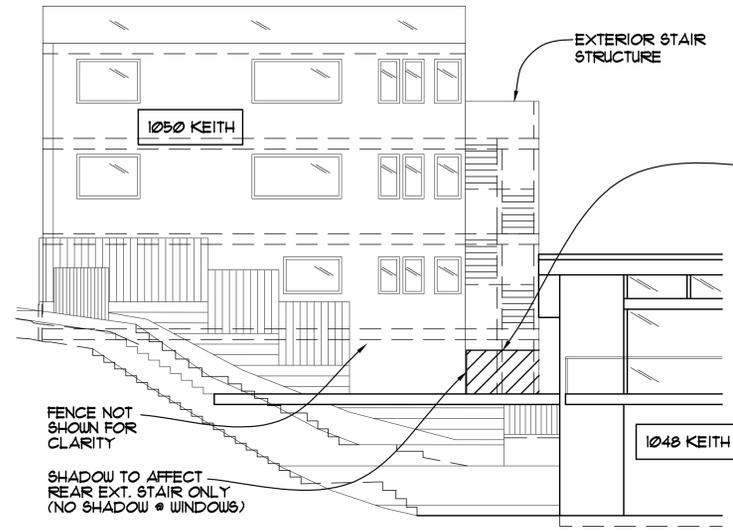
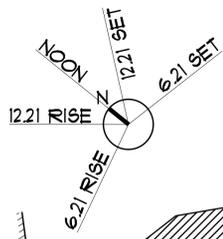
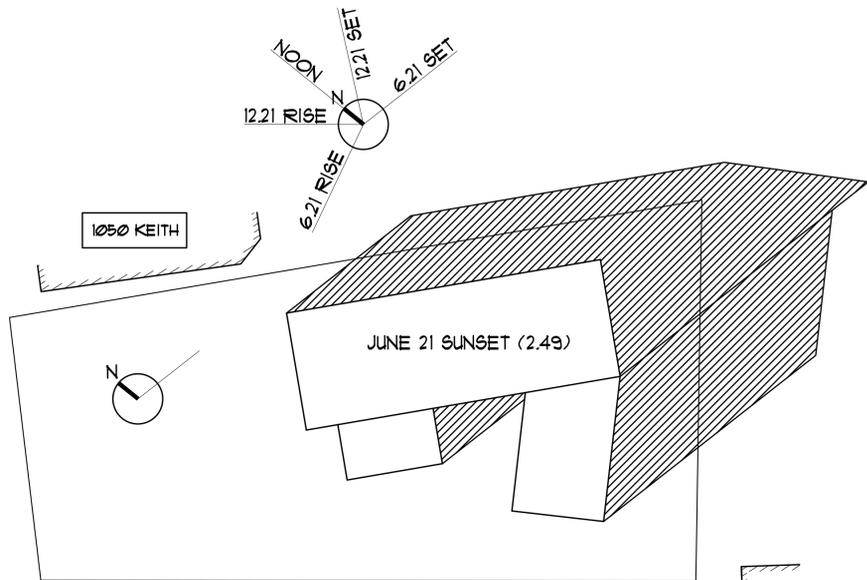


NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

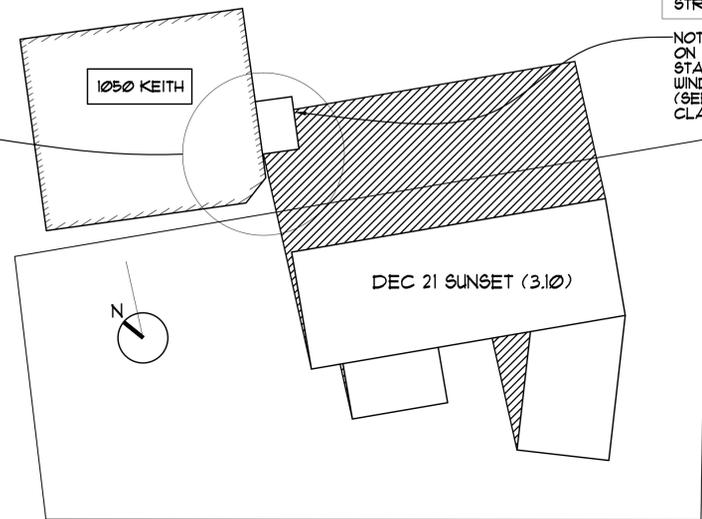
USE PERMIT PLANS - 1048 KEITH  
SHADOW STUDY OF EXISTING  
DWELLING @ 1048 KEITH AVE

DATE: 12.09.24  
JOB NO: LN-1048  
SCALE: 1/16"=1'-0"  
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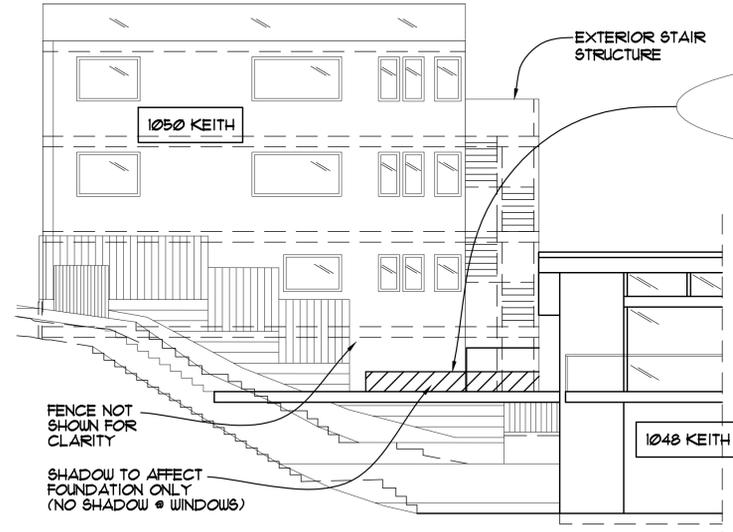
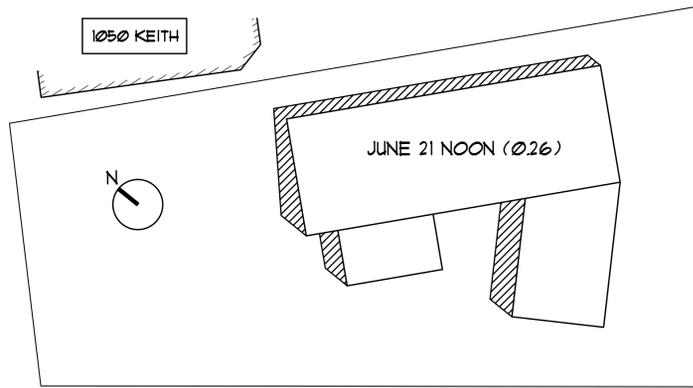
A16  
OF 18 SHEETS  
Page 189



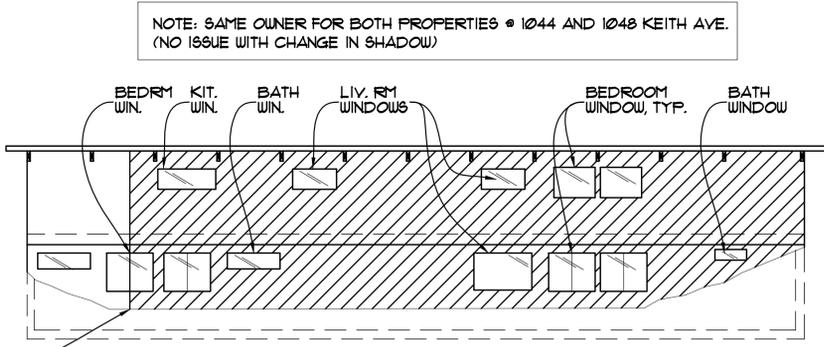
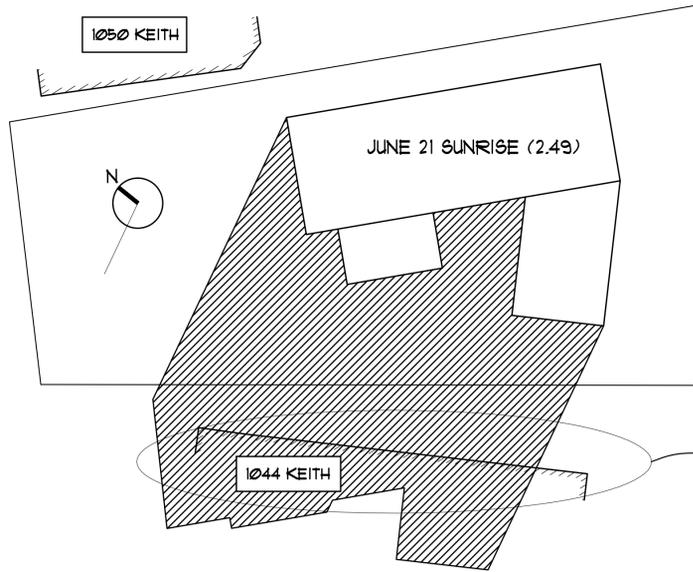
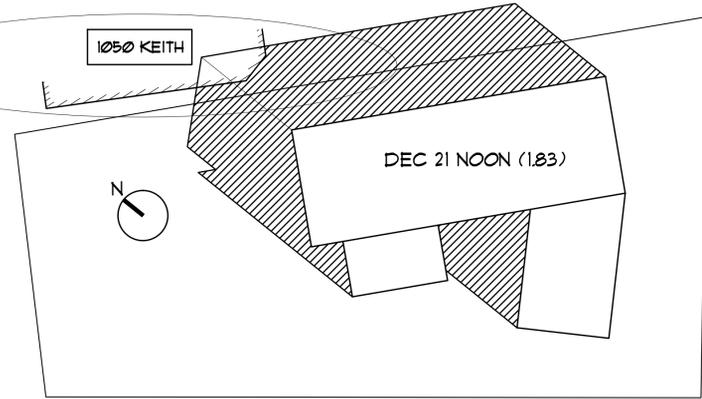
NEIGHBORING HOUSE • 1050 KEITH: WEST ELEVATION  
SHADOW FOR PROPOSED HOUSE • 1048: DEC 21 SUNSET 1/8"=1'-0"



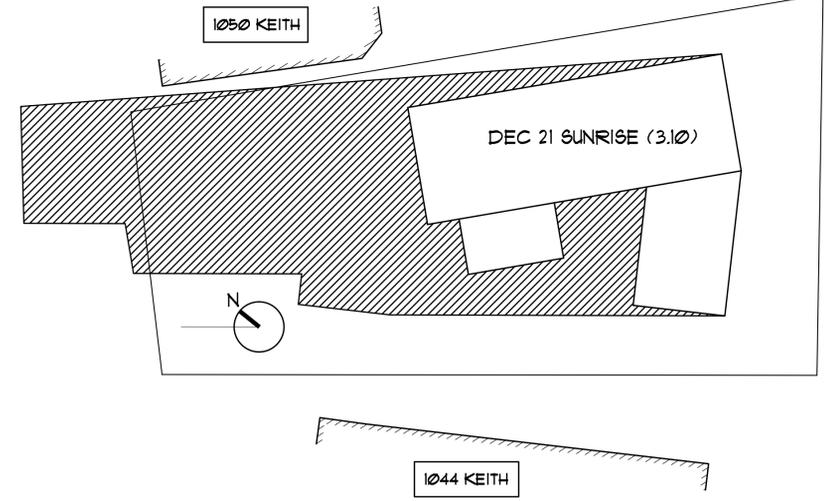
NOTE THAT GRADE IS SLOPING UPWARDS PER ELEVATIONS 4 STREET STRIP VIEWS  
NOTE: SHADOW CAST ON EXTERIOR OPEN STAIR ONLY. NO WINDOWS AFFECTED. (SEE ELEVATION FOR CLARITY)



NEIGHBORING HOUSE • 1050 KEITH: WEST ELEVATION  
SHADOW FOR PROPOSED HOUSE • 1048: DEC 21 NOON 1/8"=1'-0"

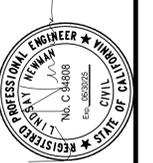


NEIGHBORING HOUSE • 1044 KEITH: EAST ELEVATION  
SHADOW FOR PROPOSED HOUSE • 1048: JUNE 21 SUNRISE 1/8"=1'-0"



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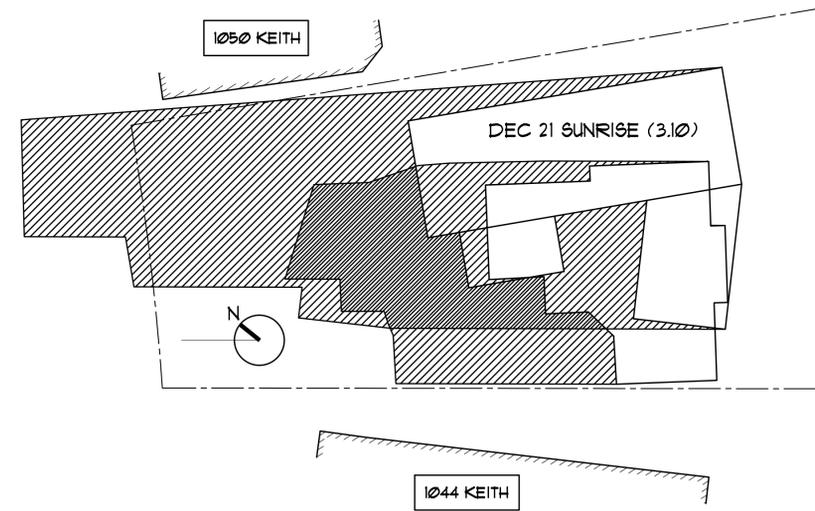
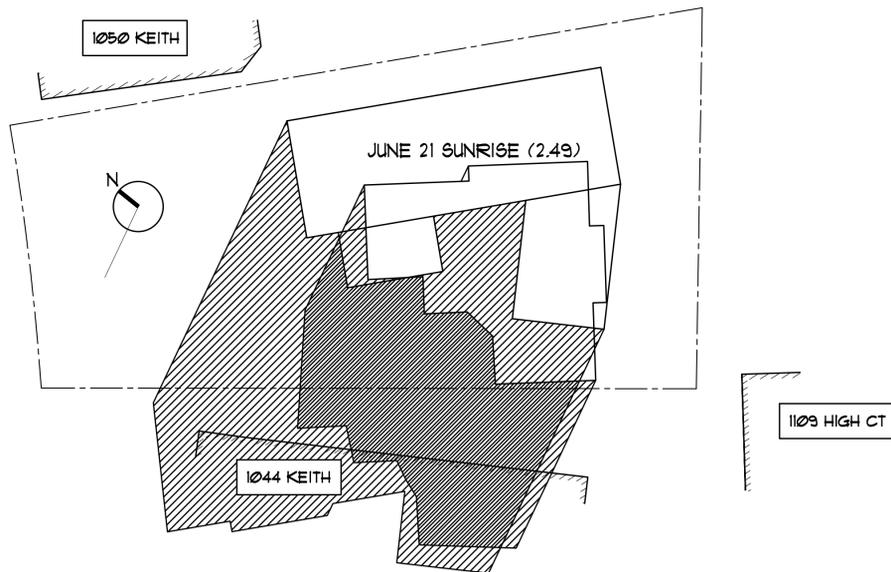
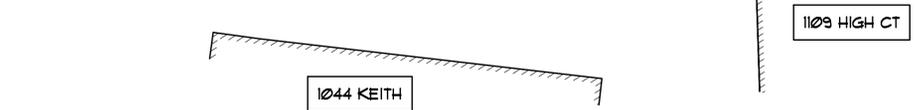
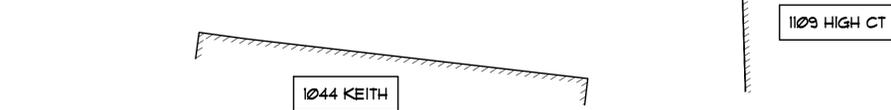
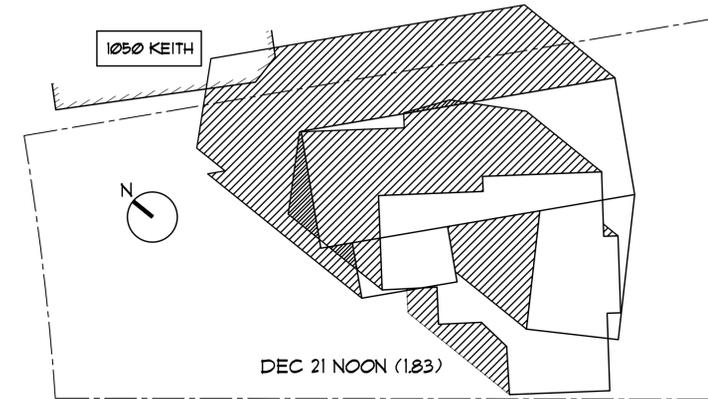
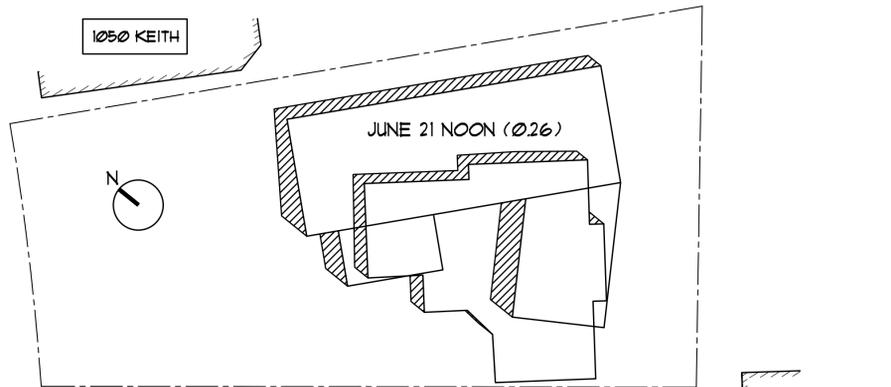
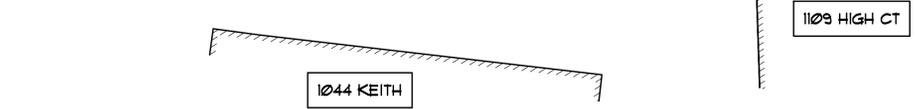
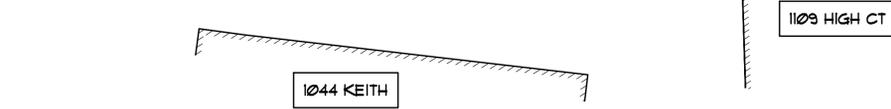
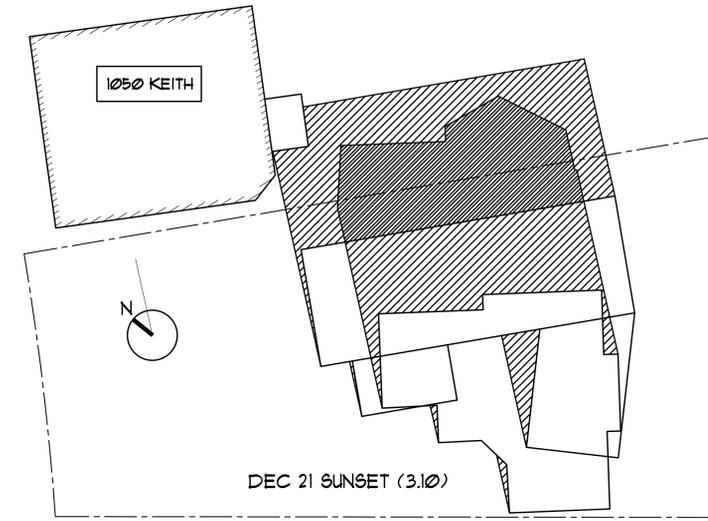
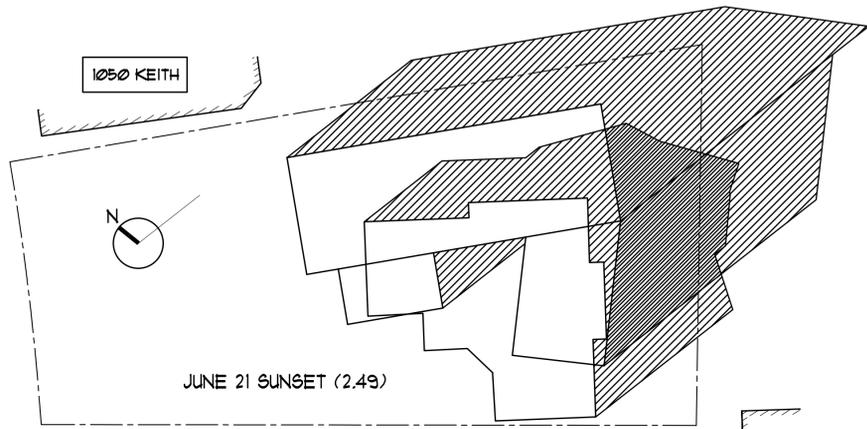
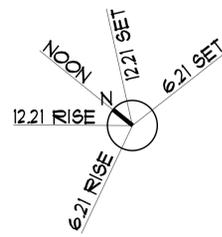
LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P. 313.615.9400  
newmanl26@gmail.com



NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
SHADOW STUDY OF PROPOSED  
DWELLING @ 1048 KEITH AVE

DATE: 12.09.24  
JOB NO: LN-1048  
SCALE: 1/4"=1'-0"  
DRAWN: LN



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LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P. 313.615.9400  
newmanl26@gmail.com



NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
SHADOW STUDY OF EXISTING  
& PROPOSED DWELLING

DATE: 12/09/24  
JOB NO: LN-1048  
SCALE: 1/4"=1'-0"  
DRAWN: LN

A18  
OF 18 SHEETS

CITY OF BERKELEY - CITY CLERK  
2025 JAN 27 AM 9:37

**To:** The Mayor and City Council Members  
**c/o:** City Clerk – 1947 Center Street, 3<sup>rd</sup> Floor, Berkeley, CA 94704

**Re:** 1048 Keith Avenue Use Permit ZP#2024-0014  
**Appeals Letter:** 1050 Keith Ave. & Neighboring homeowners  
**Date:** 01/25/2025

Dear Mayor and City of Berkeley Councilmembers,

We are writing to appeal Zoning Adjustments Board's Notice of Decision approving the new home to be built at 1048 Keith Avenue because the lot line adjustment made under this use permit encroaches on me, the uphill neighbor at 1050 Keith Avenue, and impacts 12 other homes up to Euclid Avenue and multiple homes on High Court, the backyard neighbors to 1048 Keith. This is a serious legal error, setting an unparalleled precedent for Berkeley, while a quiet deed lawsuit and mediation are in effect to resolve the underlying property dispute.

We have listed points of concern that need to be mitigated (with your help) for a fair and reasonable lot line adjustment around the immediate applicant's address to amicably mediate and resolve the issue, rather than forcing the hardship indefinitely to a domino effect across properties in the block and public right of ways. The current approved use permit will impose a multiple class action lawsuit amongst neighbors that could be prevented by the City, were it to set an equitable path, using the deeded square footages for each immediate property.

We have no objection to the proposed building itself, but to its location. Simply put, the applicants appear to be attempting to build partially on 1050 Keith property, based on nothing more than a survey with a disclaimer stating that the accuracy of the survey due to significant landslide motion in this area to be 5-feet or more. Thereafter, the applicant obtained in Moran's supplemental October 2024 supplemental survey, it reports that the street monument's accuracy is within 1". On January 14, 2025, Transit Land Surveying hired by me (1050 Keith) also confirmed the accuracy of the street monuments, but refused to do a survey because of the inability to accurately identify the neighboring property boundaries, as coordinates carried to the backyard start to go through the home at 1054 Keith and so on.

**Below is a list of concerns from the neighboring community to consider:**

1. The applicant of use permit ZP#2024-0014 for the property at 1048 Keith Avenue completed a preliminary historical land survey that resulted in an encroachment of approximately 20 feet into my property at 1050 Keith Avenue. That encroachment reduces the 1050 Keith Avenue deeded property width of 65 feet to 39 feet. Please note that 1050 Keith Avenue currently measures at a width of 61 feet to provide the 1054 Keith Avenue neighbor proper access around their home. In 2001 we at 1050 Keith Avenue, understood and honored the arrangement due to the ongoing landslide

conditions for this and adjacent properties. Many land survey companies do not survey properties in the Berkeley Hills due to the landslides and inaccuracies of data. We finally contracted Transit Land Surveying to survey our property at 1050 Keith Avenue. After about 4 hours of work, Transit Land Surveying decided not to complete the survey due to the shifting lot line that would run directly through the neighboring home at 1054 Keith Avenue. (Note: While the applicant used the Moran Engineering survey to absorb 20 feet of uphill property at 1050 Keith, it claims that the survey is not accurate enough to provide the land identified by the survey as 1111 High Court's property on 1048's side of the historic fence, even though it is this land that the City is using for the setback required from 1111 High Court. To be clear, the applicant uses the survey to take land uphill but refuses to use the survey to cede land to their backyard neighbor, claiming the disclaimer in the survey makes it to inaccurate to do so.)

2. Consequently, use permit ZP#2024-0014 forces the lot-line adjustment to be carried over to the property of 1054 Keith Avenue by a similar distance that will then go right through the house of that property. Applying the same methodology at the property of 1060 Keith Avenue, the lot line adjustment runs straight through the middle of the permitted structure. On the corner of Keith and Euclid Avenue, at the address 1060 Euclid Avenue, the lot line adjustment will run through the center of the street, Euclid Avenue.

3. I visited Moran Engineering which completed the survey for 1048 Keith Avenue and they stated that completion of a surrounding homes boundary alignment is crucial for equitable lot line adjustments. Moran Eng. was going to investigate with a boundary subject matter expert retired colleague for more detailed verification process for boundaries. I am awaiting this information.

4. It is of great concern that the Zoning Adjustments Board disregarded the letters and opposition from immediately affected neighbors. By not promoting proper boundary adjustments to be made amicably, all immediate neighbors on Keith Avenue and High Court are forced to settle property line disputes locally, creating inconsistent and uneven resolutions amongst the neighbors. (Note: Commissioner Todd Jersey voted to abstain, noting that 1048 Keith bought themselves the issues they are facing by not staying within the stamp of the prior house at Keith.)

5. The proposed building design of the property at 1048 Keith Avenue is to demolish and relocate their existing structure into the disputed area. The new construction would then be over the present sewer line and storm drainage for 1050 Keith Avenue, with no relocation shown or planned for in the documents. A mediation for the disputed area between 1048 Keith Avenue and 1050 Keith Avenue is scheduled for 3/25/25.

6. The applicant of use permit ZP#2024-0014 stopped talking to us in March of 2024 and unilaterally demolished our shared fence on 3/6/24. The fence was built in 2001 with the location having been agreed upon between Mr. Peter Berk, the previous owner of 1048 Keith Avenue and us. Thereafter, the applicant of use permit ZP#2024-0014 proceeded to demolish existing structures of 1050 Keith Avenue on the disputed

property. The demolished structures include my sons' animal Sanctuary, as well as our deceased animal tombstones, and numerous plants and fruit trees ranging from 15 to 40 plus years old. To this date, daily trespassing and the intimidation of my family continues. Video footage of digging on our beloved pet graves for over a year. Notably, on Christmas day the applicant was intentionally digging over our family beloved pet graves to further inflict pain and sorrow which brought tears to my wife and younger son. As well as a destructive handling of an over-40-year-old apple tree on new year's Eve that were both reported via videos to the Berkeley Police.

With this petition, we ask the City of Berkeley to revise the ZAB's decision and make property line adjustments based on deeded square footage for immediate adjacent properties to settle the issue within a few homes around 1048 address rather than pushing the hardship and uncertainties throughout the community indefinitely.

Best Regards,

Bahram Gangei and affected neighbors at:

1064, 1062, 1060, 1058, 1056, 1054, 1050, 1044, 1042 Keith Avenue

1105, 1109, 1111, 1113, 1117, 1119, 1137 High Court & 1060 Euclid Ave. AND more neighbor's signed petition with major concerns.

.....

Bahram Gangei

1050 Keith Ave,

Berkeley, CA 94708

Tel (510) 612-5821

bgangei@comcast.net

To, the Mayor and City Council Members  
c/o City Clerk: 2180 Milvia St. Berkeley, CA 94704  
Re: 1048 Keith Avenue Use Permit ZP#2024-0014  
Appeals Letter: 1050 Keith Ave. & Neighboring home owners  
Date: 01/23/2025

| No. | Home Address    | Name             | Date    | Signature |
|-----|-----------------|------------------|---------|-----------|
| 1   | 1053 KEITH AVE  | ROBERT TRON      | 1/25/25 |           |
| 2   | 1053 Keith Ave  | Deborah Russo    | 1/23/25 |           |
| 3   | 1051 Keith Ave  | AARON NEE        | 1/23/25 |           |
| 4   | 1056 KEITH AVE  | GAUTAM JAGANNATH | 1/23/25 |           |
| 5   | 1056 KEITH AVE  | EMILY ABRAHAM    | 1/23/25 |           |
| 6   | 1059 Keith Ave  | Janet Woodhams   | 1/23/25 |           |
| 7   | 1060 Keith Ave  | Mollie Boero     | 1/23/25 |           |
| 8   | 1066 KEITH AVE  | TIM NICHOLS      | 1/23/25 |           |
| 9   | 1066 Keith Ave  | Shannon Nicholls | 1-23-25 |           |
| 10  | 1060 EUCLID AVE | MICHAEL HAROLD   | 1 23 25 |           |
| 11  | 1060 Euclid Ave | Denise Harold    | 1 23 25 |           |
| 12  | 1119 High ct.   | Gary Handman     | 1/23/25 |           |
| 13  | 1119 High ct    | Pam Handman      | 1/23/25 |           |
| 14  | 1113 High ct.   | Ellice Richmond  | 1/23/25 |           |
| 15  | 1113 High ct    | Steve Nani       | 1/23/25 |           |

To, the Mayor and City Council Members  
 c/o City Clerk: 2180 Milvia St. Berkeley, CA 94704  
 Re: 1048 Keith Avenue Use Permit ZP#2024-0014  
 Appeals Letter: 1050 Keith Ave. & Neighboring home owners  
 Date: 1/23/2025

| No. | Home Address                      | Name                           | Date      | Signature        |
|-----|-----------------------------------|--------------------------------|-----------|------------------|
| 16  | 1060 Keith Ave Berkeley CA 94708  | Robert Matthews                | 1/23/25   | R. Matthews      |
| 17  | 1057 Keith Ave                    | Tom Johnston                   | 1/23/25   | Tom Johnston     |
| 18  | 1057 Keith Ave Berkeley CA 94708  | Elisha Guchman                 | 1/23/25   | Elisha Guchman   |
| 19  | 1049 Keith Ave Berkeley           | Hester Sobel                   | 1/23/25   | Hester Sobel     |
| 20  | 1058A Keith Av 94708              | Margit Stange                  | 1/23/25   | M Stange         |
| 21  | 1050 Keith Ave 94708              | Erica Eagle                    | 1/23/25   | Erica Eagle      |
| 22  | 1069 Keith Ave 94708              | Frank Boening                  | 1/24/25   | Frank Boening    |
| 23  | 1058 Keith Berkeley CA 94708      | Anthony Acosta                 | 1/24/25   | Anthony Acosta   |
| 24  | 1051 KEITH BERKELEY CA 94708      | JOHN DOPPE<br>Maureen Bessette | 1/24/2025 | John Doppe       |
| 25  | 1111 High Ct Berkeley CA 94708    | Maureen Bessette               | 1/24/2025 | Maureen Bessette |
| 26  | 1111 High Ct Berkeley CA 94708    | John Orban                     | 1/24/2025 | John Orban       |
| 27  | 1137 High Ct APT A Berkeley 94708 | Melissa Nance                  | 1/25/2025 | Melissa Nance    |
| 28  | 1117 High Ct Berkeley, CA 94708   | Clinton Loo                    | 1/25/2025 | Clinton Loo      |
| 29  | 1117 High Ct Berkeley, CA 94708   | Jessica Lin                    | 1/25/2025 | Jessica Lin      |
| 30  | 1050 Keith Ave Berkeley 94708     | Behram Gungor                  | 1/25/2025 | Behram Gungor    |

To, the Mayor and City Council Members  
 c/o City Clerk: 2180 Milvia St. Berkeley, CA 94704  
 Re: 1048 Keith Avenue Use Permit ZPH2024-0014  
 Appeals Letter: 1050 Keith Ave. & Neighboring home owners  
 Date: 1/23/2025

| No. | Home Address      | Name                            | Date      | Signature          |
|-----|-------------------|---------------------------------|-----------|--------------------|
| 31  | 1054 Keith Avenue | Lee Bridges                     | 1/23/25   | Lee Bridges        |
| 32  | 1054 Keith Avenue | Mark Bridges                    | 1/23/25   | MB                 |
| 33  | 1115 Arch St      | Lee Goodwin                     | 1/26/25   | Lee Goodwin        |
| 34  | 1115 Arch St      | RICHARD SCHWARZMAN              | 1-26-25   | Richard Schwarzman |
| 35  | 1114 Arch St      | MARIE COCCANESE                 | 1/26/25   | Marie Cocanesse    |
| 36  | 1114 Arch St      | MARCOS TARDUCCI<br>Al. Tarducci | 1/26/25   | Al. Tarducci       |
| 37  | 1154 Arch St      | HINDA AURICCHIO                 | 1/26/25   | Hinda Aurichio     |
| 38  | 1156 Arch St      | REIEN PEARCE                    | 1/26/2025 | Reien Pearce       |
| 39  | 1136 Arch St      | Lynn Adler                      | 1/26/25   | Lynn Adler         |
| 40  | 1136 Arch St      | JAMES LOCKER                    | 1/26/25   | James Locker       |
| 41  | 1124 Arch St      | ALEXANDER BRENNEN               | 1/26/25   | Alexander Brennen  |
| 42  | 1124 Arch St      | WENDY NILES                     | 1/26/25   | Wendy Niles        |
| 43  | 1166 Arch St      | Mark Nitzberg                   | 1/26/25   | Mark Nitzberg      |
| 44  | 1105 High Court   | Sarah Valor                     | 1/26/25   | Sarah Valor        |
| 45  | 1105 High Court   | Darrell Valor                   | 1/26/25   | Darrell Valor      |



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

FOR BOARD ACTION  
JANUARY 9, 2025

## 1048 Keith Avenue

Use Permit #ZP2024-0014 to demolish a 2,760-square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600-square-foot single-family dwelling within the rear setback and parking pad in the front setback.

### I. Background

#### A. Land Use Designations:

- General Plan: Low Density Residential (LDR)
- Zoning District: Single-Family Residential – Hillside Overlay (R-1H) District

#### B. Zoning Permits Required:

- Use Permit, pursuant Berkeley Municipal Code (BMC) Section 23.326.030(B)(1) to demolish a dwelling unit
- Use Permit, pursuant to BMC Section 23.202.020(B) to construct a single-family dwelling unit
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C)(4), to reduce the building setbacks in the Hillside Overlay Zone
- Administrative Use Permit, pursuant to BMC Section 23.322.080(E)(2)(b), to allow unenclosed off-street parking within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.070(B) to construct an unenclosed structure (trellis) within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.080(A), to construct a fence more than 6 ft in height on the lot line

#### C. CEQA Recommendation:

It is staff's recommendation to the Zoning Adjustments Board (ZAB) that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of

ZONING ADJUSTMENTS BOARD  
January 9, 2025

1048 KEITH AVENUE  
Page 2 of 16

Regulations, Section 15000, et seq.) pursuant to CEQA Guidelines Section 15303 (“New Construction or Conversion of Small Structures”).

**D. Project Recommendation:**

Approval. The project is, on balance, consistent with the Zoning Ordinance and General Plan.

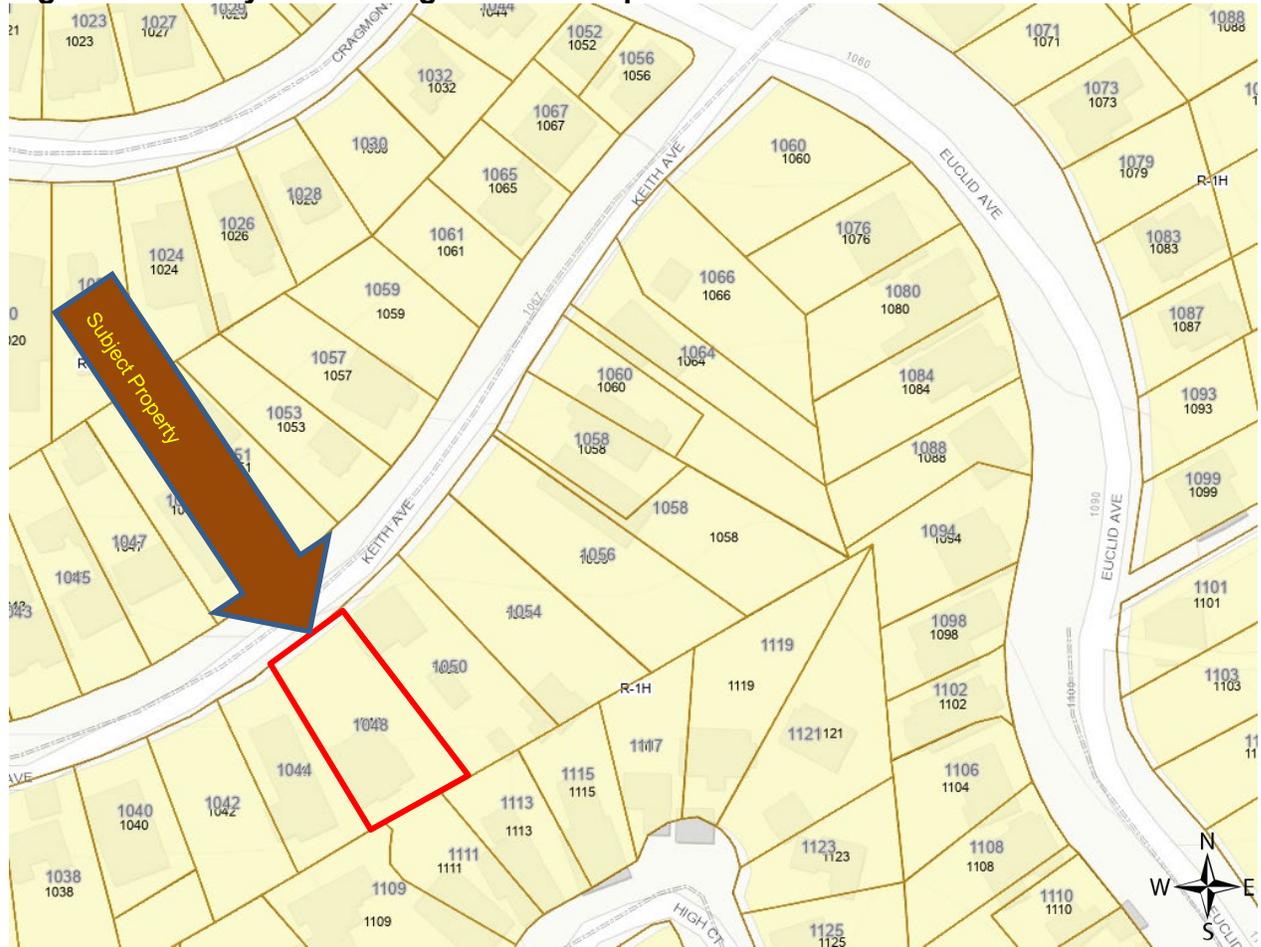
**E. Parties Involved:**

- Applicant/Property Owner: Lindsay Newman, 1048 Keith Avenue, Berkeley, CA, 94708

ZONING ADJUSTMENTS BOARD  
January 9, 2025

1048 KEITH AVENUE  
Page 3 of 16

**Figure 1: Vicinity and Zoning Districts Map**



R-1H = Single-Family Residential – Hillside Overlay (R-1H) District

ZONING ADJUSTMENTS BOARD  
January 9, 2025

1048 KEITH AVENUE  
Page 4 of 16

Figure 2: Site Plan

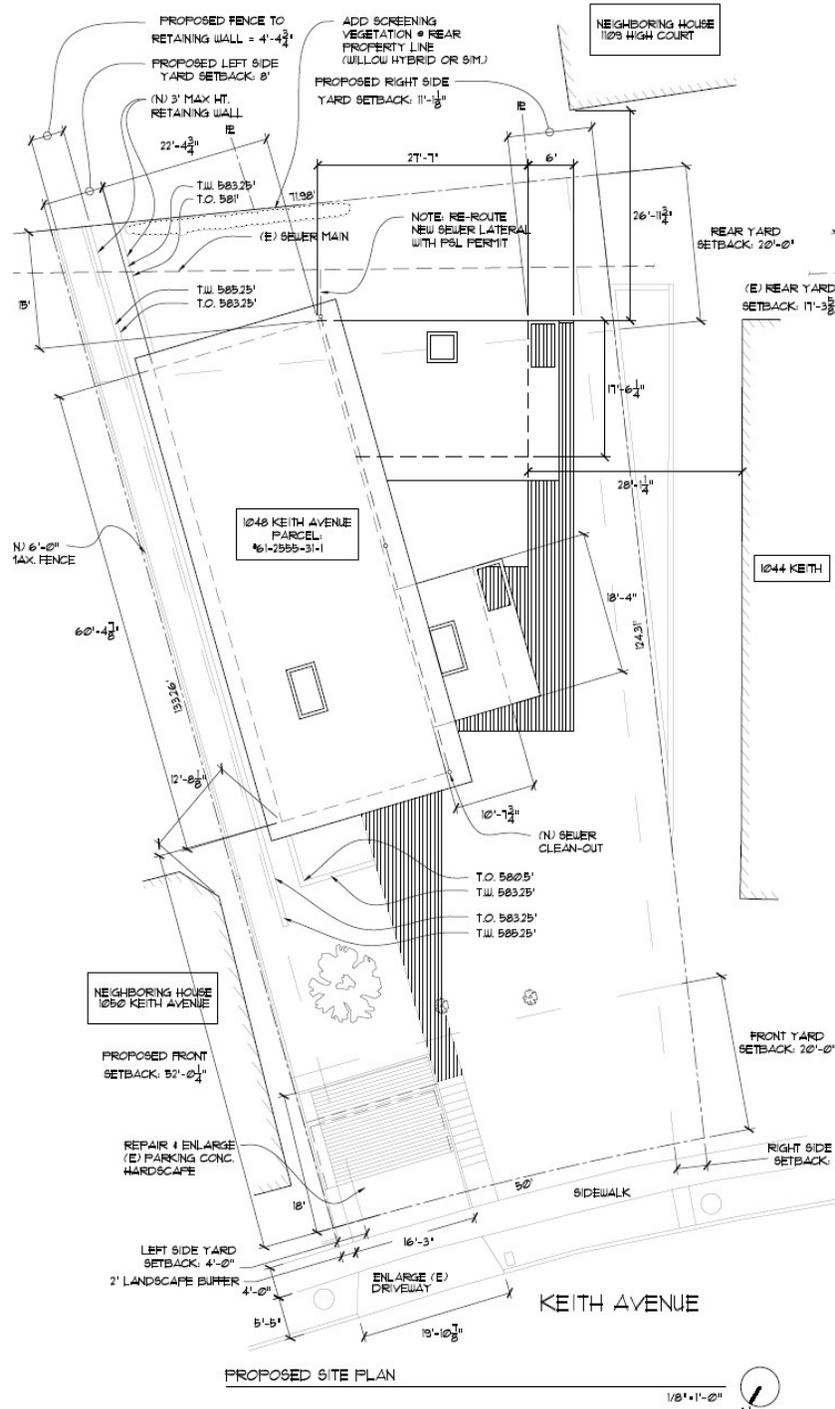
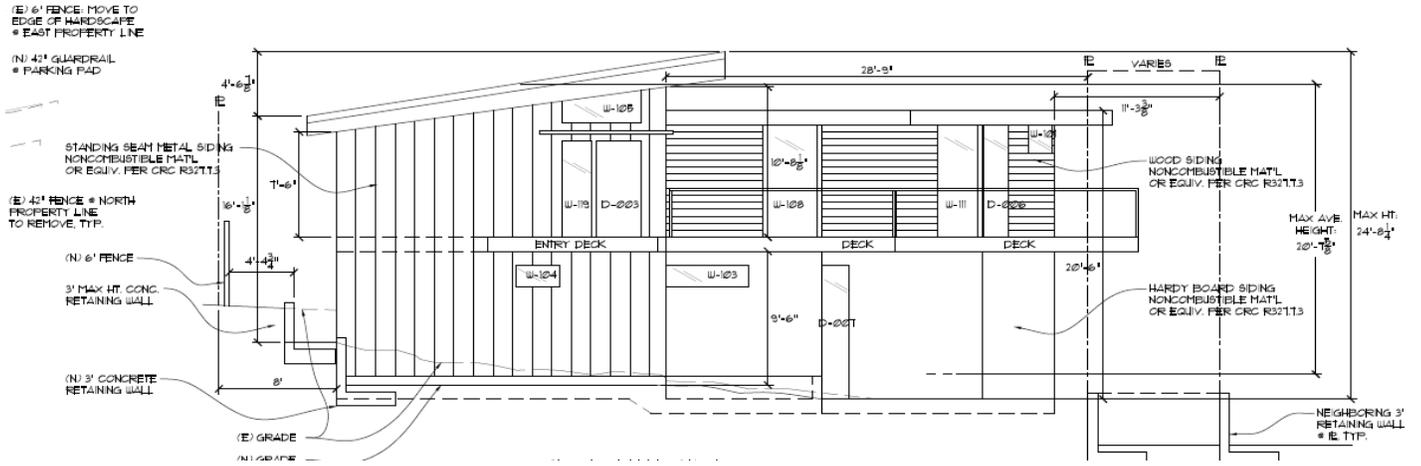
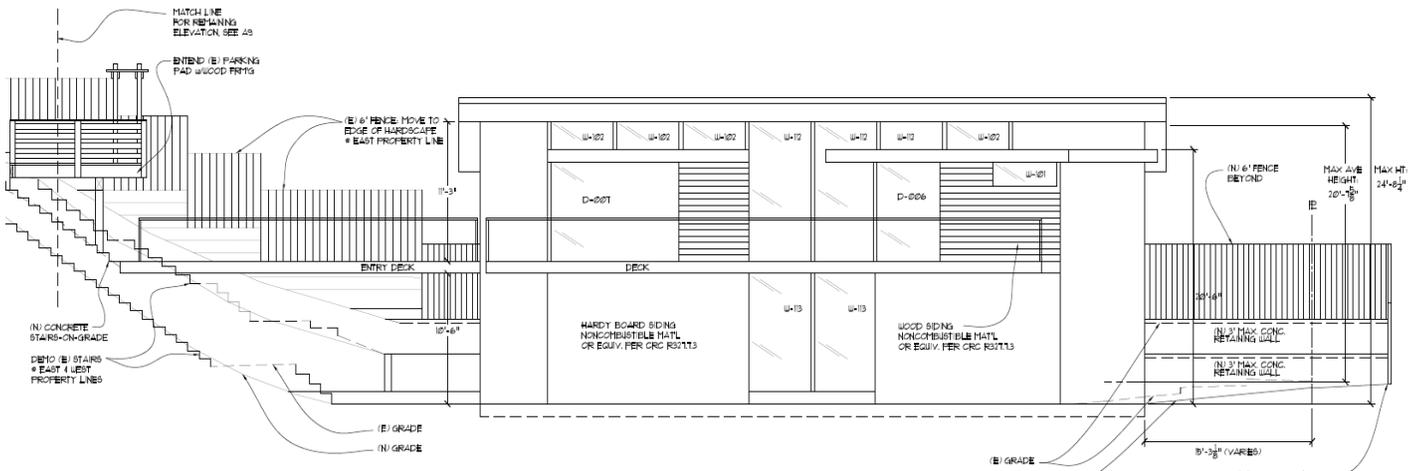


Figure 3: Elevations



Proposed Front (North) Elevation



Proposed Side (West) Elevation

ZONING ADJUSTMENTS BOARD  
January 9, 2025

1048 KEITH AVENUE  
Page 6 of 16

**Table 1: Land Use Information**

| Location               |       | Existing Use             | Zoning District                                              | General Plan Designation      |
|------------------------|-------|--------------------------|--------------------------------------------------------------|-------------------------------|
| Subject Property       |       | Single Family Residences | Single-Family Residential – Hillside Overlay District (R-1H) | Low Density Residential (LDR) |
| Surrounding Properties | North |                          |                                                              |                               |
|                        | South |                          |                                                              |                               |
|                        | East  |                          |                                                              |                               |
|                        | West  |                          |                                                              |                               |

**Table 2: Special Characteristics**

| Characteristic                                                                          | Applicability | Explanation                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------------------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Affordable Housing Fee for qualifying non-residential projects (Resolution 66,617-N.S.) | No            | These fees apply to projects with net new non-residential floor area over 7,500 square feet. The project only proposes new residential floor area; therefore, these requirements do not apply.                                                                                                                                     |
| Affordable / Inclusionary Housing Requirements (BMC Chapter 23.328)                     | No            | The proposed project is a housing development project, as defined in BMC 23.328.020(E), <sup>6</sup> would provide less than 5,000 square feet of residential unit floor area, and is not part of a larger housing development project. Therefore, this project is exempt from the inclusionary housing provisions.                |
| 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                                                                           | No            | The project does not utilize a density bonus.                                                                                                                                                                                                                                                                                      |
| Historic Resources                                                                      | No            | The project would demolish an existing residential building that is greater than 40 years old. An historic resource evaluation was prepared by Mark Hulbert on January 5, 2021 and was revised on April 10, 2024, which concludes that this property is not eligible for listing in the California Register of Historic Resources. |
| Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))                        | No            | The project does not meet the definition of a "Housing Development Project" per Government Code Section 65589.5(h) (2) <sup>b</sup> . The project proposes to construct one dwelling; therefore, the Housing Accountability Act does not apply.                                                                                    |
| Housing Crisis Act of 2019 (SB 330)                                                     | Yes           | The project proposes only one dwelling unit and is not considered a "housing development project" <sup>7</sup> ; therefore SB 330 does not apply.                                                                                                                                                                                  |

ZONING ADJUSTMENTS BOARD  
January 9, 2025

1048 KEITH AVENUE  
Page 7 of 16

| Characteristic                      | Applicability | Explanation                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Rent Controlled Units               | No            | There are no rent-controlled units at the site, nor would the new dwelling unit be subject to rent control restrictions.                                                                                                                                                                                                                                                                                     |
| Residential Preferred Parking (RPP) | No            | The site is not located in an RPP zone. Should an RPP zone be established in the future, the project is not eligible for RPP permits per BMC Section 14.72.080(C)(1) as no permits shall be issued to residents in a newly constructed residential unit.                                                                                                                                                     |
| Seismic Hazards (SHMA)              | Yes           | The site is located within an area susceptible to liquefaction, Fault Rupture, or Landslides as shown on the State Seismic Hazard Zones map <sup>8</sup> . A geotechnical report prepared by Rutherford + Keene (October 30, 2017) was submitted by the applicant, however, the project is exempt from this requirement because it includes the construction of one, two-story, single-family dwelling unit. |
| Soil/Groundwater Contamination      | No            | The project site is not listed on the Cortese List <sup>9</sup> , nor is it within the City's Environmental Management Area.                                                                                                                                                                                                                                                                                 |
| Transit                             | Yes           | The project area is served by AC Transit line 65. There is an existing bus stop within 0.2 miles to the east near the intersection of Keith Avenue and Euclid, serving AC Transit line 65.                                                                                                                                                                                                                   |

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. The Cortese List is an annually updated list of hazardous materials sites compiled pursuant Government Code Section 65962.5.

**Table 3: Project Chronology**

| Date              | Action                           |
|-------------------|----------------------------------|
| January 11, 2024  | Use Permit Application submitted |
| February 8, 2024  | Application deemed incomplete    |
| February 15, 2024 | Application resubmitted          |
| February 27, 2024 | Application deemed incomplete    |
| February 27, 2024 | Application resubmitted          |
| February 29, 2024 | Application deemed complete      |

ZONING ADJUSTMENTS BOARD  
January 9, 20251048 KEITH AVENUE  
Page 8 of 16

| Date               | Action                                               |
|--------------------|------------------------------------------------------|
| March 22, 2024     | Application Processing letter issued                 |
| April 29, 2024     | Application resubmitted                              |
| May 23, 2024       | Application Processing letter issued                 |
| June 27, 2024      | Application resubmitted                              |
| June 27, 2024      | Application Processing letter issued                 |
| June 27, 2024      | Application resubmitted                              |
| July 10, 2024      | Complete Application Processing letter issued        |
| August 12, 2024    | Revised application materials resubmitted.           |
| September 12, 2024 | Public hearing notices mailed/posted                 |
| September 26, 2024 | ZAB hearing – project continued to October 10, 2024  |
| October 10, 2024   | ZAB hearing - project continued to date uncertain    |
| October 15, 2024   | Revised final survey dated October 10, 2024 received |
| December 18, 2024  | Public hearing notices mailed/posted                 |
| January 9, 2025    | ZAB hearing                                          |

**Table 4: R-1H Development Standards BMC Sections 23.202.050 and 23.210.020, and 23.322 Parking and Loading**

| Standard                      |                      | Existing | Proposed Total | Permitted/Required                                 |
|-------------------------------|----------------------|----------|----------------|----------------------------------------------------|
| Lot Area (sq. ft.)            |                      | 7,800    | 7,800          | 5,000 min                                          |
| Dwelling Units                | Total                | 1        | 1              | 1 max                                              |
|                               | Average              | 13'-6"   | 20'-8"         | 28' max                                            |
| Building Height (ft. - in.)   | Maximum              | 17' - 3" | 24'-8"         | 35' max                                            |
|                               | Stories              | 1        | 2              | 3 max                                              |
|                               | Front (Keith Avenue) | 50'-0"   | 52'-0"         | 20' min                                            |
| Building Setbacks (ft. - in.) | Rear                 | 17'-4"   | 15'-0"         | 20' min                                            |
|                               | Left Side            | 13'-8"   | 8'-0"          | 4' min                                             |
|                               | Right Side           | 0'-10"   | 11'-1"         | 4' min                                             |
|                               | Lot Coverage (%)     | 18%      | 29%            | 40% max                                            |
| Usable Open Space (sq. ft.)   |                      | 6,378    | 5,753          | 400 sq. ft. min<br>(400 sq. ft. per dwelling unit) |
| Parking                       | Automobile           | 1        | 2              | 1 min<br>(for roadway width less than 26 ft.)      |

## II. Project Setting

### A. Neighborhood/Area Description:

The project site is located in the northern area of the Berkeley hills in the R-1H, Single-Family Residential – Hillside Overlay District. The area is characterized by a residential development pattern of one- to three-story single-family dwellings. Lots in the neighborhood are generally rectangular with some irregularities due to existing slopes and curved roadways. The neighborhood hills generally slope downward from the northeast to the southwest and provide west facing views of the San Francisco Bay.

### B. Site Conditions:

The 7,800 square-foot lot is rectangular-shaped, located on the south side of the street, and oriented in a northwest and southeast direction. The lot slopes downward by 20 ft. from Keith Avenue to a level section towards the middle and rear portions of the property where the front of the lot is set at a higher elevation. The lot has 50-feet of frontage along Keith Avenue, is approximately 128 feet deep, and developed with a one-story 2,760 square-foot residence. Existing vegetation on the lot includes various trees such as Plum, Red Fir, Loquat, and Yucca, as well as dense shrubbery. There are no, nor has there recently been, protected Coast Live oak trees on this project site.

## III. Project Description

**A. Proposed Project Details:** The proposed project would demolish the one-story 2,760 square-foot residence built in 1924 and construct a two-story 3,600 residence in its place. The new residence would include five bedrooms including an office, a recreation room, first and second story decks along the southern face of the residence. In addition, the project would include two new parking spaces that would encroach into the northern front setback, and fence and retaining walls along the eastern property line that are in the required side setback.

## IV. Community Discussion

### A. Neighbor/Community Concerns:

Prior to application submittal, a pre-application poster was installed on site by the applicant in January 2024. On September 12, 2024 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 at nearby three locations within the neighborhood on these dates. Prior to the first hearing on September 26, a neighbor raised questions about the surveyed lot lines.

During the September 26 hearing, neighbors raised concerns about the impact of landslides on property boundaries, boundary disputes, landslide impacting shifting property lines, and questioned the accuracy of the site survey dated November 16, 2020. As a result, staff recommended that the project be continued to October 10. The project

ZONING ADJUSTMENTS BOARD  
January 9, 2025

1048 KEITH AVENUE  
Page 10 of 16

was continued a second time to a date uncertain to allow the applicant time to obtain a revised survey for staff review.

On December 18, 2024, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations for the hearing on January 9, 2024. At the time of writing this report, staff has received nine letters opposing the project, stating concerns regarding project impacts related to views, privacy, and the location of property lines (Attachment 4).

#### **B. Landmark Preservation Commission / Design Review Committee Review:**

The project is not subject to review by the Landmarks Preservation Commission because it does not propose the demolition of a nonresidential building. The project is not subject to review by the Design Review Committee because it is located in a residential district that is not subject to design review, or in a commercial or manufacturing district.

### **V. Issues and Analysis**

#### **A. CEQA Approach and Recommendation**

It is staff's recommendation that the project is exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15303 ("New Construction or Conversion of Small Structures"). The proposed project is consistent with the example projects listed under this categorical exemption and is below the size threshold. In addition, none of the exceptions to eligibility for a categorical exemption as listed under CEQA Guidelines Section 15300.2, apply to the project:

1. The project is currently developed/characterized as developed by the California Natural Diversity Database;<sup>1</sup> therefore, it is not located in an environmentally sensitive area;
2. The cumulative impact of successive projects of the same type in the same place, over time would not be significant;
3. There are no "unusual circumstances" at the project site that would result in significant environmental effects;
4. There are no eligible or designated scenic highways within the City of Berkeley;<sup>2</sup> therefore, the project site is not in view of a state scenic highway;
5. The site is not included on a list compiled pursuant to Government Code Section 65962.5;<sup>3</sup> and
6. The project would not result in a substantial adverse change in the significance of a

<sup>1</sup> California Department of Fish and Wildlife. California Natural Diversity Database. Available: <https://apps.wildlife.ca.gov/bios6/?tool=cnddbqv>

<sup>2</sup> California Department of Transportation. California Scenic Highway Program's Scenic Highway System List. Available: <https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways>

<sup>3</sup> California Environmental Protection Agency. Cortese List Data Resources. Available: <https://calepa.ca.gov/sitecleanup/corteselist/>

ZONING ADJUSTMENTS BOARD  
January 9, 2025

1048 KEITH AVENUE  
Page 11 of 16

historical resource.

The CEQA exemption determination is made by ZAB, as the decision-making body.

## B. Site Survey

The original site survey prepared and stamped by Moran Engineering and dated November 16, 2020 contains a note indicating that the exact location of the property boundaries shown on the survey could vary up to five feet, due to significant historic land motion in the area.<sup>4</sup> Due to the uncertainty of the property boundary locations on the survey, staff was unable to review the project for compliance with district development standards. Staff requested that the survey be revised and the boundary lines confirmed.

The applicant submitted a revised survey prepared by Moran Engineering, dated October 10, 2024, that confirmed the accuracy of property boundaries to within an inch, based on three site survey monuments.<sup>5</sup> (See Attachment 2, Project Plans, Sheet A13.) The Public Works Department and Building and Safety Division reviewed the revised survey and confirmed that it meets surveying standards. Staff reviewed the project design with the revised survey and determined the project is in compliance with applicable development standards.

## C. General Non-Detriment Finding:

BMC Section 23.406.040(E) "Findings for Approval" establishes that before the ZAB approves an application for a Use Permit, it must find that the project would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or 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.

Staff recommends that the ZAB find that these potential impacts are not detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood, for the reasons outlined below.

1. Shadows: Shadow studies submitted by the applicant documented sun angles at different times throughout the day during the summer and winter solstice. The studies indicate that new shadows would affect the following property:
  - 1044 Keith Avenue (west of the project site): New shadows would be cast two hours after sunrise during the summer solstice onto the windows of two of the

<sup>4</sup> The Boundary Note on the original survey reads: "Due to significant land motion in this area, it is not possible to establish the property boundary with certainty. The boundary shown could vary based on the consideration of alternate survey reference points. This variance is very likely on the order of 5.0 feet or more in magnitude."

<sup>5</sup> The Boundary Note on the October 10, 2024 revised survey reads: "This property boundary shown is based on the survey monuments as detailed hereon. These three monuments fit together within an inch"

bedrooms and bathrooms, kitchen, and living room (Attachment 2, Project Plans, Sheet A17).

Although the project would create new shadows on neighboring residences, the projected impacts would only occur during certain times of the day and limited times of the year. The shadow impacts from the project on adjacent residential uses would be reasonable and not detrimental.

2. Air: The construction of the new residence would be consistent with the existing development pattern and building-to-building separation (air criterion) in this R-1H zoned neighborhood. The proposed residence complies with the 20-foot front setback and 5-foot side setbacks. However, the rear building wall would encroach 5 feet into the required 20-foot rear setback. This encroachment is proposed to position the residence on the flatter portion of the lot, accommodating site conditions while maintaining appropriate separation from neighboring residences.
3. Privacy: The proposed residence would result in reduced setbacks from the rear property line, and complies with the other required minimum setbacks. A rear primary bedroom with an attached deck and new windows and doors openings is proposed on the second story. The second-story deck and openings would not result in privacy concerns onto the abutting properties. The resident at the adjacent property to the south (1111 High Court), has expressed privacy concerns to the applicant. In response, the applicant has proposed improvements to address these concerns, including the installation of a fence that measures over 6 feet tall along the eastern and southern lot lines, as well as the planting of screening trees along the southeastern portion of the property to screen views (Attachment 2, Project Plans, Sheet A1). Staff believes the proposed dwelling would not be detrimental regarding privacy.
4. Views: The proposed project would not result in obstruction of a View Corridor <sup>6</sup> as defined in BMC Section 23.502 (Glossary). As described above under Project Settings, the neighborhood hills generally slope downwards from the northeast to the southwest and provide primary views westward towards the San Francisco Bay. However, the view to the San Francisco Bay in this location is partially obstructed by existing structures and mature trees.  
The proposed two-story residence would replace the existing one-story residence. The overall height would increase by eight feet. Story poles installed in August 2024, revealed that the views of the San Francisco Bay from at least one residence, 1050 Keith Avenue, may be marginally diminished due to the height and width of the proposed two-story residence. Therefore, the proposed dwelling would not result in a significant impact to views in the area.
5. The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to

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<sup>6</sup> *View Corridor*. A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

#### **D. Demolition of Residential Unit**

Per BMC Section 23.326.030(B), the ZAB approves a Use Permit to eliminate or demolish one or more Residential Units, upon finding that the demolition is necessary to permit construction approved pursuant to this Chapter of at least the same number of Dwelling Units.

The proposed project would replace an existing dwelling unit with a newly constructed dwelling unit. The Rent Stabilization Board confirmed that the existing residence has not been removed from the rental market under the Ellis Act in the past five years and there is no evidence of harassment or any threatened or actual illegal eviction over the past three years. Furthermore, the dwelling proposed for demolition was vacated in July of 2024, and is not subject to tenant relocation provisions under BMC Chapter 23.326, as it does not involve the displacement of any tenants.

#### **E. Off-Street Parking Space in Front Setback**

Per BMC Section 23.322.080(E)(2), to approve an AUP for unenclosed parking in the front setback, ZAB must find that the space meets all applicable requirements in this section.

The proposed project would enlarge the 12-foot wide driveway and construct a 16 ¼ foot wide by 18-foot long concrete parking pad within the required front setback, in order to minimize additional site grading. A 2-foot-wide by 18-foot long landscaped buffer would be included to provide visual screening. In addition, nearby residences along the southern frontages off Keith Avenue also have off-street parking within in the front setback due to restrictive site conditions. After review of the proposed parking, the City's Traffic Engineer determined that the proposed parking pad, driveway approach, and increased curb cut do not present any traffic engineering concerns. The proposed parking location would meet all parking layout and design requirements in BMC Section 23.322.080.

#### **F. Reduced rear building setback in the H Overlay Zone**

Per BMC Section 23.210.020(C)(4), the minimum required main building lot line setbacks in the underlying base district can be reduced upon finding that the reduction is consistent with BMC 23.210.020(A), Purpose of the Hillside Overlay.

The purpose of the Hillside Overlay district is to:

- Implement General Plan policies for hillside development;
- Protect the safety and health of residents where steep topography, unusual street conditions and proximity to the wildland-urban interface create severe risk from wildfire;
- Protect the character of Berkeley's hillside areas and their immediate environs;

ZONING ADJUSTMENTS BOARD  
January 9, 2025

1048 KEITH AVENUE  
Page 14 of 16

- Give reasonable protection to views yet allow appropriate development of all property;
- Allow modifications in standard setback and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the hillside areas.

The project proposes to construct a two-story residential structure that would encroach 5 feet into the required 20-foot required rear setback. The site has an irregular shape and features a 20 ft. drop from the street elevation to a level area. These site characteristics limit the building and off-street parking placement. The proposed residence is sited on the relatively flat area of the site, while the parking pad is located within the front setback, at the street, eliminating the need for a steep driveway and associated costs. The project design otherwise maintains setback and height requirements by limiting the height to 23.5 feet, below the 35-foot maximum and is consistent with the aesthetic and character of the Berkeley hillside area.

#### **G. Unenclosed Accessory Structures Within A Required Lot Line Setback**

Per BMC Section 23.304.070 (B), unenclosed accessory structures require an AUP if placed on the ground within a required setback.

The project proposes the installation of a new 8-foot-tall unenclosed entry trellis located on the southern end of the proposed parking pad within the required 20-foot front setback (Attachment 2, Project Plans, Sheet A8). The trellis is designed to serve as a privacy screen for the main residence, shielding the main residence from public view. Additionally, the entry trellis also provides for an access to the entry deck to access the residence from the front or northern side of the property. Its open design, scale, and wood materials align with nearby residences, ensuring compatibility with the neighborhood character.

#### **H. Fences more than 6 ft in height and On the Lot Line**

Per BMC Section 23.304.080(A), an AUP is required for fences more than 6 ft in height and on lot line or within required lot line setbacks for main building.

The project proposes a 12-foot fence along the eastern lot line, consisting of a 6-foot wood fence atop two 3-foot staggered concrete retaining walls – measuring 6 feet, that would be used for privacy screening for the main residence and the adjacent property at 1050 Keith Avenue (Figure 3). The wood fence and concrete retaining walls would not contain barbed or razor wire, sharp or jagged glass, sharp or jagged metal components, or similar hazardous materials, adhering to the construction material restrictions in BMC Section 23.304.080(C).

## VI. Other Considerations (Zoning and Land Use Considerations)

### A. General Plan Consistency:

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

1. **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.
2. **Policy UD-16 Context:** The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
3. **Policy UD-24 Area Character:** Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
4. **Policy UD-33 Sustainable Design:** Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The proposed residence was designed to be architecturally compatible with the neighboring residences by maintaining a similar ridge height and massing with neighboring two-story residences. Additionally, the design includes Hardie board exterior siding similar to the neighboring residences. It is consistent with development standards of the Hillside Overlay Zone and the R-1H Single-Family Residential zoning district. The project would not cause substantial air, sunlight, or privacy issues for the adjacent properties, and it would be compatible with the General Plan policy to encourage housing production in the city.

## VII. Recommendation

The project is consistent with the Zoning Ordinance and General Plan, and will have minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

1. **FIND** that the project is categorically exempt from the provisions of the CEQA pursuant to Section 15303 of the CEQA Guidelines ("New Construction or Conversion of Small Structures") and
2. **APPROVE** Use Permit #ZP2024-0014 pursuant to Section 23.406.040(D) and subject to the attached Findings and Conditions (see Attachment 1).

### Attachments:

1. Findings and Conditions
2. Project Plans, received December 9, 2024
3. Revised Site Survey, dated October 10, 2024
4. Neighbor Correspondences

ZONING ADJUSTMENTS BOARD  
January 9, 2025

1048 KEITH AVENUE  
Page 16 of 16

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5. Notice of Public Hearing

**Staff Planner:** Waqar Shah, [wshah@berkeleyca.gov](mailto:wshah@berkeleyca.gov), (510) 981-7469

# ATTACHMENT (1)

## FINDINGS AND CONDITIONS

JANUARY 9, 2025

### 1048 Keith Avenue

**Use Permit #ZP2024-0014 to demolish a 2,760-square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600-square-foot single-family dwelling within the rear setback and parking pad in the front setback.**

#### ZONING PERMITS REQUIRED

- Use Permit, pursuant Berkeley Municipal Code (BMC) Section 23.326.030(B)(1) to demolish a dwelling unit
- Use Permit, pursuant to BMC Section 23.202.020(A) to construct a single-family dwelling unit
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C)(4), to reduce the building setbacks in the Hillside Overlay Zone
- Administrative Use Permit, pursuant to BMC Section 23.322.080(E)(2)(b), to allow unenclosed off-street parking within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.070(C)(1) to construct an unenclosed structure (trellis) within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.080(A), to construct a fence more than 6 ft in height on lot line

#### I. CEQA FINDINGS

- A.** The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”).

#### II. FINDINGS FOR APPROVAL

- A.** As required by Section 23.406.040(E) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or 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 for the reasons outlined below:

1. Shadows: Shadow studies submitted by the applicant documented sun angles at different times throughout the day, and during the summer and winter solstice. Although the project will create new shadows on neighboring residences, the projected impacts will only occur during certain times of the day at certain times of the year. Thus, the shadow impacts from the project on adjacent residences will be reasonable and not detrimental;
  2. Air: The construction of the new residence will be consistent with the existing development and building-to-building separation pattern – or air – in this R-1H zoned neighborhood. The new residence's rear building wall that encroaches into the required 20-foot rear setback is sited on the flatter portion of the lot to suit the site conditions while maintaining appropriate separation and air with neighboring residences;
  3. Privacy: A rear primary bedroom with new window, door openings and a deck are proposed on the second story. The second-story rear deck and openings will not result in privacy concerns with any neighboring residences. In addition, to mitigate any potential privacy concerns, the project will incorporate fencing along the eastern, western, and southern lot lines and screening trees along the southeastern portion of the property, ensuring adequate visual separation from neighboring properties. Thus, the proposed project will not be detrimental regarding privacy;
  4. Views: The proposed two-story residence will replace the existing one-story residence. The overall height will increase by eight feet. Although, the proposed residence will contribute to an already diminished view of the San Francisco Bay it will not completely obstruct it. Therefore, the proposed dwelling will not result in a significant impact to views in the area;
  5. The project will be subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, which will ensure that the project will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or 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.
- B.** Pursuant to BMC Section 23.304.070 (B), unenclosed accessory structures require an AUP if placed on the ground within a required setback.
1. The project proposes installing a new 8-foot-tall unenclosed entry trellis strategically located on the southern end of the proposed parking pad within the required 20-foot front setback.
  2. The trellis will be used as a provide access to the entry deck to the front of the proposed residence south of Keith Avenue and will be used as a privacy screen and will provide access to the entry deck to access the residence from the northern side of the property.
  3. Its open design, scale, and use of wood materials align with nearby residences, ensuring compatibility with the neighborhood character, as well as minimizes potential impacts within its location of the required front setback.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS &amp; CONDITIONS

January 9, 2025

Page 3 of 16

- C. Pursuant to BMC Section 23.304.080(A), an AUP is required for fences more than 6 ft in height and on lot line or within required lot line setbacks for main building.
1. The project proposes a 12-foot fence along the eastern lot line, consisting of a 6-foot wood fence atop two 3-foot staggered concrete retaining walls – measuring 6 feet, that will be used for privacy screening for the main residence and the adjacent property at 1050 Keith Avenue.  
The wood fence and concrete retaining walls will not contain barbed or razor wire, sharp or jagged glass, sharp or jagged metal components, or similar hazardous materials, adhering to the construction material restrictions in BMC Section 23.304.080(C).

### III. OTHER FINDINGS FOR APPROVAL

- D. Pursuant to BMC Section 23.326.030(B), the Zoning Adjustments Board (ZAB) may approve a Use Permit to eliminate or demolish a dwelling unit only upon finding that eliminating the dwelling unit will not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley.
1. The proposed project will replace an existing dwelling unit with a newly constructed dwelling unit.
  2. The Rent Stabilization Board had reviewed that the existing residence has confirmed that the residence has not been removed from the rental market under the Ellis Act in the past five years, and there is no evidence of harassment or any threatened or actual illegal eviction over the past three years.
  3. The dwelling proposed for demolition was vacated in July of 2024, and is not subject to tenant relocation provisions under BMC Chapter 23.326, and it does not involve the displacement of any tenants.
- E. Per BMC Section 23.210.020(C)(4), the minimum required main building lot line setbacks in the underlying base district can be reduced upon finding that the reduction is consistent with BMC 23.210.020(A), Purpose of the Hillside Overlay.

The purpose of the Hillside Overlay district is to:

- Implement General Plan policies for hillside development;
  - Protect the safety and health of residents where steep topography, unusual street conditions and proximity to the wildland-urban interface create severe risk from wildfire;
  - Protect the character of Berkeley's hillside areas and their immediate environs;
  - Give reasonable protection to views yet allow appropriate development of all property;
  - Allow modifications in standard setback and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the hillside areas.
1. The proposed two-story residence will be constructed and will encroach 5 feet into the required 20-foot required rear setback. The site is lot that has an irregular shape, and features a steep drop from the street down to a more level area, characteristics which limit the placement options for the residence and the parking pad.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS & CONDITIONS

January 9, 2025

Page 4 of 16

2. The proposed residence is sited on the relatively flat area of the site, while the parking pad is placed within the front setback, close to the street, to eliminate the need for a steep driveway, (and its associated costs).
  3. Consistent with the purpose of the Hillside Overlay district, the residence's design will allow for the structure to adhere to the aesthetic and character of the Berkeley hillside areas, through maintaining reasonable setbacks and by limiting the height to 23.5 feet, below the 35-foot maximum.
- F.** Pursuant to BMC Section 23.322.080(E)(2), no portion of an off-street parking space may be located in a required front, street side, or rear setback area unless: The Zoning Adjustments Board, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.
1. The proposed project will enlarge the 12-foot driveway and construct a 16 1/4-foot-wide by 18-foot long two car parking pad within the required front setback, in order to minimize additional site grading.
  2. A 2-foot-wide by 18-foot long landscaped buffer will be included to provide visual screening.
  3. Residences along the southern frontages off Keith Avenue also include off-street parking within in the front setback due to limiting site conditions.
  4. The proposed parking is authorized, as it was determined by the City's Traffic Engineer that the proposed parking pad, driveway approach, and increased curb cut do not present any traffic engineering concerns.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS &amp; CONDITIONS

January 9, 2025

Page 5 of 16

**IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS**

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. **Conditions Shall be Printed on Plans.** The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *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.
2. **Compliance Required (BMC Section 23.102.050).** All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and 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.
3. **Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060(B)(1) and (2)):**
  - A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
  - B. 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 re-establish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.
4. **Conformance to Approved Plans (BMC Section 23.404.060(B)(4)).** All work performed under an approved permit shall comply with the approved plans and any conditions of approval.
5. **Exercise and Expiration of Permits (BMC Section 23.404.060(C)):**
  - 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 ZAB 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 must apply for and receive City approval of a new permit.
6. **Permit Remains Effective for Vacant Property (BMC Section 23.404.060(D)).** 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 Condition #5 above.



1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS &amp; CONDITIONS

January 9, 2025

Page 7 of 16

- 11. 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 Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and, except for new buildings on vacant lots, entered into the City’s database after the building permit is issued but prior to final inspection.

### **Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)**

- 12. Demolition.** Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
- 13. Construction and Demolition Diversion.** Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 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.
- 14. Toxics.** The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
- A. Phase I and Phase II 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 developments for: all new commercial, industrial and mixed-use developments and 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 \(arcgis.com\)](#)
  - B.** Depending on the findings in the Phase I, a Phase II or additional investigation may be necessary. Any available soils and groundwater analytical data available for projects listed in this section must also be submitted to TMD.
  - C. Environmental Site Clearance.** The applicant shall provide environmental screening clearance from either the San Francisco Bay Regional Water Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC), or the Alameda County Department of Environmental Health’s Local Oversight Program (LOP). Clearance from one of these regulatory agencies will ensure that the property meets development investigation and cleanup standards for the specific use proposed on the property. Environmental screening clearance shall be submitted to the City of Berkeley’s Toxics Management Division prior to issuance of any building permits.
  - D. Soil and Groundwater Management Plan.** A site-specific Soil and Groundwater Management Plan (SGMP) shall be submitted to Toxics Management Division (TMD) for all non-residential projects, and residential or mixed-use projects with more than four dwelling units, that: (1) are in the Environmental Management Area (EMA), as shown on the most recent City of Berkeley EMA map, and (2) propose any excavations deeper than 5 feet below grade or if significant soils removal is anticipated. The SGMP shall be submitted to the TMD with the project’s building permit application and shall be approved by TMD prior to issuance of the building permit.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS &amp; CONDITIONS

January 9, 2025

Page 8 of 16

The SGMP shall comply with the hazardous materials and waste management standards required by BMC Section 15.12.100, the stormwater pollution prevention requirements of San Francisco Bay Regional Water Quality Control Board's Order No. R2-2009-0074, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) 66260 et seq.), and the East Bay Municipal Utility District's Ordinance 311, and shall include the following:

- i. procedures for soil and groundwater management including identification of pollutants and disposal methods;
- ii. procedures to manage odors, dust and other potential nuisance conditions expected during development;
- iii. notification to TMD within 24 hours of the discovery of any previously undiscovered contamination; and
- iv. the name and phone number of the individual responsible for implementing the SGMP and who will respond to community questions or complaints.

TMD may require additional information or impose additional conditions as deemed necessary to protect human health and the environment. All requirements of the approved SGMP shall be deemed conditions of approval.

**E. Demolitions & Renovations – Building Materials Survey.** A hazardous materials survey for building materials and plans on hazardous materials and hazardous waste removal and disposal is required and must be prepared by qualified professionals, and submitted to the Toxics Management Division (TMD) prior to issuance of the building permit.

- i. The survey shall include 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.
- ii. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center. Contractors must 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.)
- iii. 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.
- iv. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition.

Please note, the PCB Screening Form required by Public Works, Engineering, is a separate requirement and does not address the PCB identification requirement of the Toxics Management Division.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS &amp; CONDITIONS

January 9, 2025

Page 9 of 16

**F. Hazardous Materials Business Plan.** A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 and California Health & Safety Code, Chapter 6.95 Div. 20, shall be submitted to the Toxics Management Division through the California Environmental Reporting System: <http://cers.calepa.ca.gov/> for chemicals used or stored on site during construction that exceed reporting thresholds. The reporting is required if your facility stores or handles hazardous materials in aggregate quantities equal to or greater than 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet of compressed gases, or generates any quantity of hazardous waste. This includes welding gases, emergency generator fuel, paints, etc.

Additionally, the business occupant must submit an HMBP within 30 days of starting operations.

**G. Petroleum Storage.** An (SPCC) Plan is required to be prepared and implemented for facilities with any one of the following:

- i. aggregate aboveground petroleum storage capacities of 1,320 gallons or more stored in aboveground storage containers, tanks, oil-filled equipment, or
- ii. one or more tank(s) in an underground area (TIUGA) with petroleum storage capacities of 55 gallons or greater. More information on TIUGAs can be found here: <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/tank-in-an-underground-area-tiuga/>

The SPCC plan must be prepared prior to beginning operations and you must submit facility information to Toxics Management Division (TMD) through the California Environmental Reporting System: <http://cers.calepa.ca.gov/>. The SPCC plan will be reviewed during the site inspection and shall not be submitted in CERS or to the TMD.

### **Prior to Issuance of Any Building (Construction) Permit**

**15. 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.

**16. Solar Photovoltaic (Solar PV) and Battery Energy Storage Systems (ESS).** A solar PV system shall be installed, subject to specific limited exceptions, as specified by the Berkeley Energy Code (BMC Chapter 19.36). Energy storage system (ESS) readiness (new single-family, duplex, and townhouse homes) or ESS installation (new multifamily and most nonresidential buildings) shall be completed as specified by BMC Chapter 19.36. Location of the solar PV system and the ESS, if applicable, shall be noted on the construction plans. (Project required to meet applicable code at time of building permit application, if different from above.)

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS &amp; CONDITIONS

January 9, 2025

Page 10 of 16

- 17. Electric Vehicle (EV) Charging.** Each dwelling unit shall install a listed raceway, wiring, and load capacity to allow for future Level 2 (40 amp) plug-in electric vehicle (EV) charging system installation, or any more stringent EV charging requirements as specified by the Berkeley Green Code (BMC Chapter 19.37). Readiness for EV charging and EV charging station installations shall be noted on the construction plans. (Project required to meet applicable code at time of building permit application, if different from above.)
- 18. Recycling and Organics Collection.** Applicant shall provide recycling and organics collection areas for occupants, clearly marked on plans, which comply with the Alameda County Organics Reduction and Recycling Ordinance (2021-02). Contact the Zero Waste Division's Recycling Program Manager, Julia A. Heath, at [jheath@berkeleyca.gov](mailto:jheath@berkeleyca.gov).
- 19. 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.

#### **Prior to Demolition or Start of Construction:**

- 20. Construction/No Parking Permits.** Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood.

#### **During Construction:**

- 21. Construction Hours.** Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
- 22. Survey Required.** The height and location of the proposed structure, property lines and spot elevations shall be verified by a licensed surveyor or engineer on site after foundation forms are placed, but before pouring concrete or placing construction material in its permanent position. This verification shall be to the satisfaction of the Zoning Officer.
- 23. Public Works - Implement Bay Area Air Quality Management District (BAAQMD)-Recommended Measures during Construction.** For all proposed projects, BAAQMD 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.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS &amp; CONDITIONS

January 9, 2025

Page 11 of 16

- 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 Air District's phone number shall also be visible to ensure compliance with applicable regulations.

**24. 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 one of the following measures:

- 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 BAAQMD and OEHHA. 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
- 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.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS &amp; CONDITIONS

January 9, 2025

Page 12 of 16

- 25. Construction and Demolition Diversion.** 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.
- 26. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25 percent. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff. (Project required to meet applicable code at time of building permit application, if different from above.)
- 27. 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 MBTA and CFGC, 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.
- 28. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore:
- A.** In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
  - B.** If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS &amp; CONDITIONS

January 9, 2025

Page 13 of 16

- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall 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 qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

**29. Human Remains (Ongoing throughout demolition, grading, and/or construction).** 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. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

**30. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** 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 paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist 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 paleontologist 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.

**31. Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin 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 City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, 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.

**32. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS &amp; CONDITIONS

January 9, 2025

Page 14 of 16

- 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 area(s) shall be covered; no other area shall drain onto this area. 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 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.
- 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 must be designed to reduce/limit the potential for runoff to contact pollutants.
- F. All on-site storm drain inlets/catch basins must 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 Dept.
- G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
- H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- I. All loading areas must be designated to minimize "run-on" or runoff from the area. Accumulated waste water 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

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS &amp; CONDITIONS

January 9, 2025

Page 15 of 16

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.** 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.
- L.** 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.
- 33. Public Works.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
- 34. Public Works.** 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.
- 35. Public Works.** The applicant shall ensure that all excavation accounts for surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 36. Public Works.** 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.
- 37. Public Works.** 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 by 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.
- 38. Public Works.** 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.
- 39. Public Works / Building and Safety.** **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.**

#### **Prior to Final Inspection or Issuance of Occupancy Permit:**

- 40. Compliance with Conditions** The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS &amp; CONDITIONS

January 9, 2025

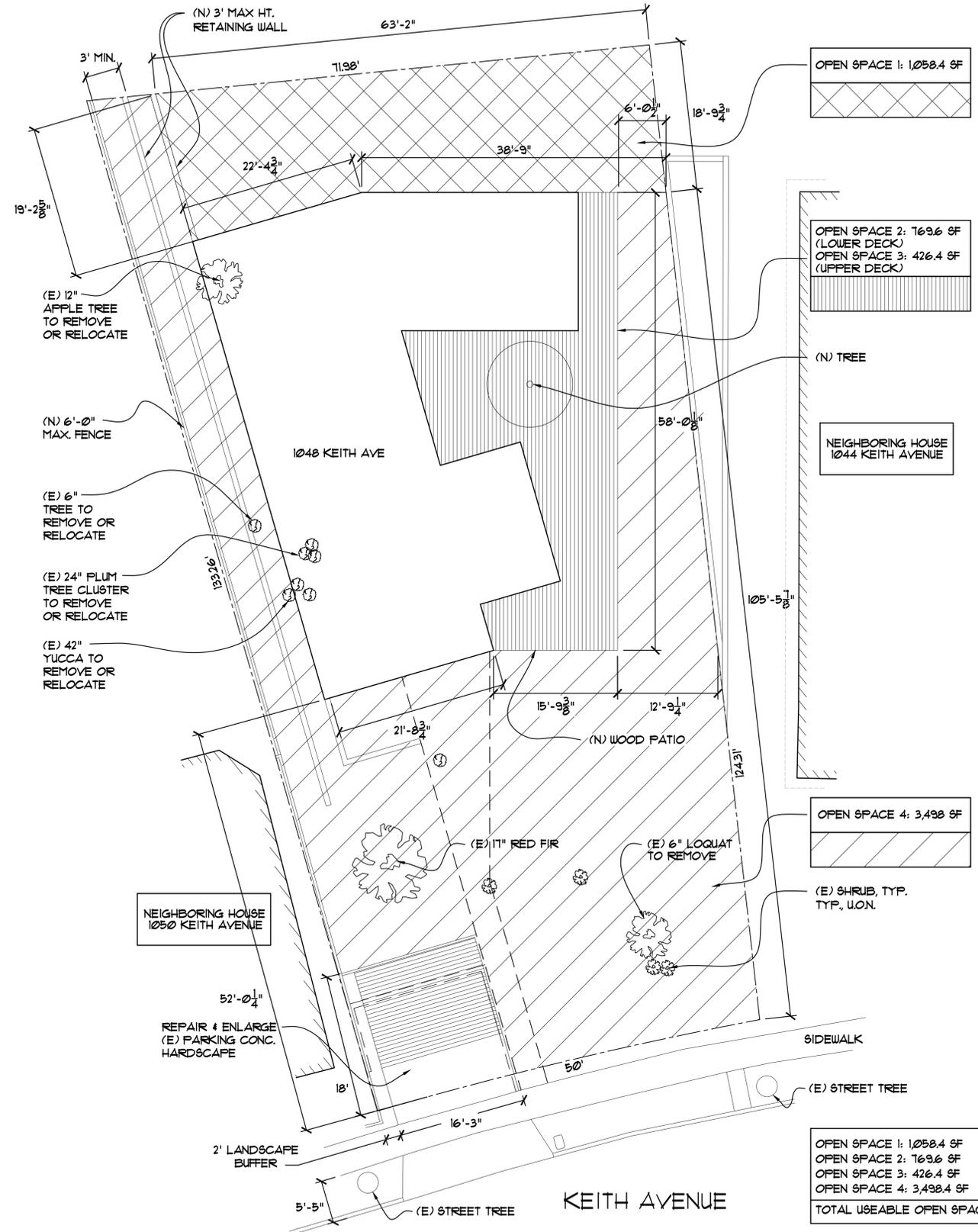
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**At All Times:**

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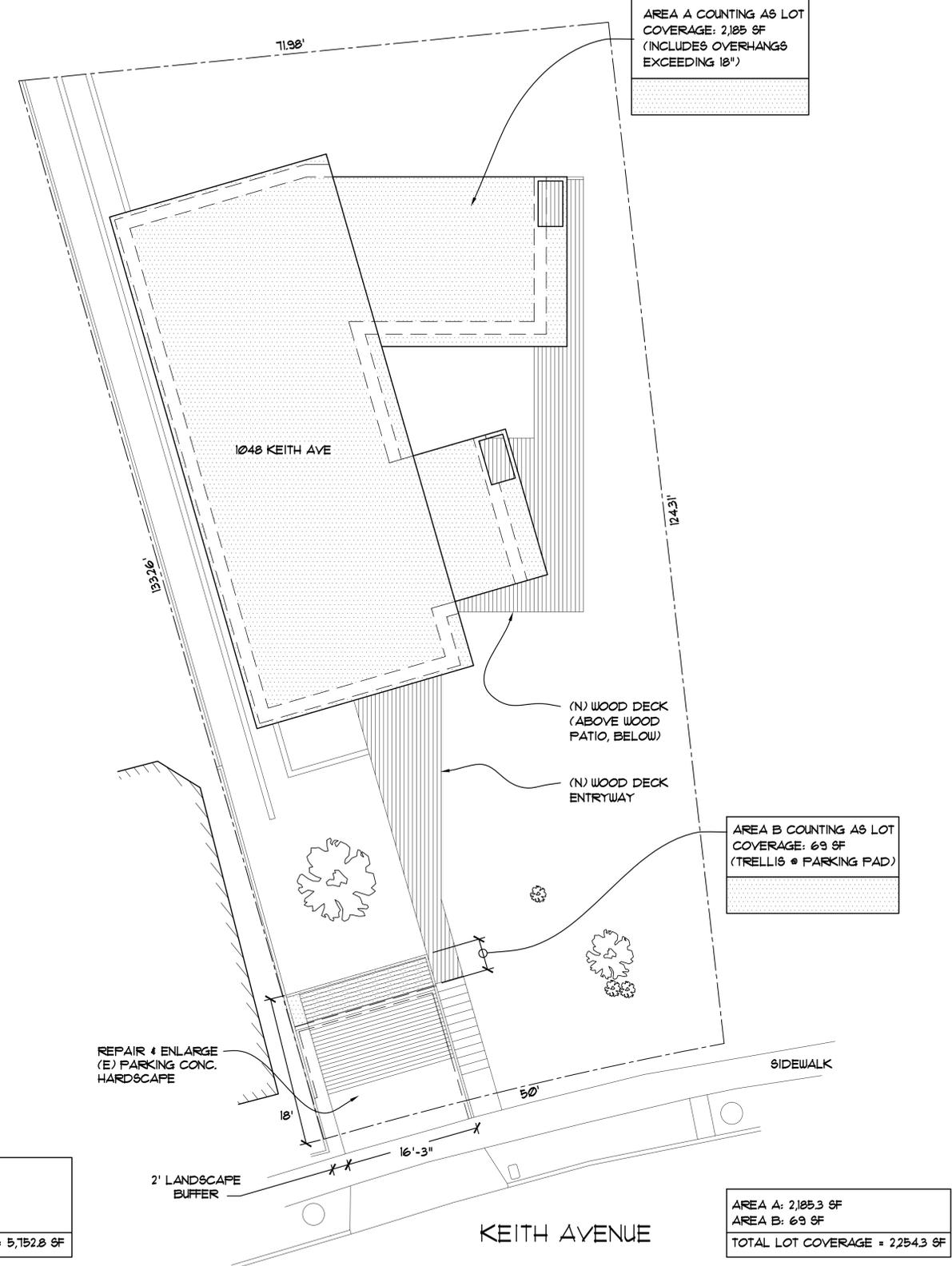
41. **Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.
42. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated December 9, 2024.
43. **Exterior Lighting.** All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
44. **Drainage Patterns.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
45. **Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.
46. **Loading.** All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.
47. **Residential Electric Vehicle (EV) Charging.** Required Level 2 charging stations and low power Level 2 EV charging receptacles, as specified by the Berkeley Green Code (BMC Chapter 19.37) shall be maintained in good working condition and made available for building resident use. (Project required to meet applicable code at time of building permit application, if different from above.)





LANDSCAPE & USEABLE OPEN SPACE PLAN  
1/8" = 1'-0"

USEABLE OPEN SPACE DEFINED PER BMC CHAPTER 23.502:  
OUTDOOR SPACE, INCLUDING NATURAL AND LANDSCAPED GROUND AREAS, POOLS, PATIOS, DECKS  
& BALCONIES DESIGNED FOR ACTIVE OR PASSIVE RECREATIONAL USE AND WHICH IS ACCESSIBLE  
TO THE OCCUPANTS OF A BUILDING ON THE SAME LOT.



LOT COVERAGE DIAGRAM  
1/8" = 1'-0"

LOT COVERAGE DEFINED PER BMC CHAPTER 23.502:  
ALL THE AREA OF A LOT, AS PROJECTED ON A HORIZONTAL PLANE, WHICH IS:  
1. ENCLOSED BY THE EXTERIOR WALLS OF BUILDINGS OR ENCLOSED ACCESSORY STRUCTURES, OR  
2. COVERED BY DECKS, PORCHES, STAIRS AND/OR LANDINGS WHICH COVER AN ENCLOSED SPACE OR PAVED GROUND AREA.

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LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P. 313.615.9400  
newmanli26@gmail.com



NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
LANDSCAPE & USEABLE OPEN SPACE  
PLAN & LOT COVERAGE DIAGRAM

DATE: 12.03.24  
JOB NO: LN-1048  
SCALE: 1/4" = 1'-0"  
DRAWN: LN

A2  
OF 18 SHEETS

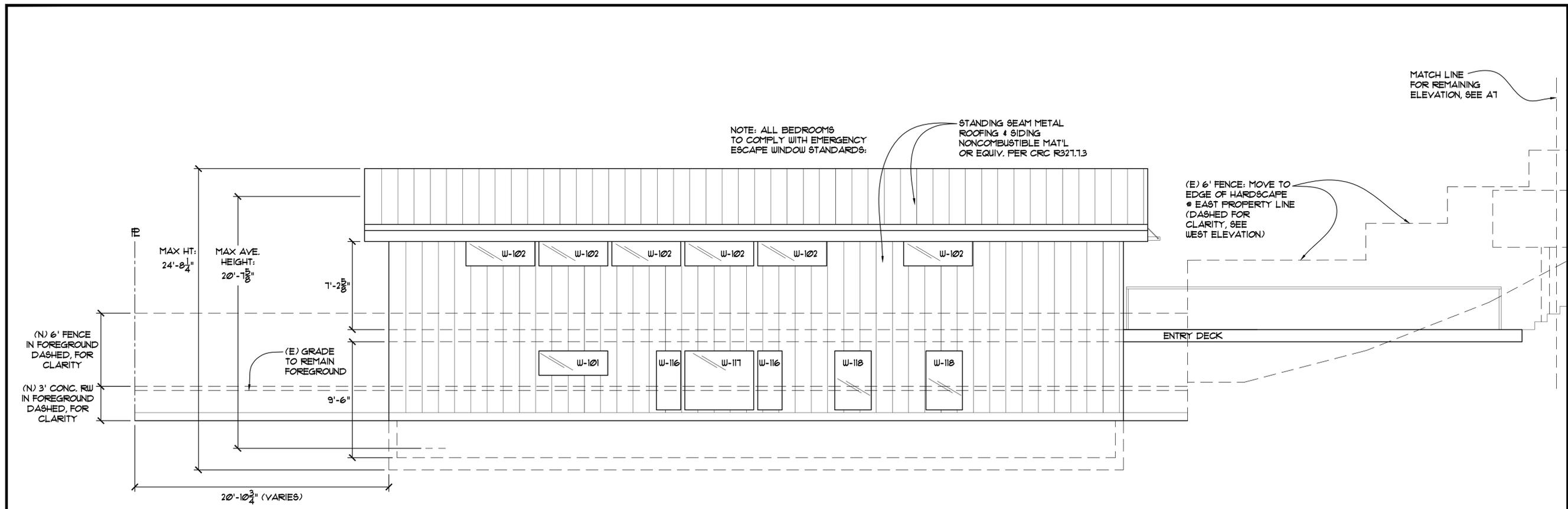




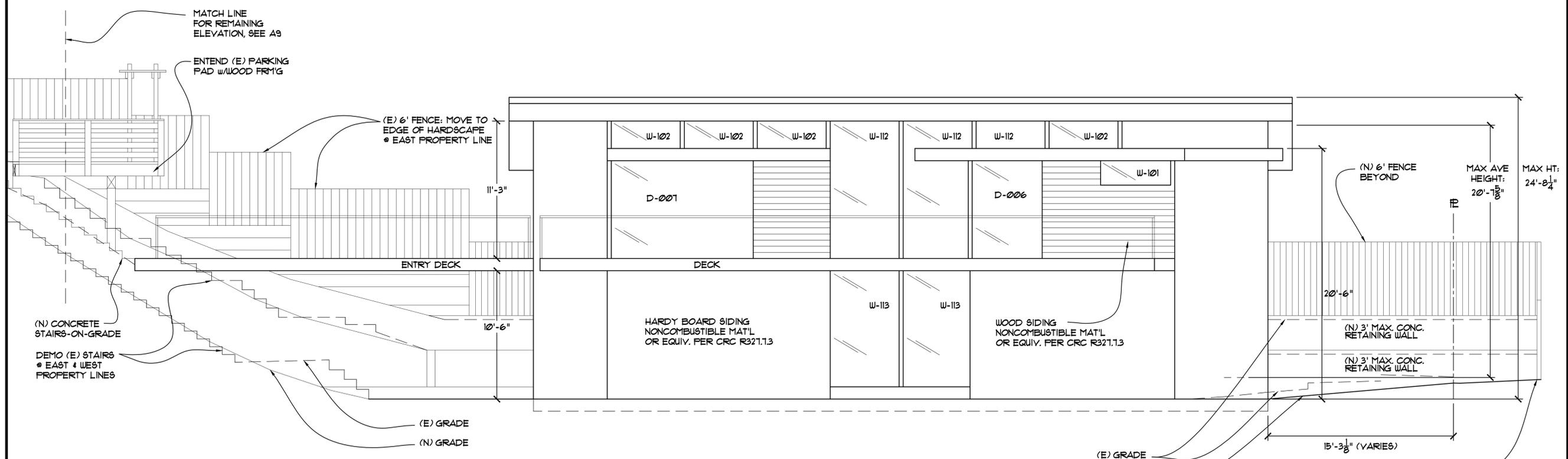








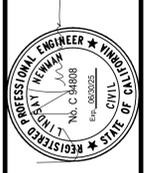
PROPOSED EAST ELEVATION  
1/4" = 1'-0"



PROPOSED WEST ELEVATION  
1/4" = 1'-0"

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LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P. 313.615.9400  
newmanli26@gmail.com



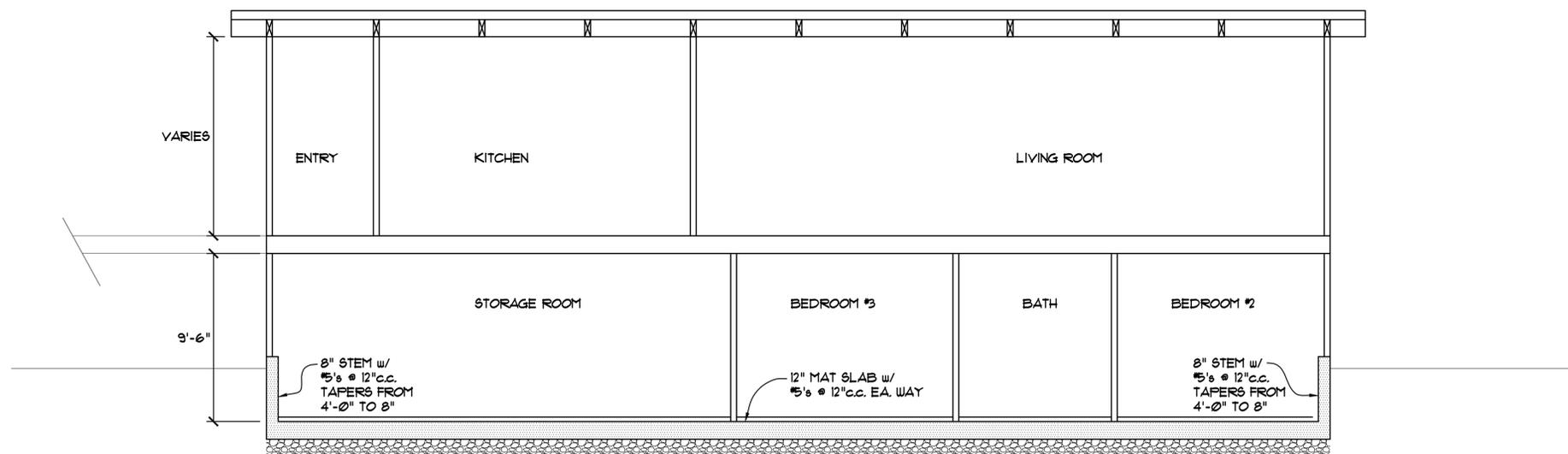
NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
PROPOSED EAST & WEST  
ELEVATIONS

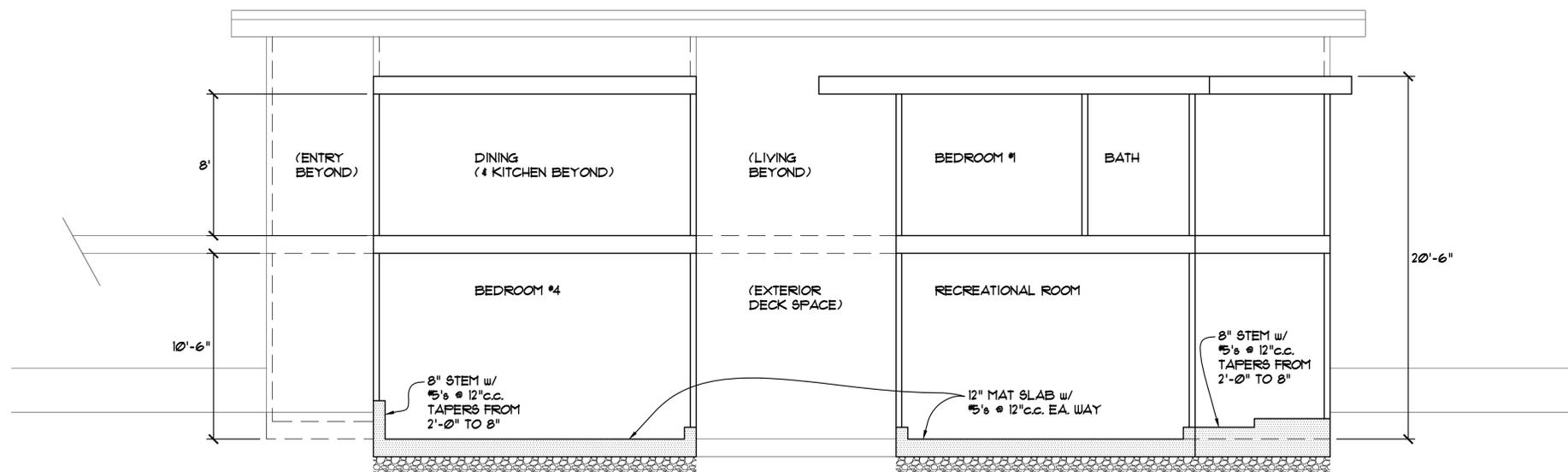
DATE: 12.03.24  
JOB NO: LN-1048  
SCALE: 1/4" = 1'-0"

DRAWN: LN  
A8  
OF 18 SHEETS





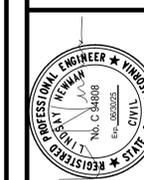
PROPOSED LONGITUDINAL SECTION @ MAIN HOUSE - NORTH TO SOUTH



PROPOSED LONGITUDINAL SECTION @ POP-OUTS - NORTH TO SOUTH

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LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P.313.615.9400  
newmanl26@gmail.com



NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
PROPOSED LONGITUDINAL  
SECTIONS

DATE: 12/23/24  
JOB NO: LN-1048  
SCALE: 1/4"=1'-0"  
DRAWN: LN

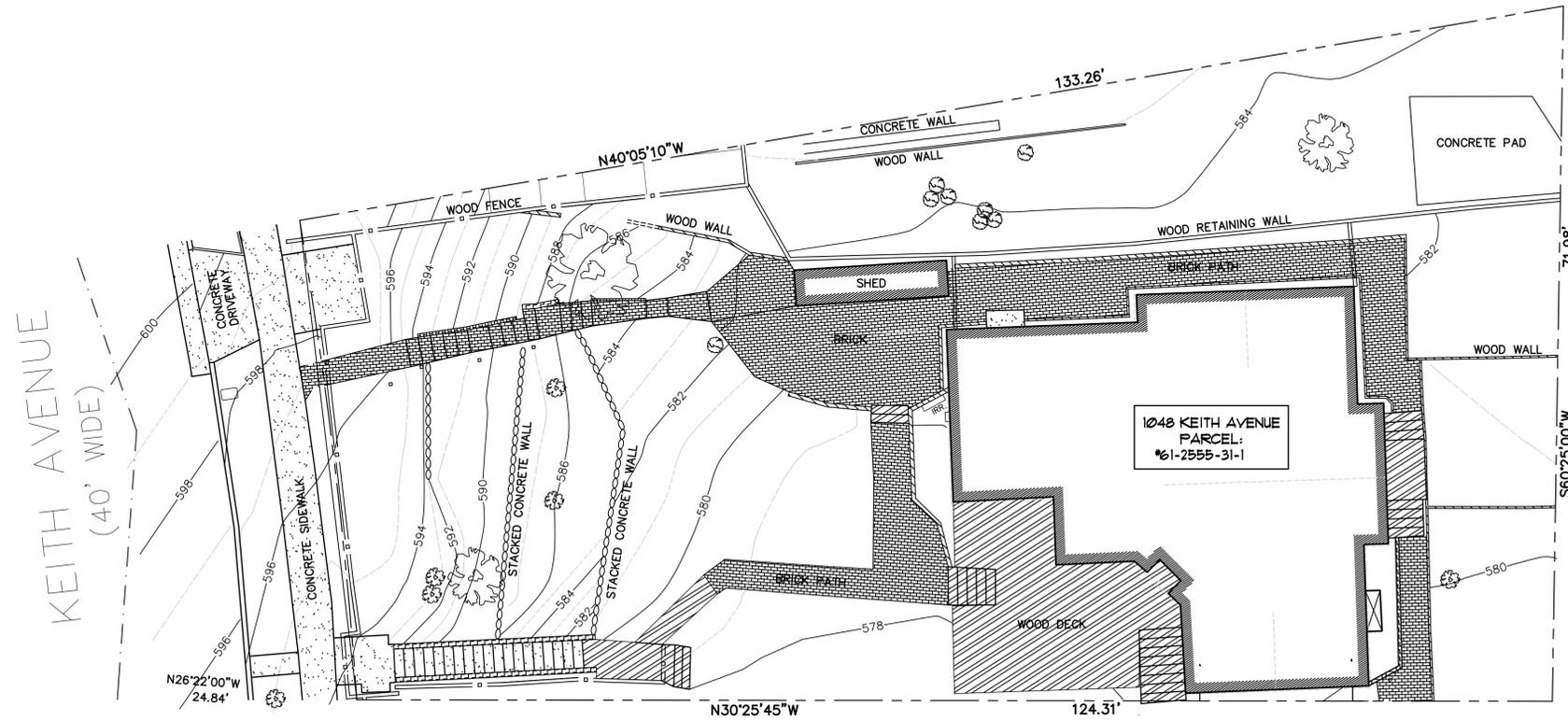


OF 18 SHEETS



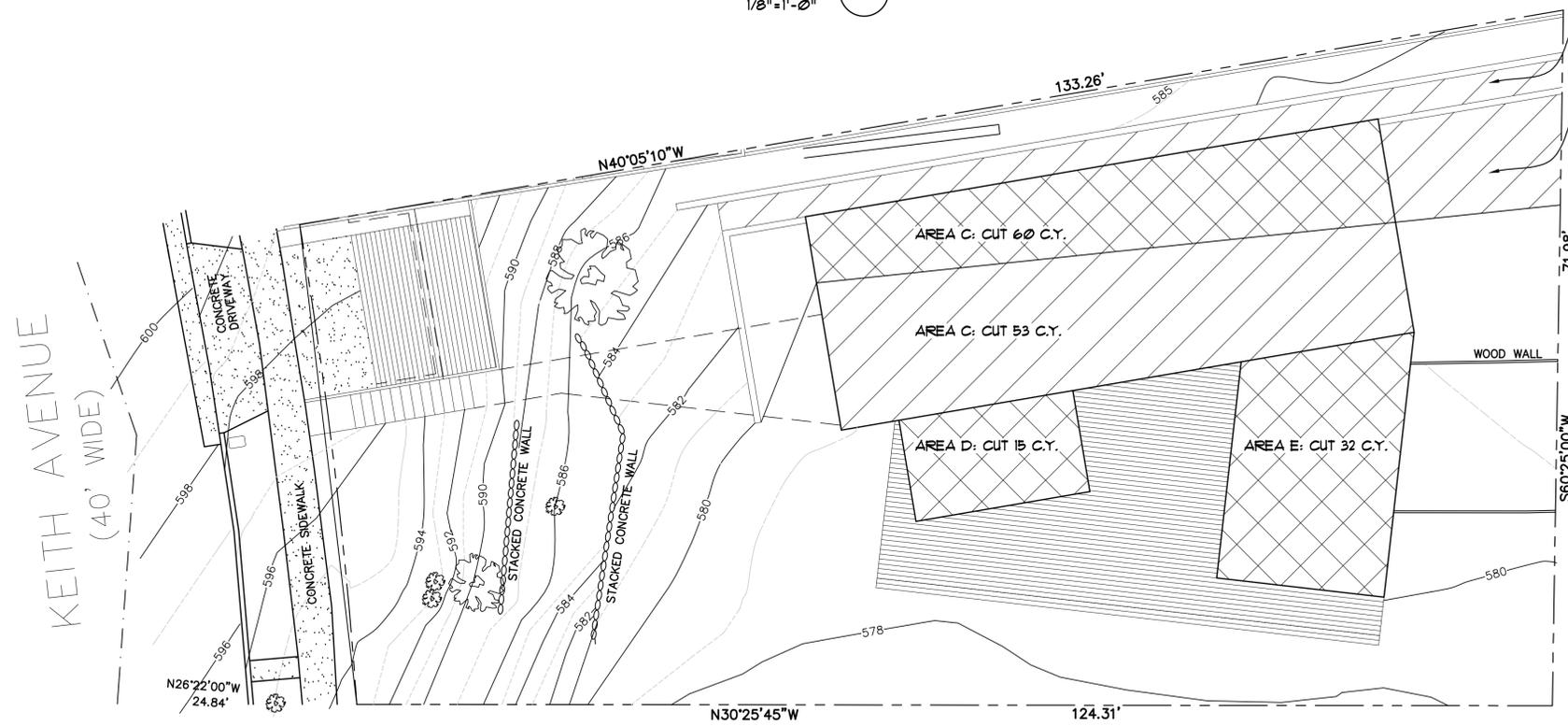






EXISTING GRADING PLAN

1/8" = 1'-0"



PROPOSED GRADING PLAN

1/8" = 1'-0"

AREA A: CUT 48 C.Y.

AREA B: CUT 20 C.Y.

AREA C: CUT 60 C.Y.

AREA C: CUT 53 C.Y.

AREA D: CUT 15 C.Y.

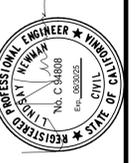
AREA E: CUT 32 C.Y.

NOTE: FOR ELEVATION VIEW OF CUTS, SEE A6

TOTAL CUT: 228 C.Y.

| REVISIONS | BY |
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LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P.313.615.9400  
newmanl26@gmail.com



NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
GRADING PLAN

DATE: 12.03.24  
JOB NO: LN-1048  
SCALE: 1/4" = 1'-0"  
DRAWN: LN

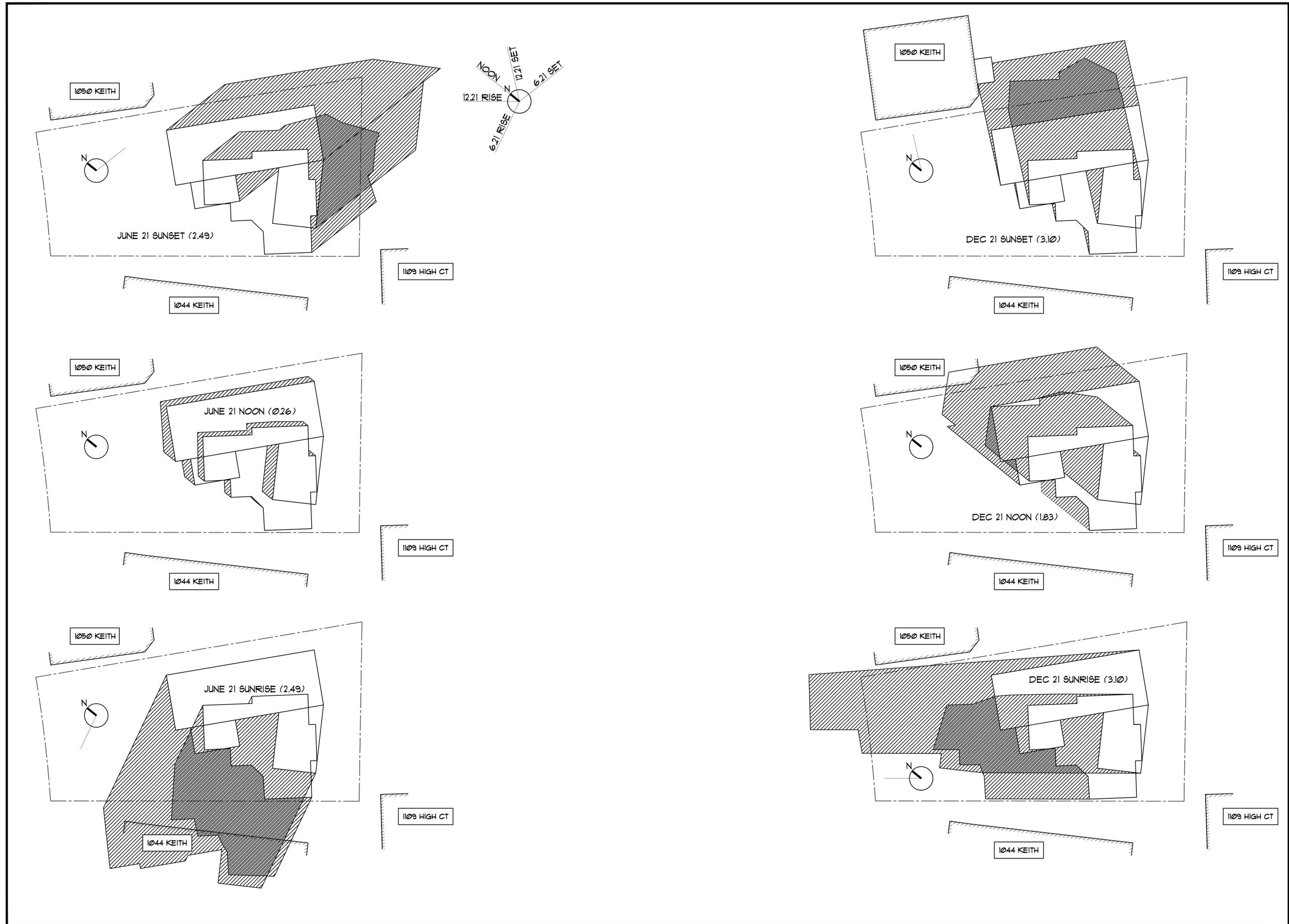


OF 18 SHEETS









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LINDSAY NEWMAN, PE  
CIVIL ENGINEER  
P.313.615.9400  
newmanli26@gmail.com

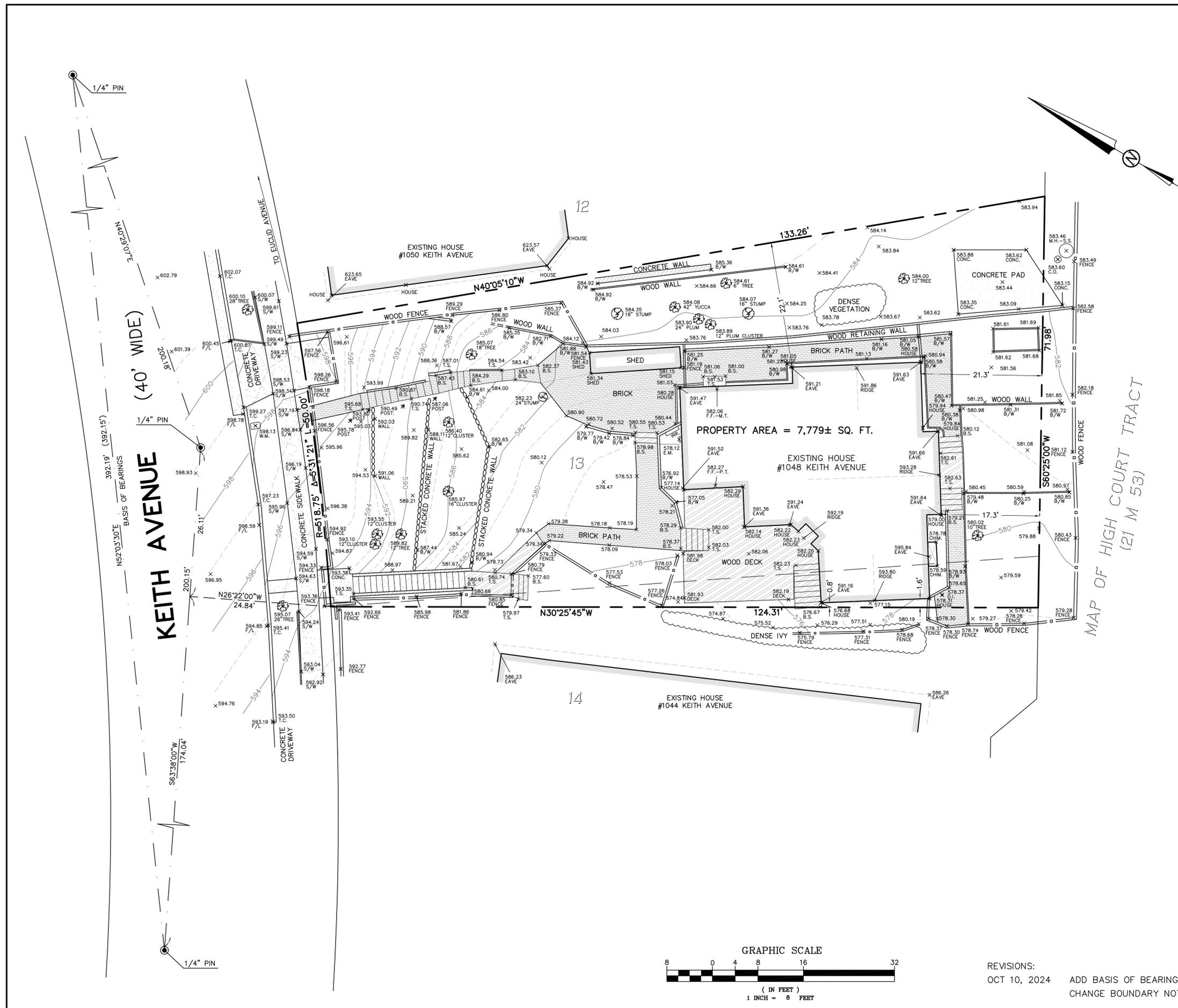


NEW SINGLE-FAMILY RESIDENCE  
1048 KEITH AVENUE  
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH  
SHADOW STUDY OF EXISTING  
& PROPOSED DWELLING

DATE: 12.09.24  
JOB NO: LN-1048  
SCALE: 1/4"=1'-0"  
DRAWN: LN

A18  
OF 18 SHEETS



- LEGEND**
- B.S. BASE OF STEPS
  - B/W BASE OF WALL
  - CHIM. CHIMNEY
  - C.O. CLEANOUT
  - CONC. CONCRETE
  - D.I. DRAIN INLET
  - E.M. ELECTRIC METER
  - F.F. FINISHED FLOOR
  - F/L FLOWLINE
  - IRR. IRRIGATION
  - M.H. MAINTENANCE HOLE
  - M.T. METAL THRESHOLD
  - P.T. PLASTIC THRESHOLD
  - S.S. SANITARY SEWER
  - S/W SIDEWALK
  - T.C. TOP OF CURB
  - T.S. TOP OF STEPS
  - W.M. WATER METER
  - BUILDING LINE
  - BRICK
  - CONCRETE SURFACE
  - CONCRETE WALL
  - STACKED CONCRETE WALL
  - WOOD SURFACE
  - WOOD WALL
  - WOOD FENCE
  - FOUND CITY MONUMENT IN WELL, AS NOTED

**GENERAL NOTES:**  
DIMENSIONS ARE IN FEET AND DECIMAL FEET.

NO TITLE REPORT WAS PROVIDED, EASEMENTS MAY EXIST.

**BENCHMARK:**  
ELEVATIONS ARE BASED ON CITY OF BERKELEY DATUM.  
THE PIN MONUMENT IN KEITH AVENUE, DESIGNATED "B1141" WAS TAKEN AS ELEVATION = 598.58' FEET PER CORNER RECORD 8339 (80 CR 5).

**BASIS OF BEARINGS:**  
THE BASIS OF BEARINGS OF N52°03'30"E BETWEEN THE MONUMENTS IN KEITH AVENUE IS BASED ON THE MAP OF NORTH CRAGMONT (23 M 84), CALCULATED FROM THE NORTH CRAGMONT CALCULATION MAP (ON FILE IN THE CITY ENGINEERING DEPARTMENT) ROTATED BY 23' 30".

**BOUNDARY NOTE:**  
THIS PROPERTY BOUNDARY SHOWN IS BASED ON THE SURVEY MONUMENTS AS DETAILED HEREON. THESE THREE MONUMENTS FIT TOGETHER WITHIN AN INCH. DUE TO HISTORIC LAND MOTION IN THIS AREA, BOUNDARIES DETERMINED FROM MONUMENTS FURTHER AWAY, OR FROM THE ADJACENT SUBDIVISION TO THE SOUTH, MAY NOT AGREE.

LICENSED LAND SURVEYOR  
JAMES S. MORAN  
7881  
*James Moran*  
STATE OF CALIFORNIA  
10-10-2024

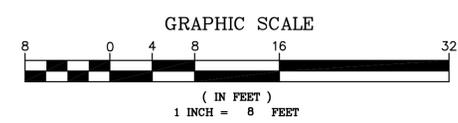
**BOUNDARY AND TOPOGRAPHIC SURVEY**

LOT 13 AND A PORTION OF LOT 14, BLOCK 2, NORTH CRAGMONT (23 M 84)  
LOCATED AT 1048 KEITH AVENUE  
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

NOVEMBER 16, 2020 SCALE: 1" = 8'  
UPDATED APRIL 24, 2024

**MORAN ENGINEERING, INC.**

CIVIL ENGINEERS \ LAND SURVEYORS  
1930 SHATTUCK AVENUE, SUITE A  
BERKELEY, CALIFORNIA 94704  
(510) 848-1930



REVISIONS:  
OCT 10, 2024 ADD BASIS OF BEARINGS,  
CHANGE BOUNDARY NOTE.



**Jacob, Melinda**

---

**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Use Permit application #ZP2024-0014 1048 Keith Agenda item for 10/10

**From:** John Doppke <john@doppke.com>  
**Sent:** Wednesday, October 9, 2024 7:13 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>  
**Subject:** Use Permit application #ZP2024-0014 1048 Keith Agenda item for 10/10

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

Hello,

I live at 1051 Keith Ave, and wanted to add a comment to the permit application for 1048 Keith:

Like a number of my neighbors I've spoken to, I'm very concerned by the prospect of my neighbors trying to claim land from one another in a well-known landslide zone. I have no interest in being the judge of who should own the disputed area—that's not my job. But if this process continues, it threatens to upend our whole street, leading to a chain of neighbors suing one another only to wind up with the same amount of land, just a few feet up the hill. That seems like madness to me, and not the spirit in which we've lived alongside each other for years.

I'm also disturbed by the fact that the permit applicant has already destroyed property in the disputed area—the fence, an unused chicken coop, and I believe some trees. It's possible that those actions were provoked; I don't claim to know everything that has transpired. But regardless, I think it's only fair to block any further permanent actions, including building in the disputed area, until the dispute has been resolved.

Thank you,  
John Doppke

**Jacob, Melinda**

---

**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 1048 Keith Avenue  
**Attachments:** Greetings Berkley ZAP.pdf

**From:** Darius Gangei <dariusgangei@gmail.com>  
**Sent:** Monday, September 23, 2024 11:08 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>  
**Subject:** 1048 Keith Avenue

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

Hi there, Zoning Adjustment Board,

I've attached our letter to add to the September 26th Meeting for the ZP2024-0014 permit. We are objecting to the permit and will be there in person to share our grievances.

Sincerely,

**Darius Gangei** | Lighting Designer & Architectural Designer  
[dariusgangei@gmail.com](mailto:dariusgangei@gmail.com)  
Mobile Line (415) 706-3902

-----  
Please keep in mind that the contents of this e-mail and any attachments are private, confidential, and intended for the recipient. They may contain information subject to legal privilege and protected by the Electronic Communications Privacy Act, 18 U.S.C. §2510 et seq. Please also be sure to check any attachments for viruses before opening them. Thank you for your cooperation and understanding.

Greetings Berkeley Zoning Adjustment Board,

My name is Darius Gangei, Son of the Gangei Family residing at 1050 Keith since 2001. I Graduated from my Alma mater, Berkeley High School, in 2011. Growing up in a community such as Berkeley has been a blessing.

Many of you may already know that Berkeley Hills is in a Fault Zone and Landslide Zone and that movement of the land beneath our homes has caused Fences, Yards, and entire buildings to slip downhill, causing each neighbor's historically identified property corners to encroach into the neighbors and vice versa. Most good neighbors mitigate conflict by accepting the status quo. Lose some ground on the uphill side and gain some ground on the downhill side. Some neighbors wish to fight the status quo, keep their gained downhill ground, and take back land from their uphill neighbor. This is what is happening to my family.

On 9/24/2019, the Newman/ Kainz Family residing at 1044 Keith bought the next uphill home, 1048 Keith, from Peter and Cyndi Berck, which abuts 1050 Keith uphill from it. On 11/16/20 Mr. Kainz hired Moran Engineering to perform a survey of 1048 Keith, the survey showed that 20 feet of land being used at 1050 Keith for the previous 23 years, fence line, Mature 50+ year-old apple trees were inside of 1048 Keith's property lines. Subsequently, they developed a plan to Demolish the existing home at 1048 Keith and build a new 2-story house in a new location, requiring the demolition and construction of a retaining wall in what is currently my family's backyard. All are based on a survey where the surveyor states that the survey is not reliable by 5 or MORE feet. see (Exhibit A. and B).

Rather than go through the legal route to obtain approval and mutual agreement, on 4/7/24, Newman/ Kainz CUT DOWN my family's fence himself with a power saw. My family awoke to this invasion and called the police, but the police did nothing. Kainz ignored cease-and-desist letters and in-person pleas to stop as he used powered tools to clear-cut the land, rip out trees, tear down chicken coops, and remove pet grave markers to erase their existence. The invasion, harassment, and destruction has been nearly everyday since. Even as I write this letter they are creating a hostile environment in the neighborhood. My family is fearful to go into their own yard.

Neighbors have experienced and some have even called the cops as they witness the harassment and have been there to condole us as this invasion happens on a daily basis. As it states in the Berkeley city ordinance no noise on weekends before 9am but Mr. Kainz starts at 7am to remind us and the whole neighborhood of their presence while abusing the rights of the cease-and-desist, lawsuit and lis pendens filed against the property.

Multiple conversations have taken place since October of 2023 Bahram Gangei and Erica Eagle have objected in person, over email and on the phone dating back before the community outreach (Exhibit D) that stated we have not been informed and that a letter was sent certified to avoid our objection to their plans for submittal. We had tried the mediation through the city personal in recommendation from both parties but no resolution or agreement could be reached.

We ask you the Zoning Adjustment Board to halt all permit progress until a resolution in the courts can be reached.

Exhibit A.

**BOUNDARY NOTE: DUE TO SIGNIFICANT LAND MOTION IN THIS AREA, IT IS NOT POSSIBLE TO ESTABLISH THE PROPERTY BOUNDARY WITH CERTAINTY. THE BOUNDARY SHOWN COULD VARY BASED ON THE CONSIDERATION OF ALTERNATE SURVEY REFERENCE POINTS. THIS VARIANCE IS VERY LIKELY [SIC] ON THE ORDER OF 5.0' OR MORE IN MAGNITUDE.**

Exhibit B.

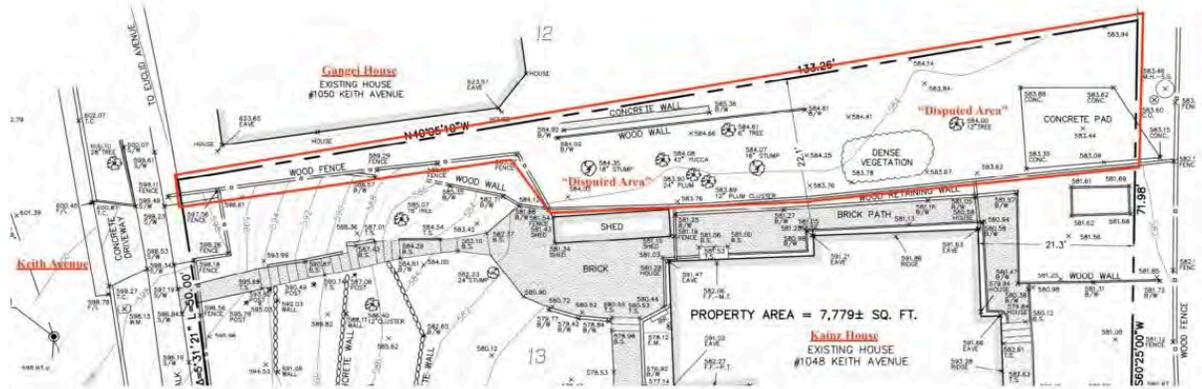


Exhibit C. A cascade of encroachments 1058 > 1056 > 1054 > 1050 > 1048 > 1044 > 1042

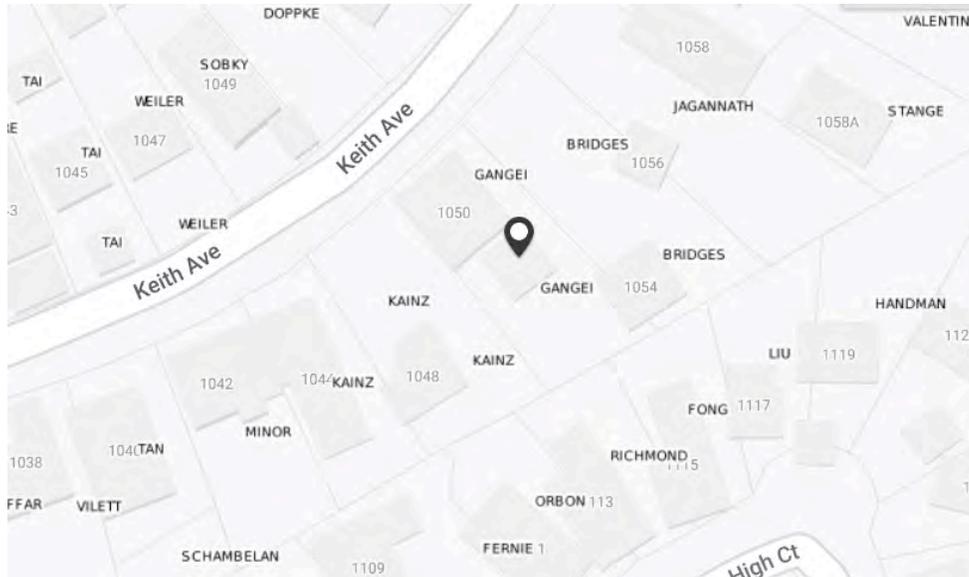


Exhibit D.

I have reviewed plans at 1048 Keith Ave for a proposed 2-story single family dwelling.

| NAME (PRINTED)  | SIGNATURE              | ADDRESS        | RENTER OR OWNER | HAVE NO OBJECTIONS | HAVE OBJECTIONS (STATE BRIEFLY) | HAVE NO COMMENT |
|-----------------|------------------------|----------------|-----------------|--------------------|---------------------------------|-----------------|
| LINDSAY NEWMAN  | <i>L. Newman</i>       | 1044 KEITH AVE | OWNER           | ✓                  |                                 | ✓               |
| Lisa Rose       | <i>Lisa Rose</i>       | 1047 KEITH AVE | OWNER           | ✓                  |                                 |                 |
| <see below>     |                        | 1049 KEITH AVE |                 |                    |                                 |                 |
| <see below>     |                        | 1050 KEITH AVE |                 |                    |                                 |                 |
| <see below>     |                        | 1051 KEITH AVE |                 |                    |                                 |                 |
| CHRIS FERRE     | <i>Chris Ferre</i>     | 1109 HIGH CT   | owner           | ✓                  |                                 | ✓               |
| Margen Bessie   | <i>Margen Bessie</i>   | 1111 HIGH CT   | owner           |                    |                                 | ✓               |
| Ellice Richmond | <i>Ellice Richmond</i> | 1113 HIGH CT   | owner           | ✓                  |                                 |                 |

→ Not home 11/9/24 or 11/10/24. Stopped by 3 times each. sent by certified mail 11/11/24 (see receipts)

**From:** [Bahram Gangei](#)  
**To:** [Shah, Waqar](#)  
**Subject:** RE: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave. Berkeley  
**Date:** Tuesday, November 19, 2024 5:52:31 PM  
**Attachments:** [images-zz.png](#)

---

Hi Mr. Shah,

The Newman family specially Joachim, has become more aggressive in their conduct being emboldened by the city allowing them to put the story poles in a disputed area. On a daily basis they destroy our trees/plants and leave the debris/trash scattered on our property. Please ask the Newman family to remove the story poles from the disputed area until it is mitigated either amicably as it should be or with the lawsuit.

He came close to me this afternoon on several occasions while cleaning the grounds in my own yard and shouted at me and my gardner and proceeded to block me from walking to my back shed and followed me for minutes not giving me an inch of space. He came back with a pair of loppers while continuing to get dangerously close and proceeded to grab a chair and gaze into our yard for 2 hours.

This is just one example of why my wife at this moment does not feel safe living in this environment, forcing her to spend her time elsewhere causing extreme emotional distress to my family.

Our neighbors are very concerned with this unsafe condition and the implications it may cause.

We appreciate your support to resolve this issue amicably and hope you can support in providing peace for my family and the greater Keith Ave community.

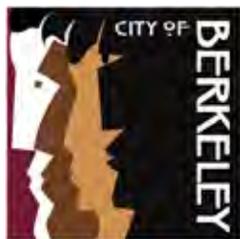
Best Regards,  
Bahram Gangei.

On 11/12/2024 4:55 PM PST Shah, Waqar <wshah@berkeleyca.gov> wrote:

Hi Bahram—Thank you for your email. At this time, it is still pending.

Best,

Waqar



**Waqar Shah** (he/him)

Associate Planner

Planning and Development, Land Use Division

1947 Center St., 2<sup>nd</sup> Floor, Berkeley, CA 94704

**Phone:** (510) 981.7469

**Website:** [www.berkeleyca.gov](http://www.berkeleyca.gov)

**Email:** [wshah@berkeleyca.gov](mailto:wshah@berkeleyca.gov) .

***The [Permit Service Center \(PSC\)](#), including the zoning counter, is open between 8:30 am – 2:30 pm (final check in at 2:00 pm) Monday through Thursday.***

*To limit the spread of COVID-19, face masks and social distancing are required when visiting our offices, and some Planning staff continue to work remotely.*

***All permit-related and Zoning services are available online. Please visit us [online](#) for more information.***

---

**From:** BG Personal <bgangei@comcast.net>  
**Sent:** Tuesday, November 12, 2024 1:49 PM  
**To:** Shah, Waqar <wshah@berkeleyca.gov>  
**Subject:** Re: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave. Berkeley

Hi Mr. Shah,

We are anticipating the city decision on the referenced permit that will ripple effect multiple immediate neighbors property deeded area square footage with property vales and taxes etc.,

Please let me know if the city is planning to postpone the permit until the dispute is settled.

The Newman family have been emboldened to increase their aggression of threatening, stealing and damaging our properties and caught on video last Sunday in the disputed area saying there is going to be a bulldozer coming to clear 60-year old apple trees, walls etc.,

Please let us know the status of this permit while we are trying to make sence of their conduct and with City's help to amicably resolve this issue.

Best Regards,  
Bahram Gangei.

Sent from my iPhone

On Oct 15, 2024, at 4:18 PM, BG Personal <[bgangei@comcast.net](mailto:bgangei@comcast.net)> wrote:

Hi Mr, Shah,  
Thank you for the update. Much appreciated.  
My attorney and other neighbors are inquiring if the city is considering the property line dispute logistics to mitigate, in addition to the standard plan check reviews?

Thank you,  
Bahram Gangei.

Sent from my iPhone

On Oct 15, 2024, at 3:13 PM, Shah, Waqar <[wshah@berkeleyca.gov](mailto:wshah@berkeleyca.gov)> wrote:

Hi Bahram-- Thank you for this supplemental item. This will be included in the staff report to ZAB when the project goes to hearing. At this time 1048 Keith's Project is continued to an unknown date, and that the hearing notice will be mailed and posted two weeks before it goes back to ZAB. You will be informed as progress is made.

Best,

Waqar

---

Waqar Shah (he/him)

Associate Planner

Planning and Development, Land Use Division

1947 Center St., 2nd Floor, Berkeley, CA 94704

Phone: (510) 981.7469

Website: [www.berkeleyca.gov](http://www.berkeleyca.gov)

-----Original Message-----

From: Bahram Gangei <[bgangei@comcast.net](mailto:bgangei@comcast.net)>

Sent: Tuesday, October 15, 2024 11:55 AM

To: Zoning Adjustments Board (ZAB)  
<[Planningzab@berkeleyca.gov](mailto:Planningzab@berkeleyca.gov)>; Garcia, Claudia  
<[CGarcia@berkeleyca.gov](mailto:CGarcia@berkeleyca.gov)>; [dariusgangei@gmail.com](mailto:dariusgangei@gmail.com)

Subject: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave. Berkeley

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

Dear ZAB Board Members & Ms. Garcia,

Attached, please find the documents and exhibits for your review in regards to the encroachment intended by the new peoject at the referenced site.

The 44-page geological report was sent to Mr. Shah with respect to the 15-page max. limit submittal to the ZAB board members.

Please let me know if you have any questions.

Best Regards,

Bahram Gangei.

Mobile: 510-612-5821

Email: [bgangei@comcast.net](mailto:bgangei@comcast.net)

<attachment 1.pdf>

**Jacob, Melinda**

---

**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave. Berkeley  
**Attachments:** attachment 1.pdf

-----Original Message-----

From: Bahram Gangei <bgangei@comcast.net>  
Sent: Tuesday, October 15, 2024 11:55 AM  
To: Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>; Garcia, Claudia <CGarcia@berkeleyca.gov>; dariusgangei@gmail.com  
Subject: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave. Berkeley

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Dear ZAB Board Members & Ms. Garcia,  
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The 44-page geological report was sent to Mr. Shah with respect to the 15-page max. limit submittal to the ZAB board members.

Please let me know if you have any questions.

Best Regards,  
Bahram Gangei.  
Mobile: 510-612-5821  
Email: bgangei@comcast.net

**From:** [Bahram Gangei](#)  
**To:** [Shah, Waqar](#)  
**Subject:** Re: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave. Berkeley  
**Date:** Wednesday, December 4, 2024 10:01:00 AM

---

Hi Mr. Shah,  
Hope all is well.  
Please let us know the results of the new survey as referenced in your email.  
I had cancelled my appointment for a new survey based on your recommendation on 10/3 to hold off.  
Please let me know if the city has a new survey that aligns with the downhill neighbors added GSF parcels.  
Best Regards,  
Bahram Gangei.

On 11/20/2024 2:15 PM PST BG Personal <bgangei@comcast.net> wrote:

Hi Mr. Shah,

Could you elaborate on what a revised survey means?

We and the immediate neighbors are expecting the City/Newman family to follow the deeded square footage for all properties with an equitable and fair adjustment to all parties.

Given the hearing being pushed back to January, could we please have the story poles taken down on the disputed area as they have already been reviewed by the city and will be adjusted based on the outcome of the dispute.

Also we have called the police several times and we are consistently told there is nothing to be done until the land dispute is finalized. We as a community feel the city has the power to find an equitable agreement/solution to end this dispute and prevent any further property line issues of this magnitude in the future.

Best Regards,

Bahram Gangei

On Nov 20, 2024, at 9:23 AM, Shah, Waqar <wshah@berkeleyca.gov> wrote:

Hi Bahram—Your message is received. The applicant has submitted a revised survey with the most current information and is now scheduled for the January 9th, 2024 ZAB hearing. As I work in the planning department, I am only able to address zoning-related matters and am unable to assist with neighborhood relations concerns. For those issues, please contact the police department.

Best regards,

Waqar

---

<image003.png>

**Waqar Shah** (he/him)

Associate Planner

Planning and Development, Land Use Division

1947 Center St., 2<sup>nd</sup> Floor, Berkeley, CA 94704

**Phone:** (510) 981.7469

**Website:** [www.berkeleyca.gov](http://www.berkeleyca.gov)

**Email:** [wshah@berkeleyca.gov](mailto:wshah@berkeleyca.gov) .

***The [Permit Service Center \(PSC\)](#), including the zoning counter, is open between 8:30 am – 2:30 pm (final check in at 2:00 pm) Monday through Thursday.***

*To limit the spread of COVID-19, face masks and social distancing are required when visiting our offices, and some Planning staff continue to work remotely.*

***All permit-related and Zoning services are available online. Please visit us [online](#) for more information.***

---

**From:** Bahram Gangei <bgangei@comcast.net>  
**Sent:** Tuesday, November 19, 2024 5:52 PM  
**To:** Shah, Waqar <wshah@berkeleyca.gov>  
**Subject:** RE: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave. Berkeley

Hi Mr. Shah,

The Newman family specially Joachim, has become more aggressive in their conduct being emboldened by the city allowing them to put the story poles in a disputed area. On a daily basis they destroy our trees/plants and leave the debris/trash scattered on our property.

Please ask the Newman family to remove the story poles from the disputed area until it is mitigated either amicably as it should be or with the lawsuit.

He came close to me this afternoon on several occasions while cleaning the grounds in my own yard and shouted at me and my gardner and proceeded to block me from walking to my back shed and followed me for minutes not giving me an inch of space. He came back with a pair of loppers while continuing to get dangerously close and proceeded to grab a chair and gaze into our yard for 2 hours.

This is just one example of why my wife at this moment does not feel safe living in this environment, forcing her to spend her time elsewhere causing extreme emotional distress to my family.

Our neighbors are very concerned with this unsafe condition and the implications it may cause.

We appreciate your support to resolve this issue amicably and hope you can support in providing peace for my family and the greater Keith Ave community.

Best Regards,

Bahram Gangei.

On 11/12/2024 4:55 PM PST Shah, Waqar  
<[wshah@berkeleyca.gov](mailto:wshah@berkeleyca.gov)> wrote:

Hi Bahram—Thank you for your email. At this time, it is still pending.

Best,

Waqar

---

<image004.png>

**Waqar Shah** (he/him)

Associate Planner

Planning and Development, Land Use Division

1947 Center St., 2<sup>nd</sup> Floor, Berkeley, CA 94704

**Phone:** (510) 981.7469

**Website:** [www.berkeleyca.gov](http://www.berkeleyca.gov)

**Email:** [wshah@berkeleyca.gov](mailto:wshah@berkeleyca.gov) .

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---

**From:** BG Personal <[bgangei@comcast.net](mailto:bgangei@comcast.net)>  
**Sent:** Tuesday, November 12, 2024 1:49 PM  
**To:** Shah, Waqar <[wshah@berkeleyca.gov](mailto:wshah@berkeleyca.gov)>  
**Subject:** Re: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave.  
Berkeley

Hi Mr. Shah,  
We are anticipating the city decision on the referenced permit that will ripple effect multiple immediate neighbors property deeded area square footage with property vales and taxes etc.,  
Please let me know if the city is planning to postpone the permit until the dispute is settled.

The Newman family have been emboldened to increase their aggression of threatening, stealing and damaging our properties and caught on video last Sunday in the disputed area saying there is going to be a bulldozer coming to clear 60-year old apple trees, walls etc.,

Please let us know the status of this permit while we are trying to make sence of their conduct and with City's help to amicably resolve this issue.

Best Regards,  
Bahram Gangei.

Sent from my iPhone

On Oct 15, 2024, at 4:18 PM, BG Personal  
<[bgangei@comcast.net](mailto:bgangei@comcast.net)> wrote:

Hi Mr, Shah,  
Thank you for the update. Much appreciated.  
My attorney and other neighbors are inquiring if the city is considering the property line dispute logistics to mitigate, in addition to the standard plan check reviews?

Thank you,  
Bahram Gangei.

Sent from my iPhone

On Oct 15, 2024, at 3:13 PM, Shah, Waqar  
<[wshah@berkeleyca.gov](mailto:wshah@berkeleyca.gov)> wrote:

Hi Bahram-- Thank you for this supplemental item. This will be included in the staff report to ZAB when the project goes to hearing. At this time 1048 Keith's Project is continued to an unknown date, and that the hearing notice will be mailed and posted two weeks before it goes back to ZAB. You will be informed as progress is made.

Best,

Waqar

---

Waqar Shah (he/him)

Associate Planner

Planning and Development, Land Use  
Division

1947 Center St., 2nd Floor, Berkeley, CA  
94704

Phone: (510) 981.7469

Website: [www.berkeleyca.gov](http://www.berkeleyca.gov)

Email: [wshah@berkeleyca.gov](mailto:wshah@berkeleyca.gov)

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-----Original Message-----

From: Garcia, Claudia  
<[CGarcia@berkeleyca.gov](mailto:CGarcia@berkeleyca.gov)>

Sent: Tuesday, October 15, 2024 12:02 PM

To: Shah, Waqar  
<[wshah@berkeleyca.gov](mailto:wshah@berkeleyca.gov)>; Updegrave,  
Samantha <[SUpdegrave@berkeleyca.gov](mailto:SUpdegrave@berkeleyca.gov)>

Subject: FW: ZAB - Use Permit#ZP2024-  
0014 - 1048 Keith Ave. Berkeley

Internal

HI Waqar and Samantha,

Please see email and attached document. I'm  
assuming this is from the neighboring  
property owner?

@Shah, Waqar: perhaps you should respond  
to acknowledge receipt of the information.  
@Updegrave, Samantha: what do you think?

Best,

Claudia

-----Original Message-----

From: Bahram Gangei  
<[bgangei@comcast.net](mailto:bgangei@comcast.net)>

Sent: Tuesday, October 15, 2024 11:55 AM

To: Zoning Adjustments Board (ZAB)  
<[Planningzab@berkeleyca.gov](mailto:Planningzab@berkeleyca.gov)>; Garcia,  
Claudia <[CGarcia@berkeleyca.gov](mailto:CGarcia@berkeleyca.gov)>;  
[dariusgangei@gmail.com](mailto:dariusgangei@gmail.com)

Subject: ZAB - Use Permit#ZP2024-0014 -  
1048 Keith Ave. Berkeley

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

Dear ZAB Board Members & Ms. Garcia,

Attached, please find the documents and exhibits for your review in regards to the encroachment intended by the new project at the referenced site.

The 44-page geological report was sent to Mr. Shah with respect to the 15-page max. limit submittal to the ZAB board members.

Please let me know if you have any questions.

Best Regards,

Bahram Gangei.

Mobile: 510-612-5821

Email: [bgangei@comcast.net](mailto:bgangei@comcast.net)

<attachment 1.pdf>

**Jacob, Melinda**

---

**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Comments on Public Hearing for 1048 Keith Avenue on 9.26.24

-----Original Message-----

From: khortan@mac.com <khortan@mac.com>  
Sent: Thursday, September 26, 2024 5:52 PM  
To: Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>  
Subject: Comments on Public Hearing for 1048 Keith Avenue on 9.26.24

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

Dear Zoning Adjustment Board Members,

We are homeowners of 1040 Keith Avenue. We respectfully request that you do NOT issue a permit to build in the disputed area until after this land dispute is resolved. To issue a permit at this time when the land dispute has not been resolved would unnecessarily further complicate matters. It would also suggest that the Board is already taking sides prematurely in favor of one side of this dispute over the other when there is no formal resolution on this land dispute.

As a matter of consistent practice, it seems prudent NOT to issue any new building permit in any disputed area in our City which has not been officially resolved.

Thank you for considering this.

Respectfully Yours,

Shu Yang Tan & Karen Khor  
Homeowners of 1040 Keith Avenue, Berkeley, CA 94708

**Jacob, Melinda**

---

**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Use Permit application #ZP2024-0014 1048 Keith Agenda item for 10/10

-----Original Message-----

From: Margit Stange <mkstange@sbcglobal.net>  
Sent: Tuesday, October 8, 2024 4:02 PM  
To: Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>  
Subject: Use Permit application #ZP2024-0014 1048 Keith Agenda item for 10/10

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

ATTN: ZAB Secretary  
RE: Use Permit application #ZP2024-0014 1048 Keith OBJECTION  
FROM: Margit Stange 1058A Keith Ave. 510 693 7032

I own the property at 1058A Keith Ave., four plots uphill from 1048 Keith. I oppose granting the referenced demo/building permit or allowing any building on the site until the ongoing property line dispute with the uphill neighbor at 1050 Keith has been settled. We on the lower side of Keith Ave. sit on the Keith Avenue Landslide. Since the original property lines were laid out more than a century ago, the land--and our structures and property lines -- has been moving downhill (S/SW) by as much as two inches a year. As long as we retained the use of the original square footage shown on the deed, we have lived peaceably with the situation, refraining from interfering with our neighbors' use of their original plot area. The owners of 1048 Keith contend there has been no land movement. Their building plan is based on a survey which redraws the property lines such that 1050's plot would shrink significantly. But this survey, like previous surveys on the Slide, includes a disclaimer: "Due to significant land motion. . . . The boundary shown could vary . . . . on the order of 5.0' or more." (11/16/20 Moran Engineering Survey of 1048 Keith). Do not approve use permit application #ZP2024-0014, as it is based on uncertain and disputed plot boundaries.

**From:** [Lindsay Newman](#)  
**To:** [Shah, Waqar](#)  
**Subject:** Re: September 26, 2024 ZAB meeting comment on 1048 Keith  
**Date:** Monday, September 23, 2024 5:40:01 PM

---

Thank you for sending this. I will email her later tonight.

[Yahoo Mail: Search, Organize, Conquer](#)

On Mon, Sep 23, 2024 at 5:07 PM, Shah, Waqar  
<[wshah@berkeleyca.gov](mailto:wshah@berkeleyca.gov)> wrote:

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**From:** kelly hammargren <[kellyhammargren@gmail.com](mailto:kellyhammargren@gmail.com)>  
**Sent:** Friday, September 20, 2024 10:49 PM  
**To:** Zoning Adjustments Board (ZAB) <[Planningzab@berkeleyca.gov](mailto:Planningzab@berkeleyca.gov)>  
**Subject:** September 26, 2024 ZAB meeting comment on 1048 Keith

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

Hello,

This parcel at 1048 Keith looks like a foolish place to add density as this parcel sits in the fire zone, earthquake fault zone, landslide zone trifecta.

My bigger question is, if this project is what it looks like, speculation building for sale, is the developer required to inform potential buyers they have hit the Berkeley hazard trifecta of fire, earthquake and landslide? If the "two houses" are for rent instead of sale, is the same notification required?

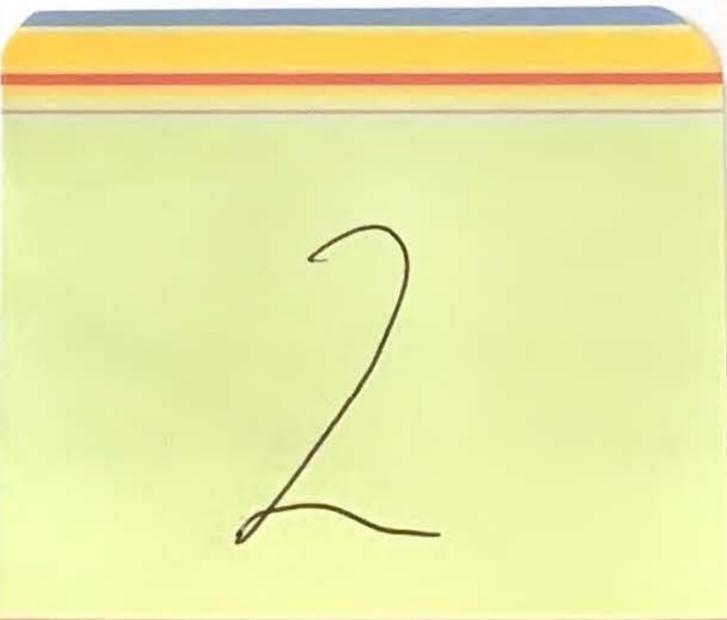
Checked the Earthquake Zones of Required Investigation map and found **THIS PARCEL IS IN THE EARTHQUAKE FAULT ZONE practically on top of the mapped fault and A LANDSLIDE ZONE** <https://maps.conservation.ca.gov/cgs/EQZApp/app/>

kelly hammargren

## Table of content for exhibits/documents attached for ZAB review

| Exhibit #                         | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                 |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <b>Documents &amp; References</b> | <b>Name: Bahram Gangei</b><br><b>Address: 1050 Keith Ave, Berkeley, Ca. 94708</b><br><b>Mobile: 510-612-5821</b><br><b>Email: bgangei@comcast.net</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>Permit# ZP2024-0014</b><br><b>Name: Lindsay Newman</b><br><b>Address: 1048 Keith Ave. Berkeley Ca. 94708</b> |
| 1                                 | Current Berkeley public utility plan show the existence of a 24" sewer manhole at 1050 Keith Ave. back yard. Ironically, three days ago city engineers came over to 1050 Keith ave to schedule an appointment for the sewer line inspection. It validates the accuracy of the manhole placement since it was built in 1908 or there of.                                                                                                                                                                                                                                                                      |                                                                                                                 |
| 2                                 | Letter submitted to ZAB from Cyndi Berk (Previous owner of 1048 Keith Ave address) stating the fact that Peter Berk had claims on the 1044 Keith Ave. eastern property line since 1979. The letter also confirms that the fence replaced in 2002 was installed where it was known to Mr. Berk since 1979 or beyond, possibly built in 1949 as we discussed.                                                                                                                                                                                                                                                  |                                                                                                                 |
| 3                                 | Notice filed by Peter Berk in 08/25/2000 that references the dashed area on the site plan attached as exhibit-3. The last paragraph references the encroachment of the deck retaining wall on the South west of the house.                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                 |
| 4                                 | Recent survey map denoting inaccuracy of the results with a huge disclaimer that the survey could be wrong by 5 or more feet.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                 |
| 5                                 | Alan Kropp extensive Geological research, studies and other legal cases compiled in collaboration with other subject matter experts providing the facts for Keith Ave. and Berkeley hills area having shifted 10-20 feet since community inception in year 1908, since Keith Ave. area is situated in a three fault line zone. The 44-page geological report was submitted to Mr. Shah via. email for your reference.                                                                                                                                                                                        |                                                                                                                 |
| 6                                 | Lawsuit Case #24CV083292 filed with superior court Alameda County on 07/12/24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                 |
| 7                                 | Plot map of Keith Ave. for ready reference. It shows 1050 back yard distance to be 65.29-feet, but we currently only have 61-feet.<br>All other neighbors distances above us toward Euclid Ave. are also different from the distances shown on the plot-map with a few feet less than expected.                                                                                                                                                                                                                                                                                                              |                                                                                                                 |
| 8                                 | Email from Mr. Shah W/City of Berkeley on 3/25/24 clarifying that there are no permits issued for the referenced project, where Newman family unilaterally began demolishing the fence starting on 04/14/24 and continuing to date destroying our property, invading our privacy daily, and intentionally stealing our belongings.                                                                                                                                                                                                                                                                           |                                                                                                                 |
| 9                                 | Summary of the damages and abusive code of conduct since 03/06/24 that has taken a big toll on my family's mental health, as we have from the start looked for ways to resolve the matter amicably for both parties while the Newman family continue to harass and terrorize. Petition signed by concerned neighbors disputing the property take over by inaccurate surveys and changing the taxing brackets etc.,                                                                                                                                                                                           |                                                                                                                 |
| Reference                         | The Missing 20-feet from 1048 Keith Ave, has to be claimed from the properties down the hill as supported in Exhibit-2.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                 |
| Reference                         | There was a public pathway between 1048 and 1040 Keith Ave. address since inception in year 1908. Peter Berk told me that the pathway was discontinued to be maintained by the City of Berkeley and was distributed to the neighboring properties and the deeds. This could also attribute to the confusion to properly address the discrepancies.<br>I could not find more specific data on the pathway with the Berkeley City staff and other city departments. ZAB board members may have resources available to investigate this matter further as this is a known subject amongst Keith Ave. neighbors. |                                                                                                                 |





c  
a

of you in this forwarded email. I wish  
g this matter.

I

to ZAB. The last sentence, referring to  
the knowledge, should read "1997 to  
2019."

Sincerely,  
Cyndi

----- Forwarded message -----

From: **Cyndi Berck** <[cyndi.berck@gmail.com](mailto:cyndi.berck@gmail.com)>

Date: Tue, Sep 24, 2024, 1:35 PM

Subject: 1048 Keith - application # ZP2024-0014

To: <[zab@berkeleyca.gov](mailto:zab@berkeleyca.gov)>

Dear Zoning Board:

I previously owned and lived at 1048 Keith. I have no opinion or  
interest as to the outcome of this application. The owners of 1050

Keith, Bahram Gangei and Erica Eagle, have asked me to share some information.

As background, my late husband, Peter Berck, owned 1048 from 1979 (initially with his first wife) until his death in 2018. I inherited the house from Peter, and sold it to Lindsay Newman (owner and resident at 1044 Keith) in 2019.

I lived at 1048 with Peter from 1997 to 2016, except for two academic sabbatical years, when the house was rented out. The house was again rented out 2016-19.

Before I sold 1048, I contacted a surveyor about the possibility of having a survey done. I was told that it is difficult to get accurate results because of land movement on that block.

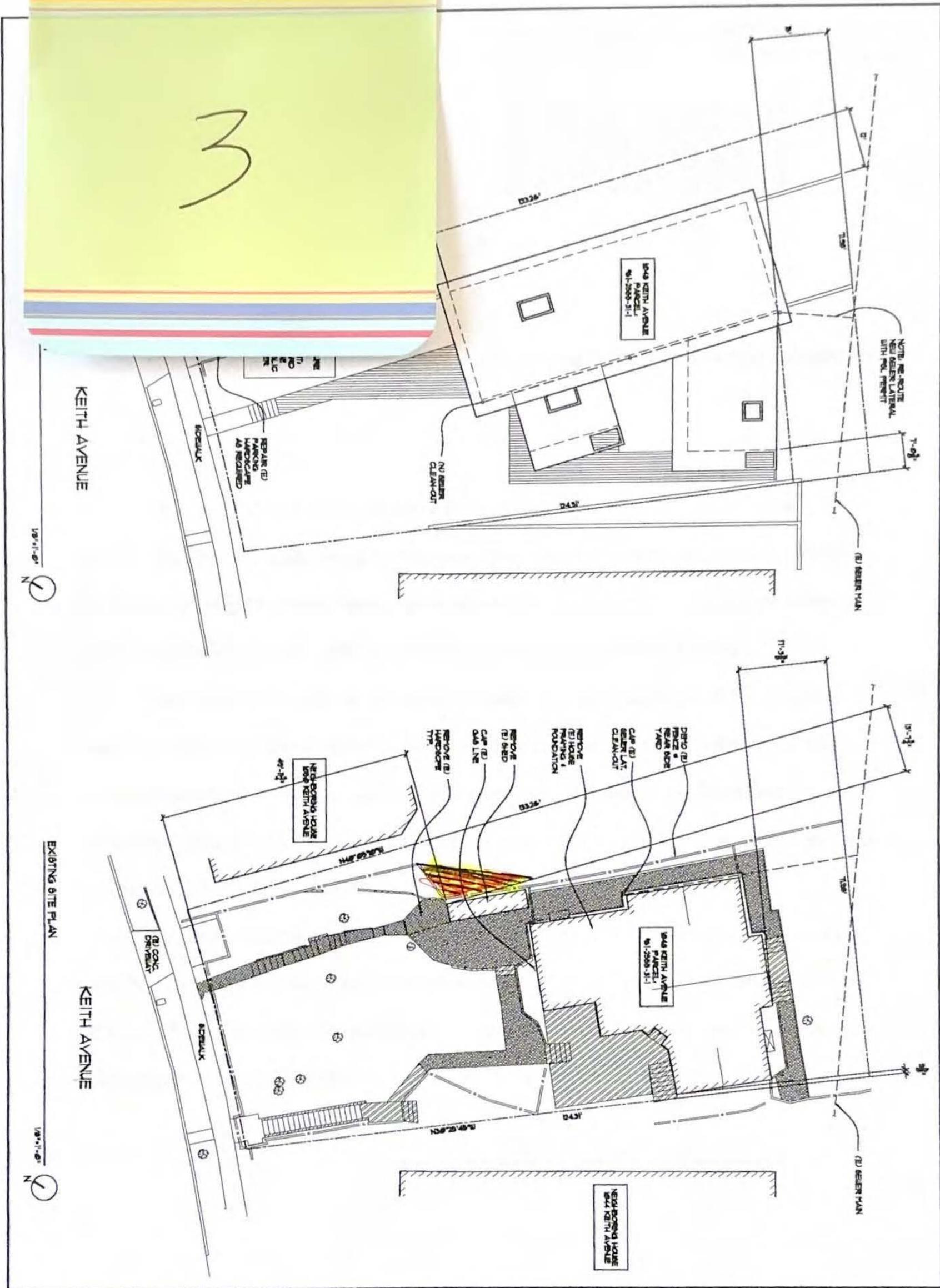
During the time of my personal knowledge (1997-2019), the yard used by the residents of 1044 included some land that was part of 1048, according to a survey marker that was located in the yard used by 1044. As of 1997, these yards were separated by a hedge and, I believe, some damaged fencing. In 2000, Peter built a new fence between the yards used by 1044 and 1048. Peter

included a gate in the fence and on occasion entered onto the portion of his property located in the yard used by the residents of 1044.

In 2000, Peter had a notice of encroachment filed with the county recorder's office, regarding encroachment of a structure from 1050 onto the front yard of 1048. The notice gave revocable permission for that encroachment.

In 2000 or 2001, Bahram and Erica asked Peter for permission to build a new fence between the back yards used by 1048 and 1050, to replace a dilapidated fence. Peter gave permission and the fence was built. It followed the line of the dilapidated fence that had separated 1048's back yard from 1050's back yard prior to the construction of the new fence. During the period of my personal knowledge (1979-2019), this was the practical demarcation of the back yards.

Sincerely,  
Cynd Berck



3

|                                                                 |                                            |                                                                        |  |                                                                                |                 |
|-----------------------------------------------------------------|--------------------------------------------|------------------------------------------------------------------------|--|--------------------------------------------------------------------------------|-----------------|
| DATE: 08/2023<br>JOB NO.: 24-004<br>SCALE: 1/4"=1'-0"<br>DRAWN: | EXISTING SITE PLAN &<br>PROPOSED SITE PLAN | NEW SINGLE-FAMILY RESIDENCE<br>1048 KEITH AVENUE<br>BERKELEY, CA 94708 |  | LINDSAY NEWMAN, PE<br>CIVIL ENGINEER<br>P. 313.615.9400<br>newmank26@gmail.com | REVISIONS<br>BY |
|                                                                 | A2<br>OF 26 SHEETS                         |                                                                        |  |                                                                                |                 |

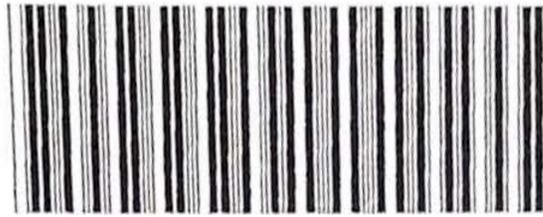
**2000266681**

09/01/2000 11:21 AM

OFFICIAL RECORDS OF  
ALAMEDA COUNTY  
PATRICK O'CONNELL

RECORDING FEE: 20.00

## RECORDING REQUESTED BY

Peter Berck  
1048 Keith Avenue  
Berkeley, CA 94708

3 PGS

## WHEN RECORDED MAIL TO:

Peter Berck  
1048 Keith Avenue  
Berkeley, CA 94708A  
3  
20**NOTICE OF CONSENT TO USE OF LAND AND NOTICE OF ENCROACHMENT**

APN: 61-2555-031-01

APN: 61-2555-32

The parcel of land owned by Peter Berck (APN 61-2555-031-01) is affected by this notice. The parcel of land owned by Margaret Webb (APN 61-2555-32), which is adjacent to the parcel owned by Peter Berck, also is affected by this notice. The legal descriptions of APN 61-2555-031-01 and APN 61-2555-32 are set forth on Exhibit A hereto.

The right of the public or any person to make any use whatsoever of the parcel of land owned by Peter Berck, APN 61-2555-031-01, described in Exhibit A hereto, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication), is by permission and subject to control of the owner pursuant to Section 813, California Civil Code.

This instrument also shall serve as notice that a portion of the retaining wall located near the southwest portion of the house on the property owned by Margaret Webb, APN 61-2555-32, described on Exhibit A, encroaches upon the adjacent parcel of land owned by Peter Berck, APN 61-2555-031-01, described on Exhibit A.

Dated: 8/25/2000

  
Peter Berck



MAP OF HIGH COURT TRACT  
(21 M 53)

- LEGEND**
- B.S. BASE OF STEPS
  - B/W BASE OF WALL
  - CHALK CHALK
  - CONC. CONCRETE
  - D.L. DRAIN ALLET
  - E.M. ELECTRIC METER
  - F.F. FINISHED FLOOR
  - F/L FLOWLINE
  - IRR. IRRIGATION
  - M.T. METAL THRESHOLD
  - P.T. PLASTIC THRESHOLD
  - S/W SIDEWALK
  - T.C. TOP OF CURB
  - T.S. TOP OF STEPS
  - W.M. WATER METER
  - BUILDING LINE
  - BRICK BRICK
  - CONCRETE SURFACE CONCRETE SURFACE
  - CONCRETE WALL CONCRETE WALL
  - STACKED CONCRETE WALL STACKED CONCRETE WALL
  - WOOD SURFACE WOOD SURFACE
  - WOOD WALL WOOD WALL
  - WOOD FENCE WOOD FENCE
  - FOUND CITY MONUMENT IN WELL AS NOTED

**GENERAL NOTES:**  
DIMENSIONS ARE IN FEET AND DECIMAL FEET.  
NO TITLE REPORT WAS PROVIDED, EASEMENTS MAY EXIST.

**BENCHMARK:**  
ELEVATIONS ARE BASED ON CITY OF BERKELEY DATA. THE P.M. MONUMENT IN KEITH AVENUE, DESIGNATED "81141" WAS TAKEN AS ELEVATION = 588.58 FEET PER CORNER RECORD 8339 (80 OR 5).

**BOUNDARY NOTE:**  
DUE TO SIGNIFICANT LAND MOTION IN THIS AREA, IT IS NOT POSSIBLE TO ESTABLISH THE PROPERTY BOUNDARY WITH CERTAINTY. THE BOUNDARY SHOWN COULD VARY BASED ON THE CONSIDERATION OF ALTERNATE SURVEY REFERENCE POINTS. THIS VARIANCE IS VERY UNLIKELY ON THE ORDER OF 3.0' OR MORE IN MAGNITUDE.

**BOUNDARY AND TOPOGRAPHIC SURVEY**  
LOT 13 AND A PORTION OF LOT 14, BLOCK 2, NORTH CRAWFORD (23 M 84)  
LOCATED AT 1048 KEITH AVENUE  
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

NOVEMBER 16, 2020 SCALE: 1" = 8'  
**MORAN ENGINEERING, INC.**  
CIVIL ENGINEERS \ LAND SURVEYORS  
1930 SHATTUCK AVENUE, SUITE A  
BERKELEY, CALIFORNIA 94704  
(510) 848-1930

F.B. NO. 1789 KEITH-TORQUINO JOB NO. 20-10244



From: Alan Kropp akropp@akropp.com  
Subject: Gangei Property Movement  
Date: Sep 24, 2024 at 5:55:33 PM  
To: Bahram Gangei bgangei@comcast.net

---

Bahram-

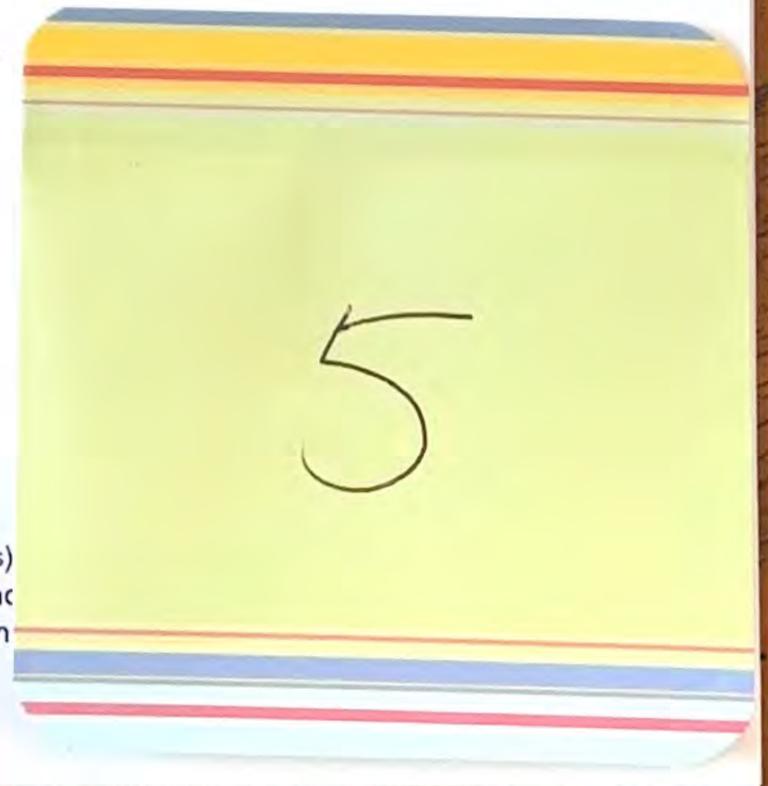
You asked that I comment on the issue of property line movement in the active Keith Avenue Landslide area where you live. You indicated that a neighbor had a survey performed and wants to build a new structure within their surveyed property lines. The problem is that the land has moved between 10 and 20 feet in your area since the property lines were established, so houses and improvements have partially migrated across property lines and this is no longer the normal situation where a person can just rely on a standard survey map. I have attached a series of articles and professional papers on this topic to help demonstrate the complexity of the situation and show how extensive the problem is. The first article is from the San Francisco Chronicle 20 years ago and focusses on this specific problem in your neighborhood, but also shows how it impacts other properties on other slowly moving landslides in the Berkley Hills and Kensington. The movement of the Keith Avenue Landslide was also highlighted in my firm's recent study of the Oxford School site located within the slide (a copy of our report can be found on our website).

I have been an expert witness in litigation on four such property line disputes in the area, and I can say that litigation never really resolved the issues. In my experience, the best way dozens of people I have worked with the situation is to acknowledge the property lines are not a good determiner of the lot limits, but simply to take the property dimensions and fit them as well as possible to the existing improvements. However, this takes cooperation between neighbors so the cascading problem from lot to lot for entire blocks can be avoided.

I hope this is helpful. Let me know if you have any questions.

Alan Kropp, G.E.  
President, Principal Engineer  
Alan Kropp & Associates  
2140 Shattuck Avenue, Suite 910  
Berkeley, CA 94704  
(510) 841-5095 (office)  
(510) 841-8357 (fax)  
[www.akropp.com](http://www.akropp.com)

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County of Alameda  
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SCHORR LAW  
A Professional Corporation  
ZACHARY D. SCHORR (SBN 222510)  
JAYANT TRIPATHY (SBN 330900)  
1901 Avenue of the Stars, Suite 615  
Los Angeles, California 90067  
Telephone: (310) 954-1877  
Facsimile: (310) 402-5972  
Email: [zschorr@schorr-law.com](mailto:zschorr@schorr-law.com)  
Email: [jtripathy@schorr-law.com](mailto:jtripathy@schorr-law.com)

Attorneys for Plaintiffs  
BAHRAM GANGEI AND ERICA LORENE EAGLE

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

**ALAMEDA COUNTY**

BAHRAM GANGEI, an individual; and ERICA  
LORENE EAGLE, an individual,

Plaintiffs,

vs.

JOACHIM KAINZ, an individual; LINDSAY  
NEWMAN, an individual; all persons unknown,  
claiming any legal or equitable right, title, estate,  
lien, or interest in the property described in the  
complaint adverse to Plaintiffs' title, or any cloud  
upon Plaintiffs' title thereto; and DOES 1 through  
20, inclusive,

Defendants.

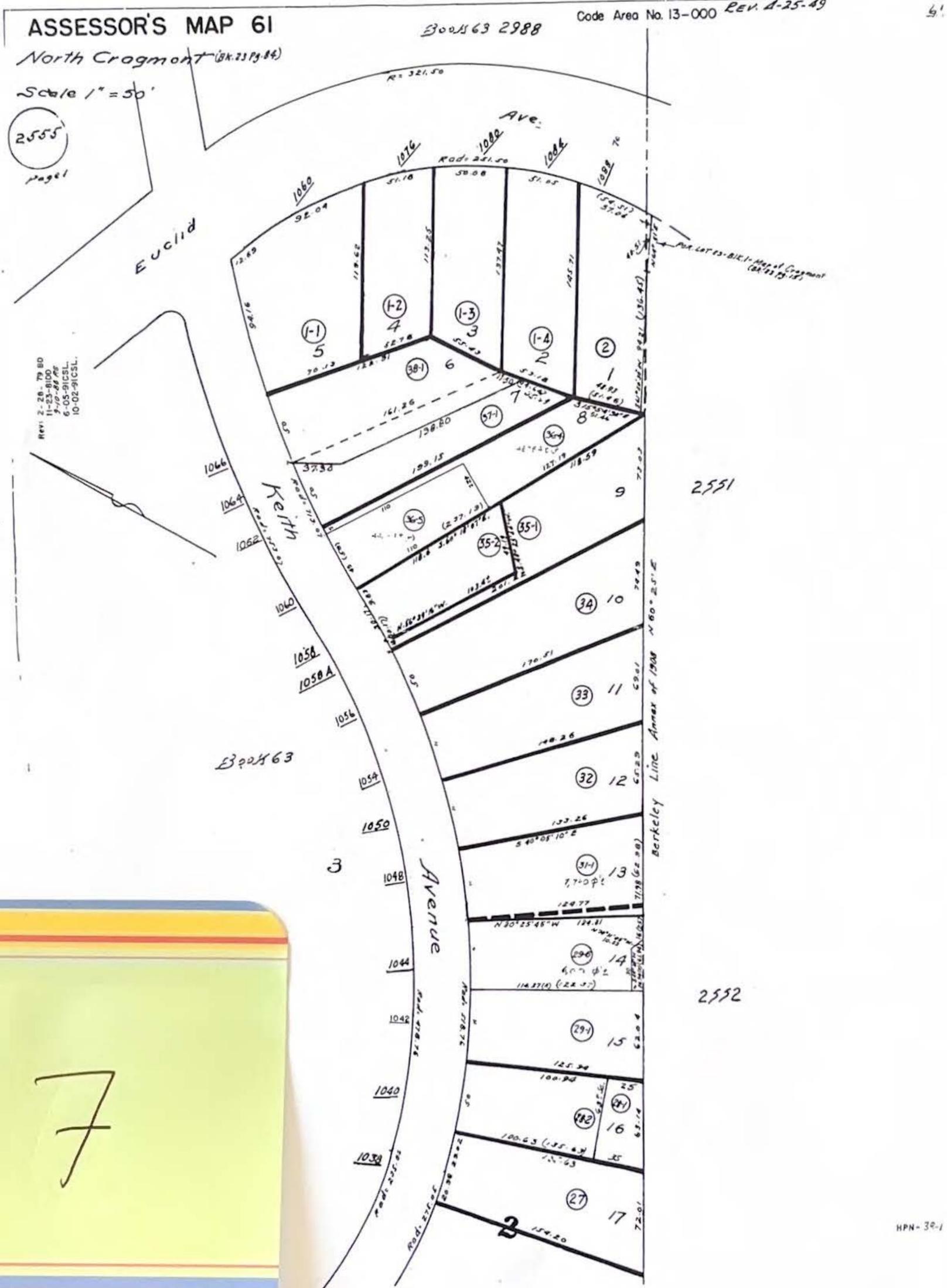
) Case No.: **24CV083292**  
)  
) **PLAINTIFFS' VERIFIED COMPLAINT**  
) **FOR:**  
)  
) **1) QUIET TITLE;**  
) **2) PRIVATE NUISANCE;**  
) **3) TRESPASS;**  
) **4) CONVERSION;**  
) **5) QUIET TITLE (IRREVOCABLE**  
) **LICENSE);**  
) **6) QUIET TITLE (EQUITABLE**  
) **EASEMENT);**  
) **7) INJUNCTIVE AND DECLARATORY**  
) **RELIEF.**



1

Verified Complaint

FOR Assessment Use Only



From: Shah, Waqar wshah@berkeleyca.gov  
Subject: RE: Zoning Project at 1048 Keith Avenue  
Date: Mar 25, 2024 at 9:33:48 AM  
To: BG Personal bgangei@comcast.net

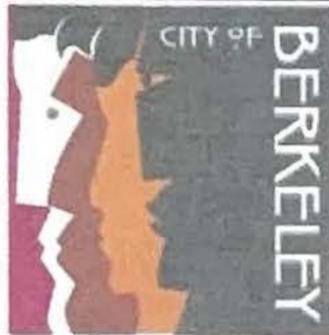
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The city is currently continuing to review the use permit for the demolition and rebuild of a single family residence.

The city has not approved the demolition of a fence and start of any construction. I have informed the applicant that they have to go through the use permit process and apply for a demolition permit in order to achieve permission for the proposed work.

I apologize for the inconvenience, this project is causing you. I will work with the applicant to understand what is going on and advise them on the proper plan of action.

Best,  
Waqar



---

**Waqar Shah** (he/him)  
Associate Planner  
Planning and Development, Land Use Division  
1947 Center St., 2<sup>nd</sup> Floor, Berkeley, CA 94704  
Phone: (510) 981.7469  
Website: [www.berkeleyca.gov](http://www.berkeleyca.gov)  
Email: [wshah@berkeleyca.gov](mailto:wshah@berkeleyca.gov)

**The Permit Service Center (PSC), including the zoning counter, is open between 8:30 am – 2:30 pm (final check in at 2:00 pm) Monday through Thursday.**

*To limit the spread of COVID-19, face masks and social distancing are required when visiting our offices, and some Planning staff continue to work remotely.*

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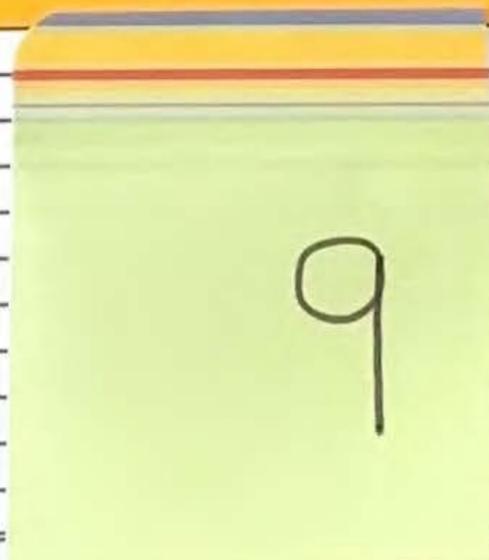


Name: Bahram Gangei  
Address: 1050 Keith Ave, Berkeley Ca. 94708  
Mobil: 510-612-5821  
Email: bgangei@comcast.net

Defendant's **Unilateral Self-Help** assaults without our permission and/or city approved permits

**RED-FONTS** highlights sentimental and other personal affiliations

| Demolished sentimental Private structures (Built with two sons in 2002-3) |                                                                          | Qty      | Age (Years)             |
|---------------------------------------------------------------------------|--------------------------------------------------------------------------|----------|-------------------------|
| 1                                                                         | Bird Cage                                                                | 1        | 21                      |
| 2                                                                         | Multi-function Chicken House with divided sections for different animals | 1        | 21                      |
| 3                                                                         | Dog House                                                                | 1        | 21                      |
| Total                                                                     |                                                                          |          |                         |
| Stolen Private Properties                                                 |                                                                          | Qty.     |                         |
| 1                                                                         | Cat House                                                                | 1        | 19                      |
| 2                                                                         | Firewood 2-Chord                                                         | 2        | 2                       |
| 3                                                                         | Planter Clay Round                                                       | 1        | 5                       |
| 4                                                                         | Planter Box with irrigation                                              | 20-feet  | 7                       |
| 5                                                                         | Retaining wall decorative stones                                         | 45       | 14                      |
| 6                                                                         | <b>Memorable Tombstones and plaques</b>                                  | 4        | <b>5 &amp; 10 Years</b> |
| 7                                                                         | Irrigation drip system                                                   | 40-feet  | 12                      |
| 8                                                                         | Wood Fence                                                               | 110-feet | 22                      |
| 9                                                                         | Chain link Fence enclosure panels & Door assembly                        | 6        | 19                      |
| Total                                                                     |                                                                          |          |                         |
| Stolen trees and plants                                                   |                                                                          | Qty.     |                         |
| 1                                                                         | Boxwood                                                                  | 5        | 7                       |
| 2                                                                         | <b>Grapefruit Tree (Grandfater gift to the kids)</b>                     | 1        | <b>17+</b>              |
| 3                                                                         | <b>Japaneese Maple (Grandfater gift to the kids)</b>                     | 4        | <b>18+</b>              |
| 4                                                                         | Jasmine                                                                  | 1        | <b>35+</b>              |
| 5                                                                         | Jewish artichoke                                                         | 20       | <b>35+</b>              |
| 6                                                                         | <b>Lime Tree (Memorial Plant on the Grave)</b>                           | 1        | 4                       |
| 7                                                                         | <b>Flowers aound the graves</b>                                          | 6        | 4                       |
| 8                                                                         | Roses                                                                    | 4        | 8                       |
| 9                                                                         | Evergreen shrubs                                                         | 15       | 5                       |
| 10                                                                        | Bogunvellia                                                              | 1        | 3                       |
| 11                                                                        | Misc. Ice plants                                                         | 10       | 3                       |



Name: Bahram Gangei Defendant's **Unilateral Self-Help** assaults without our permission and/or city approved permits  
 Address: 1050 Keith Ave, Berkeley Ca. 94708  
 Mobil: 510-612-5821  
 Email: bgangei@comcast.net **RED-FONTS** highlights sentimental and other personal affiliations

|                                                       |                            | Total        |             |
|-------------------------------------------------------|----------------------------|--------------|-------------|
| <b>Damaged and Disturbed items without permission</b> |                            |              | <b>Qty.</b> |
| 1                                                     | Large Planters             | 7            | 5           |
| 2                                                     | Hameck                     | 1            | 4           |
| 3                                                     | Personal Boxes             | 4            | 3           |
| 4                                                     | Jacuzzi steps              | 1            | 4           |
| 5                                                     | Stone fountain with statue | 1            | 15          |
| 6                                                     | Garden chime               | 1            | 10          |
| 7                                                     | Figs and Pomegranite trees | 3            | 3           |
|                                                       |                            | <b>Total</b> |             |

| <b>6--Months Delibrate Aggressive, Threatening and provocative interactions with assault tools. At times heavily Intoxicated with foaming mouth seems to be under influence of heavy drugs All incidents below have been them acting none-verbal with literal scary zombie conduct Since 4/14/24</b> |                                                                                                                                                                                                                                                             | Date of occurrence |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--|
| 1                                                                                                                                                                                                                                                                                                    | We met defendants to discuss and mediate the disputed area, They seemed nervous and agitated where Mr. Kains told my wife and I that he was castrated and missing one of his testicals. We had told them the sanctity of the animal graves to be dear to us | 2/26/2024          |  |
| 2                                                                                                                                                                                                                                                                                                    | We met for the second time to continue our mediation and the defendants were acting nervous and agitated, after 30-min Mr. Kains started to shout loudly sweating with foaming mouth telling us they were going to act unilaterally etc.,                   | 3/6/2024           |  |
| 3                                                                                                                                                                                                                                                                                                    | My wife felt unsafe at the second meeting on 3/6/24 and told them she feels unsafe with their conduct and we proceeded to leave while Mrs. Newman was trying to calm him down.                                                                              | 3/6/2024           |  |
| 4                                                                                                                                                                                                                                                                                                    | Demolishing the Fence while acting aggressive with electric tools at hand and acting MAD                                                                                                                                                                    | 4/14/2024          |  |
| 5                                                                                                                                                                                                                                                                                                    | Demolish Personal property while acting aggressive with assault tools at hand with evil intentions to hurt us psychologically                                                                                                                               | 4/21/2024          |  |
| 6                                                                                                                                                                                                                                                                                                    | Deliberately Video taping my Younger son in his own house to make him uncomfortable                                                                                                                                                                         | 4/28/2024          |  |
| 7                                                                                                                                                                                                                                                                                                    | Cutting our flowers with weed wacker every other days to be invoke and disturbing peace on weekends most often                                                                                                                                              | Ongoing            |  |
| 8                                                                                                                                                                                                                                                                                                    | We hired Zach Schorr-Law office to mediate for us in the absence of their amicable conduct                                                                                                                                                                  | Ongoing            |  |
| 9                                                                                                                                                                                                                                                                                                    | At this point the property dispute is secondary for us than our safety and mental health at risk                                                                                                                                                            | Ongoing            |  |



7-30-1997

## SHIFTING BOUNDARY LINES

The neighborhood in which I live (Arch St. near Eunice St. in Berkeley) is in the middle of a large slow moving landslide. Recent surveys in our area have indicated that structures and other long standing geographical landmarks (i.e.: fences) are slowly moving in a southwesterly direction.

This poses a challenging situation for neighbors whose houses have moved considerable from the location on which they were originally constructed. Several houses have moved 10 feet or more and large portions of these houses are no longer on their own lot according to recent surveys. At this time several sets of neighbors including myself, are experiencing major conflict regarding this matter and it is proving to be a very challenging legal issue. What are we going to do when a survey and a long established boundary between properties no longer agree? We are not just talking about a few isolated incidents of movement. We are talking about a whole hillside that is moving up to an inch a year. We are talking about houses that are several feet into the public right of way. And vice-versa.

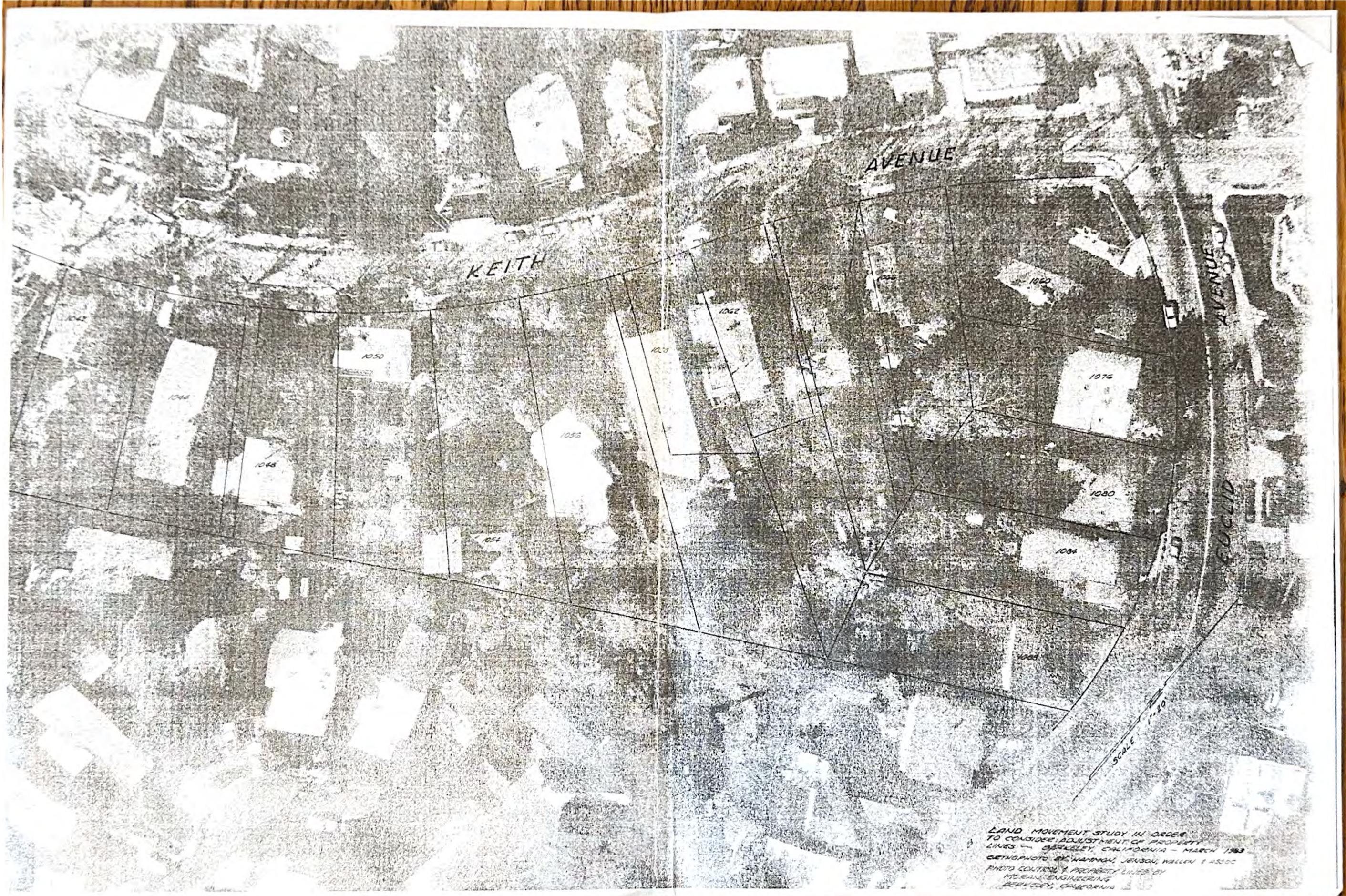
The situation creates a major problem for property owners and civic entities alike. The city of Berkeley now requires a land survey for all major residential additions. Homeowners may become aware that their structures and or setbacks no longer comply with building codes or sit within their surveyed property lines. In this situation will homeowners be allowed to do improvements on their structures?

As a public entity the City of Berkeley has both the responsibility and difficult challenge of coming up with an equitable solution or guidelines to resolve this complex issue which challenges traditional notions of land ownership. The research has shown these slides will continue to move resulting in ever changing boundary lines. It seems prudent to open up the discussion and bring this to a larger forum rather than put out individual fires as they erupt between neighbors.

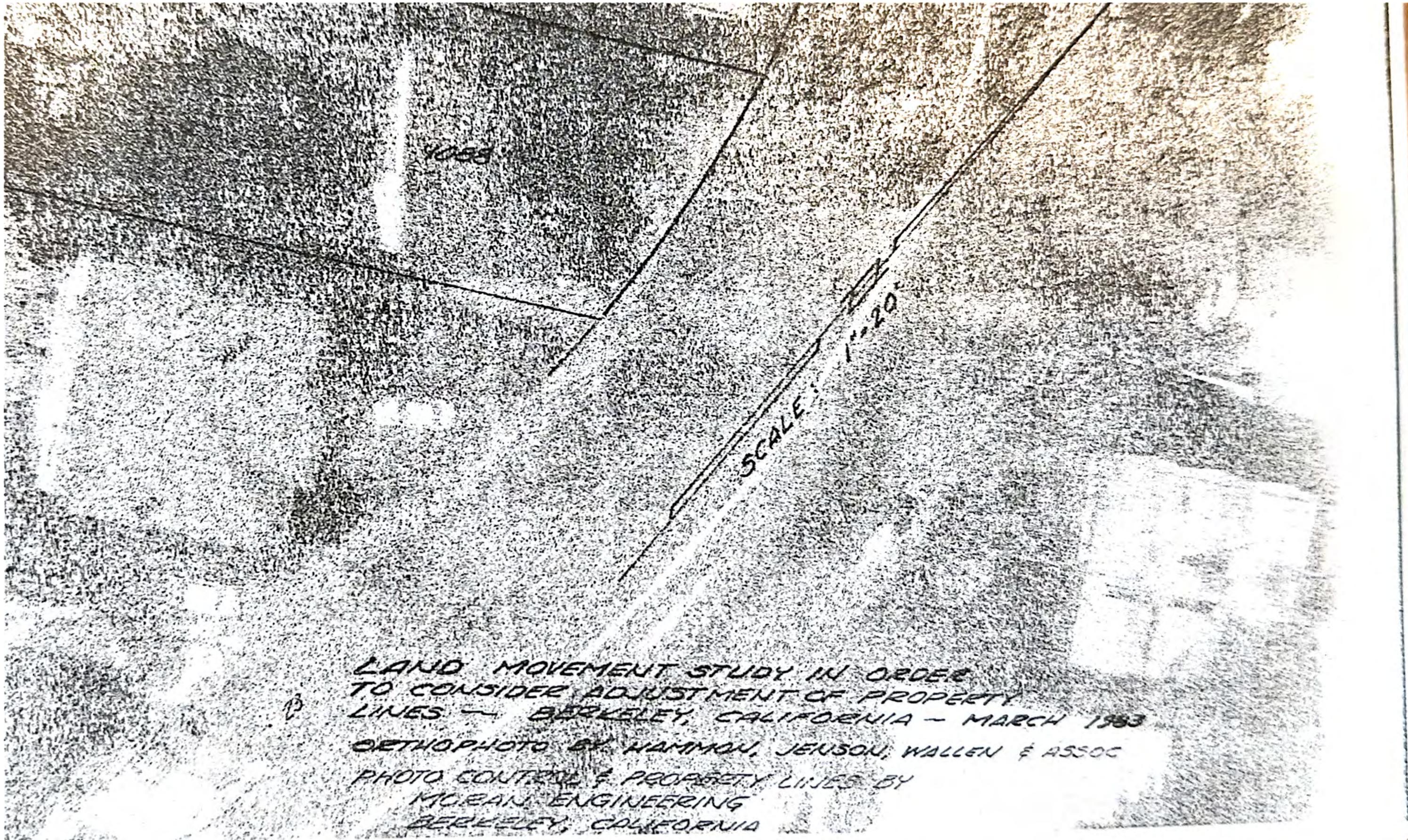
I am writing this in hopes that further discussion of this difficult issue will spark interest in the larger hillside community and the City of Berkeley that will help move us forward in coming up with an equitable solution for everyone. We have started a web site [www.propertylines.org](http://www.propertylines.org) at which can sign up for the Email list and stay informed of Berkeley hills land movement issues.

I look forward to hearing from you,

Richard Schwarzmann  
1170 Arch St  
Berkeley CA 94708  
510-501-8667  
Email: [rschwarzmann@yahoo.com](mailto:rschwarzmann@yahoo.com)



LAND MOVEMENT STUDY IN ORDER  
 TO CONSIDER ADJUSTMENT OF PROPERTY  
 LINES - BERKELEY, CALIFORNIA - MARCH 1983  
 PHOTOGRAPH BY WARRICK, JENSON, WALKER & ASSOC  
 PHOTO COURTESY OF PROPERTY LINES BY  
 MCGRAW-HILL ENGINEERING  
 BERKELEY, CALIFORNIA



LAND MOVEMENT STUDY IN ORDER  
 TO CONSIDER ADJUSTMENT OF PROPERTY  
 LINES — BERKELEY, CALIFORNIA — MARCH 1983  
 ORTHOPHOTO BY HAMMON, JENSON, WALKEN & ASSOC  
 PHOTO CONTROL & PROPERTY LINES BY  
 MURPHY ENGINEERING  
 BERKELEY, CALIFORNIA

## REPORT ON PROPOSED DRAINAGE SYSTEMS FOR CONTROL OF EARTH MOVEMENT IN THE BERKELEY HILL AREA

The following report has been prepared from the detailed technical report which resulted from geological studies, soil analyses, and test borings which have been conducted during the past two years. It is intended to summarize briefly the situation with reference to earth movement in the specific areas studied and the measures which might be taken to control each movement.

While the report from which this summary has been prepared is more comprehensive than any attempted in the past, it must be emphasized that it is necessarily preliminary in nature. It is designed to provide a general picture of the nature and scope of the problem, to serve as a background and guide for future and more specific studies and to give to the residents of the particular areas concerned a basis upon which they might decide upon a course of remedial action.

Although additional test borings and design review must be made before final proposals can be made and specific areas defined, it is felt that if any changes in the proposed corrective measures are required, they will be of a minor nature.

The detailed engineering studies from which this report has been prepared are on file in the office of the City Engineer and are available for review by interested parties.

### A. HISTORY AND BACKGROUND

In order that we may have an overall picture of the earth movement situation in the Berkeley Hills, the following brief historical background of local drainage systems is pertinent:

1. In 1904 a tunnel was driven at Euclid Avenue and Cedar Street to drain this area. Thus far, it appears that this tunnel has eliminated local earth movement.
2. In 1915 two trenches were constructed on Cragmont Avenue at Halkin Lane. These trenches connected to a tunnel on the west side of Euclid Avenue. This installation appears to have reduced the earth movement in this area.
3. In 1930 a tunnel with two wings was driven into the bank on the east side of Cragmont Avenue between Bret Harte Way and Regal Road. This project was shortened due to excessive earth movement and lack of funds. Earth movement was reduced somewhat by the insertion of a perforated pipe in the tunnel which was covered with rock and connected to a street catch basin on Cragmont Avenue.
4. In 1933 the City dug a well and installed a pump in the low area near High Court. Lack of labor forces prevented the well from extending to a depth greater than 22.5 feet.
5. In 1942 a trench was dug to bed rock across the moving earth on Keith Avenue and Eleanor Walk. The trench was filled with rock and drained by pipes into the adjacent creek. This installation has apparently halted the earth movement in this area.

6. In 1944 approximately 200 feet of rock drain was installed on Corona Court by property owners. The drain was not installed deep enough to intercept the subsurface water. This installation has not stopped the movement of earth in this location.

7. In 1952 the property owners on Vassar Street north of Spruce Street installed a drainage system to prevent damage to their homes from earth movement. To date no local earth movement has been reported.

#### B. REVIEW OF PRESENT SITUATION

Generally speaking, local drainage systems have been helpful in controlling earth movement within their respective areas. They have not, however, succeeded in restricting the overall earth movement of the entire Berkeley hill area. For example, there has been increased earth movement near the intersections of Spruce Street and Los Angeles Ave; Keith Ave. and Euclid Avenue; Arch Street and Corona Court; and on Cragmont Avenue at several locations.

It has been pointed out that the apparent ineffectiveness of local drainage systems is due primarily to the location and type of systems used below ground. These systems are probably intercepting ground water in the upper strata only. Lower ground water, in most cases, is probably flowing beneath these local systems.

In 1952 the City of Berkeley engaged a consulting geologist to report on the geologic formations and earthquake faults in the hill area. The report included some statements concerning causes of earth movement which are quoted as follows:

1. "Slides result primarily from one or a combination of the following conditions: increasing ground slopes above the natural angle of repose, overloading the ground, reduction of the stability by saturation and by slippage along a plane or zone of weakness".
2. "The natural slope of the ground is increased by excavations for roads and structures both by the cut which undermines the toe, and by the fill where placed on an already steep hill slope."
3. "Overloading may occur by the placement of fill, by building structures on the ground or by a saturation of the ground with water".
4. "Instability of the ground is increased when earth fill is placed without proper compaction or when the ground absorbs water and approaches a plastic state".
5. "Slippage is most likely to occur along a fault contact, a formational contact, or a contact where the foundation has not been properly prepared by stripping and drainage before new fill is placed upon it."

In the conclusion of the report prepared by the consulting geologist there appeared the following statements which are particularly significant:

"It is to be noted that of all the causes of slides, free water is the greatest contributing factor, and in an area already developed it is the most easily controlled".

"The interception, drainage, and diversion to storm sewers of the water entering the slides is the solution to reducing further movement in these areas to a minimum."

Many property owners in the Berkeley hill area have gone to great expense to protect their property from movement damage. In addition to building repairs and retaining walls, subsoil drains adjacent to the building foundation have been installed.

The interception of underground water in order to stabilize soil formations and control earth movement seems to be a sound basic concept.

In order to determine the subsurface conditions where earth movements are evident an exploratory boring survey was conducted in 1952. The purpose of this survey was to obtain data on the location of underground water at various depths below the surface and to examine the soils for moisture content and physical characteristics with the objective of locating the stratas under shear due to earth movement.

The scope of the work at the time permitted boring samples to be taken only from the most active sections of earth movement. These sections are as follows and will be referred to as the Spruce-Cragmont area for the purposes of this report.

- A-1 Keeler Avenue between Poppy Lane and Sterling Avenue and easterly to Miller Avenue.
- A-B-C Cragmont Ave., south of Regal Road, including the low area west between Cragmont and Keith Avenues; Keith Avenue east of Euclid Avenue; Cragmont Avenue, west of Regal Road
- D-E Euclid Avenue at, and south of Keith Avenue, including High Court and the low area between Euclid Avenue and High Court
- F-G Arch Street, Oak Street, Glen Avenue; Arch Street and Corona Court
- H - Spruce Street between Los Angeles and Eunice
- I - Cragmont Avenue west of Covert Path
- J - San Luis Road and Southampton Avenue

The following data concerning proposed methods for controlling earth movement will cover the active sections A-1 through H, of the Spruce Cragmont area.

Extensive and precise surveys checked over a long period of time would be required to clearly define the entire slide limits and the varying amount and rates of movement. The benefits of drainage systems to property owners in or adjacent to the earth movement areas may sometimes appear indefinite or intangible, but if the property is subject to earth movement the owners may be faced with extensive repair costs or loss in the market value of the property.

An interesting phase of these borderline sections is the rapidity in which damage decreases west of Spruce Street. This decrease occurs at the approximate bisection of the slide by the Hayward Fault. It may be that a great part of the underground water is being drained by this fault, thus reducing the underground waters in the sections west of this fault.

The absence of usable existing gravity drains in portions of this earth movement area is one of the major items affecting the cost of installing underground drainage systems. Most of the existing gravity drains are either too shallow or so situated as to provide little aid to the proposed underground drainage systems.

1. Section A-1 Keeler Avenue Between Poppy Lane and Sterling Avenue and Easterly to Miller Avenue

This most easterly area of the main Spruce-Cragmont movement is covered with a very dense growth of brush which made a detailed inspection of the area impossible at some locations. It was possible, however, to inspect the general characteristics of the area from its perimeter.

The area is in the form of an oval shaped ravine with the axis extending from Cragmont Avenue to Miller Avenue. The north and east edges of the movement are sharply defined by perpendicular bluffs ranging to thirty feet in height which were formed during past earth movement. A high mound is located in the center of the area and was probably formed by erosion of the loose materials around the edges of the area and the benching of materials which is typical of earth slides with a rotating slip plane. This mound divides the area into two ravines, the deepest being located on the north edge and continuing easterly in a semicircle following the top shear edge of the movement. Most of the surface run-off water enters this ravine which was also the site of a large pond located about seventy-five feet east of the Keeler Avenue right of way.

The ravine following the south edge of the movement also picks up surface run-off water from the surrounding high points.

The Proposed Main Underground Drainage System would be located in the deep north ravine and the south ravine and then combined to drain into the existing storm drain on Cragmont Avenue.

The north ravine would be bisected by a deep underground interceptor built by the well and tunnel method. The interceptor as planned would be 100 feet long and approximately 50 feet deep. This deep interceptor would be drained by a hydrauger bored drain and then would enter a shallow gravity drain leading to the existing storm drain on Cragmont Avenue.

### C. SPRUCE-CRAGMONT AREA

The Spruce-Cragmont movement area in the Berkeley hills covers a large area and has adverse topographical features which complicate the planning of underground drainage systems. The locations in which drainage systems should be installed are obstructed in most cases by extensive home development.

The underground drainage systems proposed in Sections A-1 through H for the Spruce-Cragmont area are the most readily apparent methods by which drainage in these sections may be facilitated. The proposed systems are subject to change as final design may require revisions to overcome unforeseen construction difficulties.

The depths of some of the drainage systems may at first appear to be excessive. Boring logs indicate that these depths are the minimum which should be considered if effective control of earth movement is to be obtained. The logs of depths of underground water were recorded in a dry season and some deeper penetration of water may be expected in the winter wet season and must be anticipated in planning drainage systems. It should also be noted that in some sections slide action is occurring at a greater depth than the bottom of the recorded water zone. Therefore, these proposed drains are relatively shallow in respect to total depth of movement. Borings indicate that the deeper earth movement of some sections is of a secondary nature occurring in the dry underlying strata. This movement is caused by the great weight and movement of the top saturated mass and not due to direct water penetration into these strata. It appears that there is very little to be gained by the installation of interceptor drains deeper than the lowest depth of expected water penetration.

During past years a great deal of work and money has been expended in the installation of wells, tunnels and drains in the Spruce-Cragmont area with relatively negligible results. Lack of complete planning due to limited funds was probably the cause of incomplete corrective measures. Underestimating the scope of work now necessary to obtain effective control of earth movement caused by ground water will conceivably result in the same failure.

Exploratory holes were drilled in the most active northern section where underground drainage systems would be constructed to stabilize the entire movement because the general course of underground waters appears to be southwesterly toward Codornices Creek. The southerly section adjacent to Codornices Creek comprises the toe where pressures and movement are spread over a greater area. The potential damage in this section, while not as easily foreseen, is still very real.

Portions of these lower sections which appear to be relatively stable may influence the distribution of costs for the proposed project. Close inspection of the lower sections discloses a slow erratic movement. In certain locations the movement is more apparent than in others. The exact extent of the earth movement has not been accurately determined. It is apparent from the general topography and surface indications that larger movements in these lower sections have taken place in the past and may occur again at any time when conditions of underground water and earth stresses are favorable unless stabilization is secured by interception of underground water in the upper sections.

It is proposed also to intercept surface water at the north ravine interceptor site and in the south ravine, by use of catch basins with horizontally bored well points bored into the upper portions of the movement. These well points would eliminate the necessity of extending the deep interceptor completely across the area of movement; shallow gravity drains would be used to carry the run-off from the surface water catch basins and the bored well points.

The details of this proposed drainage system are subject to change pending necessary soil borings.

It is possible that the installation of this system may eliminate the need for some of the systems in the lower sections of the earth movement.

The cost of the proposed system is estimated at \$37,000.00.

2. Section A-B-C Cragmont Avenue south of Regal Road, including the low area west between Cragmont and Keith Avenues; Keith Avenue east of Euclid Avenue; Cragmont Avenue west of Regal Road

In 1928 probable observations were made when reference points were set on Euclid Avenue. Records dated October 1930, indicate that a tabulation of earth movement was noted in this section.

The present trend of movement in general is to the southwest toward Euclid Avenue. The rate of movement seems to be fairly uniform across the width of the section on Cragmont Avenue. In portions of the section other than Cragmont Avenue the rate appears to be erratic. The most noticeable sectors of movement appear on Cragmont Avenue at the edges of the section and on the south edge of the slide area on Keith Avenue. The movement is most noticeable in the street and sidewalk area where cracks appear and extensive displacement occurs.

Borings and visual observations lead to the conclusion that this slow creeping movement existed prior to the development of the area and is related to the earth faults of the region.

The low area between Cragmont and Keith Avenues is apparently a creek area which was formed by previous slides which destroyed the old creek ravines and formed new channels. This is the extension of the creek which crossed Euclid Avenue at Keith Avenue.

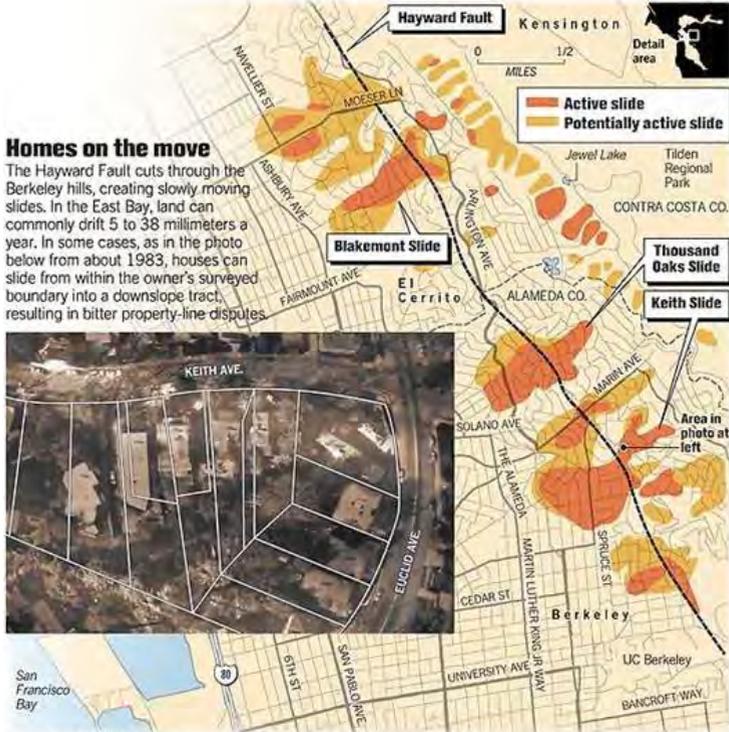
During the development of this area these water courses have become filled without the installation of proper drains and culverts. This is a major factor influencing earth movement in this area.

The Cragmont Avenue section west of Regal Road is an off-shoot of the main Spruce-Cragmont slide area and has a record of movement since 1931. The definite limits of the movement are not clearly discernable except at its east edge on Cragmont Avenue west of Regal Road. Here the movement appears to be more of a settlement than a horizontal movement.

This movement appears to be a secondary action caused by movement in the adjacent areas to the south and east which removes support from the toe of this section.





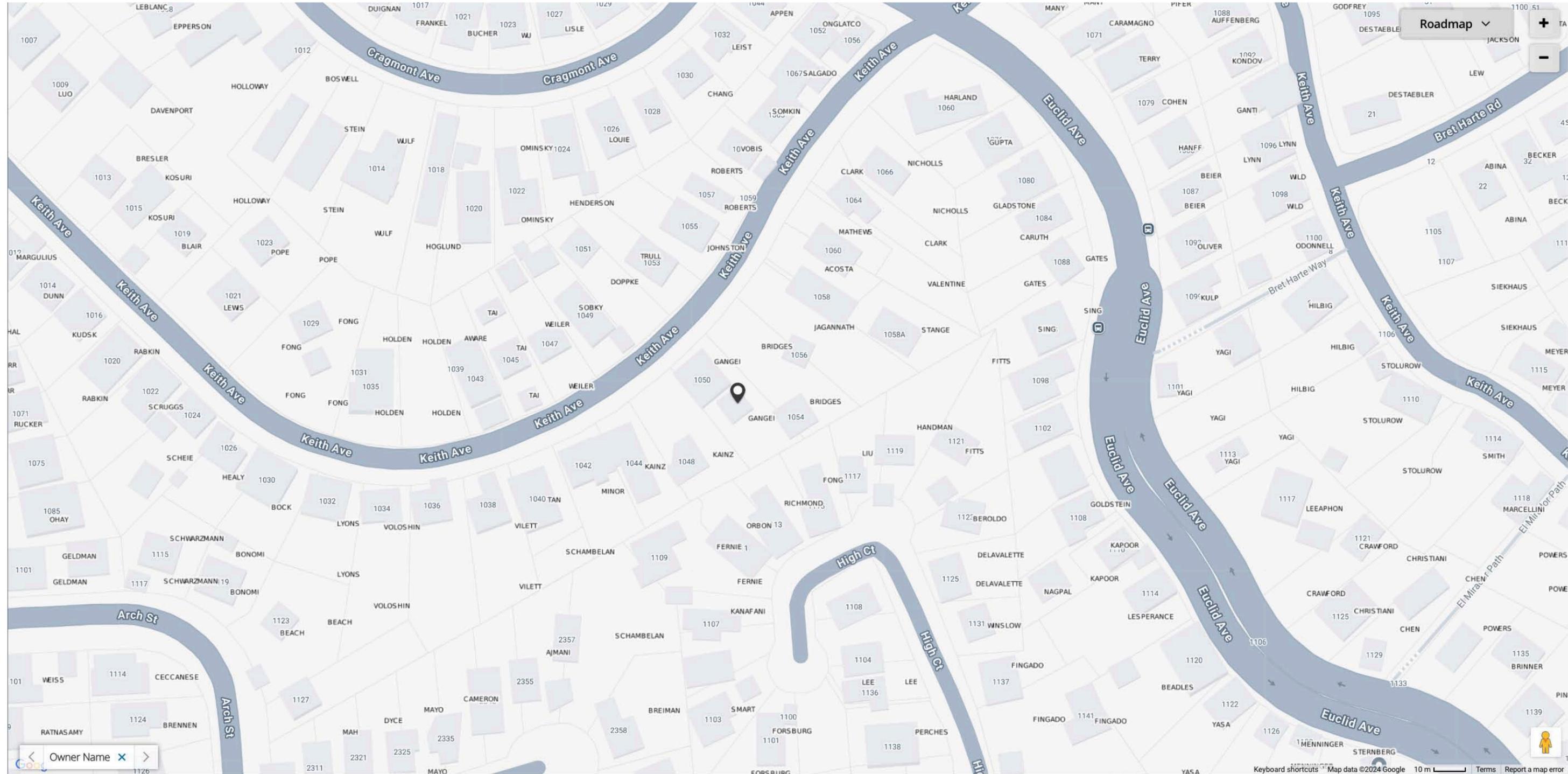


**Homes on the move**  
 The Hayward Fault cuts through the Berkeley hills, creating slowly moving slides. In the East Bay, land can commonly drift 5 to 38 millimeters a year. In some cases, as in the photo below from about 1983, houses can slide from within the owner's surveyed boundary into a downslope tract, resulting in bitter property-line disputes.



Source: ESRI, GDT, USGS, FEMA





ITEM #2,

Page 149 of 156

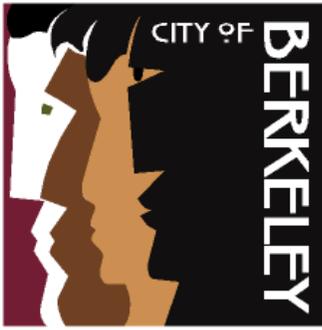
ATTACHMENT 4

025-01-09

Page 50 of 50



Page 299



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

**1048 Keith Avenue**

**Use Permit #ZP2024-0014 to demolish a 2,760-square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600-square-foot single-family dwelling within the rear setback and parking pad in the front setback.**

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, January 9, 2025, 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: Low Density Residential (LDR)
- Zoning: Single-Family Residential – Hillside Overlay (R-1H) District

1048 KEITH AVENUE  
Page 2 of 4NOTICE OF PUBLIC HEARING  
Posted DECEMBER 18, 2024**B. Zoning Permits Required:**

- Use Permit, pursuant Berkeley Municipal Code (BMC) Section 23.326.030(B)(1) to demolish a dwelling unit
- Use Permit, pursuant to BMC Section 23.202.020(B) to construct a single-family dwelling unit
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C)(4), to reduce the building setbacks in the Hillside Overlay Zone
- Administrative Use Permit, pursuant to BMC Section 23.322.080(E)(2)(b), to allow unenclosed off-street parking within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.070(C)(1) to construct an unenclosed structure (trellis) within the front setback

**C. CEQA Recommendation:** Categorically exempt pursuant to Section 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”)

**D. Parties Involved:**

- Applicant/Property Owner: Lindsay Newman, 1048 Keith Avenue, Berkeley, CA, 94708

**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, Waqar Shah, at (510) 981-7469 or [WSHAH@berkeleyca.gov](mailto:WSHAH@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](mailto: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](mailto: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, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** 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](mailto: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

1048 KEITH AVENUE  
Page 4 of 4

NOTICE OF PUBLIC HEARING  
Posted DECEMBER 18, 2024

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right to claim that your property has been taken, both before the City Council and in court.

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**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**ZAB APPEAL: 1048 KEITH AVENUE, USE PERMIT ZP2024-0014**

**The public may participate in this hearing by remote video or in-person.**

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, MAY 06, 2025 at 6:00 P.M.** a public hearing will be conducted to consider an appeal against a decision by the Zoning Adjustment Board to **APPROVE Zoning Permit #ZP2024-0014 to demolish a 2,760 square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600 square-foot single-family dwelling. The project includes a reduction of the rear building setback from 20 feet to 15 feet, two unenclosed off-street parking spaces within the front setback, the construction of a trellis within the front setback, and the installation of a fence and retaining wall along the lot line.**

The hearing will be held on, May 6, 2025 at 6:00 p.m. in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

For further information, please contact Robert Rivera, Senior Planner at (510) 981-7480

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of April 24, 2025. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to [council@berkeleyca.gov](mailto:council@berkeleyca.gov) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council 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 the City Council, 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 City Clerk. 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 City Clerk at (510) 981-6900 or [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov) for further information.

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Mark Numainville, City Clerk

**Mailed by:** April 22, 2025

Noticed Pursuant To: Berkeley Municipal Code Section 23.404.040(B), Public Hearing Notice

Attachment 4

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. § 1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

*If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.*



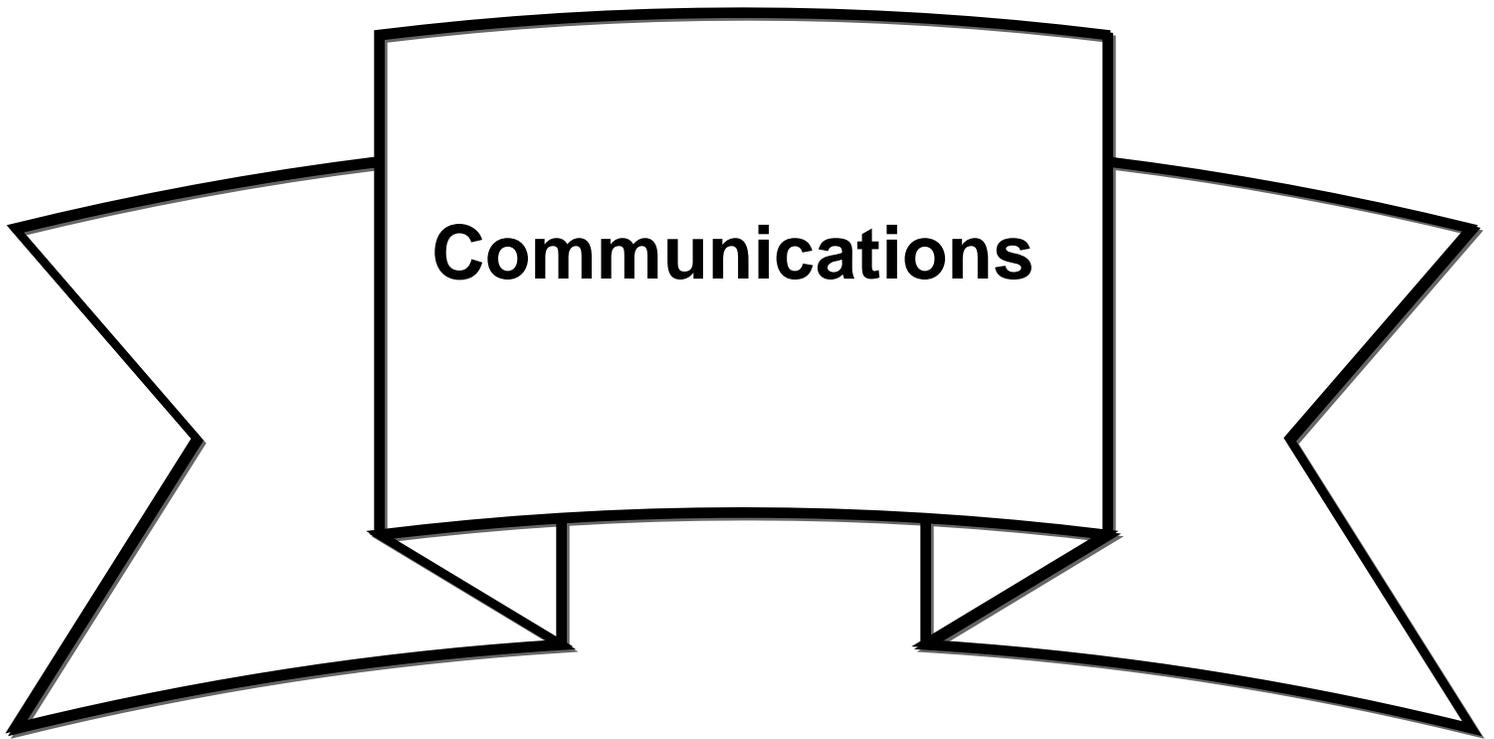
Administrative Record

This attachment is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

or from:

**The City of Berkeley's Website**  
<http://www.berkeleyca.gov>



All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

**City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**Records Online**

<https://records.cityofberkeley.info/>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF