



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
APRIL 27, 2023

3031 Telegraph Avenue

Use Permit Modification #ZP2022-0126 to modify the project originally approved under #ZP2020-0069 to construct a six-story (70 feet and 6 inches), 100,992 square-foot mixed-use building with 127 dwelling units (including nine Very Low-Income units) where 110 units were originally proposed. The project also includes 1,921 square feet of commercial space, 7,622 square feet of usable open space, 64 bicycle parking spaces and 19 vehicular parking spaces at the ground level.

I. Background

A. Land Use Designations:

- General Plan: AC – Avenue Commercial
- Zoning: C-C - General Commercial District (30,769 square feet of the 31,604 square feet lot), and R-2A – Restricted Multiple-Family Residential District (835 square feet.)

B. Zoning Permits Required¹:

- **Use Permit** (Modification) to modify an approved discretionary permit, under Berkeley Municipal Code (BMC) Section 23.404.070(B)

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

- Waiver of BMC Section 23.204.050(D)(1) to exceed the maximum floor area ratio (FAR) of 3.0 to be 3.0.
- Waiver of BMC Section 23.204.050(D)(1) to exceed the number of stories allowed to be 6 where the limit is 4
- Waiver of BMC Section 23.204.050(D)(1) to exceed height maximum of 40 feet, to be 70 feet and-6 inches
- Waiver of BMC Section 23.304.030(C)(2)(a) to reduce the rear (east) setback from a minimum of 20 feet to 5 feet

¹ See Attachment 4 (ZAB Staff Report 3031 Telegraph, March 25, 2021) for zoning permits approved with Use Permit #ZP2020-0069

- Waiver of BMC Section 23.204.050(D)(1) to reduce the usable open space from a minimum of 22,000 square feet to 7,622 square feet

D. 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 Regulations, Section 15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines ("Infill Development Projects"). The determination is made by ZAB.

The project meets all of the requirements of this exemption, as follows:

- The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
- The project occurs within the Berkeley City limits on a project site of no more than five acres and is surrounded by urban uses.
- The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
- The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Vehicle-Miles Traveled (VMT) Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the finding that the project would result in a less-than-significant impact. Standard Conditions of Approval would address potential impacts related to traffic, noise, air quality, and water quality.
- The site can be adequately served by all required utilities and public services.

Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

E. Parties Involved:

- Applicant Grubb Properties, Charlotte, NC 28209
- Property Owner HC Investment Associates, LLC., c/o Grubb Properties

Figure 1: Vicinity Map



Legend

- C-C: General Commercial District
- R-1: Single-Family Residential District
- R-2: Restricted Two-Family Residential District
- R-2A: Restricted Multiple-Family Residential District
- R-3: Multiple-Family Residential District



Figure 4: Proposed West Elevation



Figure 5: Proposed East Elevation



Figure 6: Proposed South Elevation

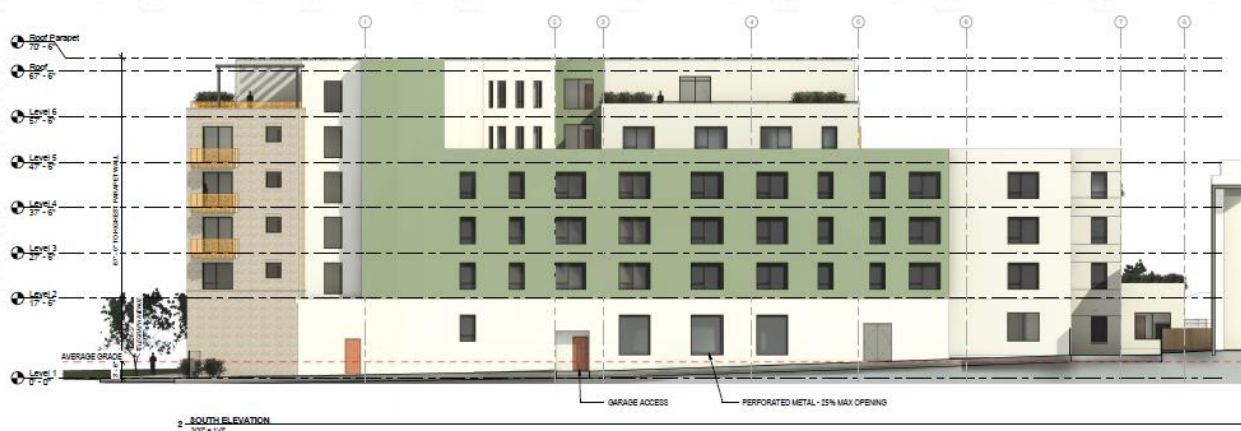


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Commercial, Medical Office	C-1 and R-2A	Avenue Commercial (AC)
Surrounding Adjacent Properties	North	Commercial, Medical Office	C-1	
	East	Residential, Single and Multi-Family	R-3 and R-2A	Medium-Density Residential (MDR) and Low-Density Residential (LDR)
	South	Commercial, Medical Office and Residential, Multi-family	C-1 and R-1	Avenue Commercial (AC) and Low-Density Residential (LDR)
	West	Commercial, Medical Office	C-1	Avenue Commercial (AC)

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to net new nonresidential floor area over 7,500 square feet. The project includes 1,921 square feet of commercial space, which is less than the nonresidential floor area threshold. Therefore, the project is not subject to this fee.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	Yes	The project includes five or more dwelling units and therefore is subject to the City's Affordable Housing Mitigation Fee / Inclusionary Housing Ordinance.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30 feet of the site.
Density Bonus		The project would provide 9 percent of the Base Project units (nine units) as affordable to Very Low - Income households, which qualifies it for a 30 percent density bonus. The project is requesting five waivers/modifications, pursuant to the Density Bonus regulation. See section II.B for discussion.
Historic Resources	No	The existing building was constructed in 1954 is more than 40 years old. Given its age, the project was forwarded to the Landmarks Preservation Commission (LPC) for review (BMC 22.12.060(B)(2)). On November 5, 2020 the LPC took no action to initiate a Landmark or Structure of Merit designation and recommended that the ZAB approve the demolition.
Housing Accountability Act (Gov't Code Section 65589.5(j))	Yes	The project meets the definition of a "Housing Development Project" per Government Code

		Section 65589.5(h).1. ² The project complies with applicable, objective general plan and zoning standards, and thus section (j) of the Housing Accountability Act applies. See Section IV.B of this report for additional discussion on compliance with the Housing Accountability Act.
Housing Crisis Act of 2019 (SB330)	Yes	The project meets the definition of a “Housing Development Project” per Government Code Section 65589.5(h)(2) ³ . See Section IV.A of this report for additional discussion on the sections of SB330 that apply to the project.
Natural Gas Prohibition (Per BMC 12.80.020)	Yes	This project includes new construction, and is therefore subject to the Natural Gas Prohibition.
Oak Trees	No	There are no oak trees on the site.
Rent Controlled Units	No	There are no existing dwelling units on the site. No rent-controlled units will be demolished.
Residential Preferred Parking (RPP)	No	Pursuant to BMC Section 14.72.080.C.1, no RPP permits shall be issued to residents in newly constructed residential units which do not meet the parking requirements established by the Zoning Ordinance unless a variance for parking requirement set forth in the Zoning Ordinance was issued. Because the applicant is not requesting a variance for parking, the project is ineligible for the RPP Program.
Seismic Hazards (SHMA)	No	The site is not located within an area susceptible to liquefaction, Fault Rupture, or Landslides as shown on the State Seismic Hazard Zones map.
Soil/Groundwater Contamination	Yes	The project site is located within the City’s Environmental Management Area, but is not on the Cortese List (an annually updated list of hazardous materials sites pursuant to Government Code Section 65962.5). The applicant submitted a Phase I report, reviewed by the City’s Toxics Management Division, which concludes that no further site investigation is required.
Transit	Yes	The project site has frontage on Telegraph Avenue, which is served by The Alameda-Contra Costa Transit District (AC) Transit line 6, and is located one block from the Ashby transit corridor, which is served by AC Transit lines 80 and 800 (All-Nighter line). A bus stop is currently located at the south side of Telegraph and Webster; that stop is planned for removal. However, AC Transit has plans to create a new bus stop at the south side of Ashby on Telegraph. The project site is located 0.7-mile east of the Ashby BART Station. There are several designated bikeways within five blocks

² 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.

³ See footnote 1

		of the project site, and a bike share station is located across Telegraph Avenue in front of Whole Foods.
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Table 3: Project Chronology

Date	Action
June 6, 2020	SB 330 Pre-Application submitted and deemed complete
November 5, 2020	LPC hearing (for original use permit #ZP2020-0069)
March 25, 2021	Use permit #ZP2020-0069 approved by ZAB
October 12, 2022	Use permit modification application submitted
November 9, 2022	Application deemed incomplete
December 9, 2022	Application resubmitted
January 9, 2023	Application deemed incomplete
January 13, 2023	Application resubmitted
January 23, 2023	Application deemed complete
February 16, 2023	DRC hearing
April 20, 2023	Public hearing notices mailed/posted
April 27, 2023	ZAB hearing

Table 4: Development Standards

C-C Standards BMC Sections 23.204.070-080		Original Project (ZAB Approved #ZP2020-0069)	Proposed Modification	Permitted/ Required
Lot Area (sq. ft.)		31,604	No change	n/a
Gross Floor Area (sq. ft.)		98,338	100,992	n/a
FAR		3.11	3.2	3.0 max.
Dwelling Units	Total	110	127	n/a
	Affordable (VLI)	7	9	9 ¹
Building Height	Average	67 feet (N, S, W)	No change	n/a
	Maximum	70 feet 6 inches	No change	40 feet max. (50 feet w/ Use Permit)
	Stories	6	No change	3 max.
Front		0	No change	n/a

Building Setbacks	Rear (East)			
	First	Varies 5 to 20 feet	No change	20'
	Second			
	Third			
	Fourth	Varies 19 to 20 feet	No change	(10 ft. or 10% of lot depth, whichever is greater, per BMC Section 23.304.030(C)(2)(a))
	Fifth			
	Sixth	Varies 79 to 147 feet	No change	
	Left (Street)	0	No change	n/a
Right (Interior)	5	No change	5 feet	
Lot Coverage (%)		86	No change	n/a
Usable Open Space (sq. ft.)		7,474	7,622	25,800 min.
Parking	Commercial	11	9	2
	Residential	9	10	N/A
	Total	20	19	4
	Bicycle	112	64	54
<small> [] = Waiver requested to modify the district standard. ¹ 9 Very Low Income units are required to qualify for the maximum 30% density bonus per Government Code section 65915. Abbreviations: sq. ft. = square feet; max. = maximum; min. = minimum; n/a = not applicable; % = percent' </small>				

II. Project Description and Modification Request

A. Project Background: On March 25, 2021, the ZAB approved Use Permit #ZP2020-0069 to demolish an existing two-story commercial building and construct a six-story, 98,338 square-foot mixed-use building with 110 dwelling units (including 7 Very Low-Income units), including 5,666 square feet of commercial space, 7,474 square feet of usable open space, 112 bicycle parking spaces and 20 vehicular parking spaces at the ground level.

In the subsequent months, the project architect and owner refined the project programming and approved plans. The following is a summary of the proposed changes:

- Revised Density Bonus calculations – Base and Proposed project
- Increase of gross floor area from 98,338 square feet to 100,992 square feet
- 17 additional residential dwelling units, primarily within the approved building envelope
- 2 additional VLI units
- Revised residential unit mix by increasing the number of studios and eliminating three-bedroom units

- Reduction of total number of bedrooms from 151 to 146
- Reduction the vehicular parking from 20 to 19 spaces
- Reduction of commercial floor area from 5,666 square feet to 1,921 square feet
- Inclusion of residential fitness amenity in place of some retail space on the ground floor
- Reconfigured programming on the ground floor (electric room, bike room, mechanical rooms, etc.)

B. Base Project and Density Bonus Project – Revised: The applicant has requested a density bonus under the State Density Bonus Law. Under the City’s density bonus procedures, the Base Project was calculated to have 98 units, as the maximum allowable density on the site.⁴ The revised Base Project has an average unit size of 736 square feet in a four-story building. The Density Bonus calculations are provided in more detail, below:

Table 5: Density Bonus

Zoning Permit	Base Project Units*	Qualifying Units	Percent Density Bonus	Number of Density Bonus Units*	Proposed Project Units
Original Project	63	7 VLI (11% of BP)	35%	23(22.05) (35%x63)	110
Modified Project	98	9 VLI (9% of BP)	30%	30 (29.4) (30%x98)	127

*Per Gov’t Code 65915(q), all unit calculations are rounded up to the nearest whole number.
Abbreviations: % = percent; BP = Base Project

By providing nine Very-Low Income (VLI) BMR units on site, or 30 percent of the 98-unit base density, the project is eligible for a 30 percent density bonus, or 30 units. Therefore, the applicant proposes 29 additional units above the base density for a total of 127 dwelling units.

To accommodate the additional units, the project would use five waivers/modifications:

- 1) Exceed the average building height of 40 feet with a height of 70 feet and five inches
- 2) Exceed the number of stories (three) with six stories
- 3) Reduce the required rear setback from 20 feet to 5 feet
- 4) Reduce the open space from 7,622 square feet to 22,800 square feet
- 5) Allow for a FAR of 3.1 where a maximum of 3 is required

⁴ Per the City’s Density Bonus Procedures (DBP), the Base Project is the largest project allowed on the site that is fully compliant with district development standards (i.e. height, setbacks, usable open space, parking, etc.), or, the *maximum allowable density* for the site. The City uses the DBP to calculate the maximum allowable density for a site where there is no density standard in the zoning district, and to determine the number of units in the Proposed Project, which is the number of Base Project units plus the number of density bonus units that can be added according to the percentage of BMR units proposed, per Government Code, Section 65915(f).

The project is eligible for one concession which results in identifiable and actual cost reductions. The project requests no concessions.

III. Community Discussion

- A. Neighbor/Community Concerns:** On April 20 2023, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations. The City also posted notices within the neighborhood in three locations. At the time of this writing, staff has not received any communications regarding the project.
- B. Landmarks Preservation Commission:** The project would demolish existing commercial buildings that are over 40 years in age. Per the Historic Resource Evaluation completed by Preservation Architecture on October 11, 2020, the building proposed for demolition does not meet the criteria for the California Register or a City of Berkeley Landmark. Pursuant to BMC Section 23.326.070(C), the proposed demolition was referred to the LPC for review prior to the consideration of the Use Permit. The LPC reviewed the demolition referral on November 5, 2020, and took no action.
- C. Design Review:** The project is located in the non-residential district and therefore, requires design review, pursuant to BMC Section 23.406.070(B)(1)(a). On February 16, 2023, the Design Review Committee (DRC) reviewed the current project design for the project, gave a favorable recommendation on the design as presented, and provided the following conditions and recommendations for Final Design Review (FDR):

Conditions

- Explore options to expand length of balconies facing Telegraph.
- Bring details of the green rain screen to FDR, specifically details of the joints and seams; top edge should have more strength.
- Introduce elements of depth and/or detail overall to have a more residential feel, but especially at the East and South facades.
- Consider adding some entry gate panel elements back where possible at main residential entrance.
- Consider an alternate durable material for seating bench surface at storefront windows.
- Provide final colors and materials at FDR, including brick details.
- Provide further detail of the roof trellis over the main entry.
- Consider small water element in pollinator garden at FDR.

Recommendations

- Consider increasing the width, as well as the depth of the window surrounds.

- Consider an alternate treatment of the windows and mullions at the brick facades. Committee suggested thicker mullions and lintel course, as well as added sill and parapet details.
- Consider proposed cooking area in courtyard carefully so odors are not an issue.
- If consistent with Public Works direction, provide alternative patterns to the sidewalk at FDR that express the communal aspect of the Public Right of Way.
- Forward recommendation to Public Works for permeable pavers between the street trees along the curb.
- Recommend including native birds in the podium courtyard mural.

IV. Issues and Analysis

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

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

The Base Project complies with applicable, objective general plan and zoning standards. Further, Section 65589.5(j)(3) provides that a request for a density bonus “shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.” Therefore, the City may not deny the Base Project or density bonus request or reduced the density with respect to those units without basing its decision on the written findings under Section 65589.5(j), above. Staff is aware of no specific adverse impacts that could occur with the construction of the Base Project or the density bonus units. All findings discussed below are subject to the requirements of Government Code Section 65589.5.

As described in Table 4 above, the project complies with the applicable general plan and zoning standards. While the project may include other Use Permits or Administrative Use Permits to modify standards not associated with the Base Project, there are no objective criteria in the findings. The ZAB still has the discretion to approve, deny or modify the request according to the zoning findings, provided the action does not reduce the project density or effectively deny the project by making it infeasible, unless the ZAB is also able to make the required findings for denial set forth under Section 65589.5(j), above.

Staff is not aware of specific adverse impacts that could occur with the construction of the of the project.

B. SB 330 – Housing Crisis Act of 2019: The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development. A “housing development project” can include any of the following: residential units only; mixed use consisting of residential and nonresidential uses in which with at least two-thirds of the square footage is designated for as residential; and transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code Section 65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in affect at the time an application is deemed complete, then the city shall not conduct more than five hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with §65920)).

The April 27, 2023 ZAB hearing represents the second public hearing for the proposed project since the project was deemed complete. The City can hold up to three additional public hearings on this project, if needed. One of those hearings must be reserved for any possible appeal to the City Council.

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

A stated in the historic resource evaluation prepared for the property in October 11 of 2019, the project site does not appear to be historically significant and therefore is not eligible for listing on the California Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit. The demolition referral was heard at the November 5, 2020 Landmark Preservation Commission Agenda, and no action was taken. Therefore, it was determined the site is not a historic resource.

3. Government Code Section 65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from CEQA. Should ZAB determine the application is categorically exempt from CEQA at the April 27, 2023 public hearing, the application must be approved or disapproved by June 26, 2023.

C. Density Bonus Concessions and Waivers: The project is entitled to one concession (or incentive) under Government Code Section 65915(d), and an unlimited number of waivers under Section 65915(e).

Waivers: A waiver is a modification of a development standard that would otherwise physically preclude the construction of the project with the permitted density bonus and concessions. The applicant is requesting six waivers from the following development standards:

- 1) Exceed the average building height of 40 feet with a height of 70 feet, and five inches
- 2) Exceed the number of stories (three) with six stories
- 3) Reduce the required rear setback from 20 feet to 5 feet
- 4) Reduce the open space from 7,622 square feet to 22,800 square feet
- 5) Allow for a FAR of 3.1 where a maximum of 3 is required

The waivers are requested because they are necessary to physically accommodate the additional eight units as allowed under the density bonus project on the site.

The City may only deny the waivers if it finds that the waivers would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low-income, very-low income, and moderate-income households, or if the waiver would be contrary to State or Federal law. Staff believes such a finding cannot be made.⁵

Concessions: No concessions are requested as part of this project.

IV. Other Considerations

The following analyses are provided for informational purposes only, to provide context.

A. General Non- Detriment: Pursuant to BMC Section 23.404.070(B), modifications to an approved Use Permits require findings of non-detriment. As described above and in Attachment 4 the proposed project furthers the purposes of the zoning district, provides new ground floor commercial space, and new shading would be limited on nearby residential uses. In addition, the project approval 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 property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

⁵ See Footnote 5.

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

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy LU-25 – Affordable Housing Development: Encourage development of affordable housing in the Downtown Plan area, the Southside Plan area, and other transit-oriented locations.
4. Policy LU-27 – Avenue Commercial Areas: Maintain and improve Avenue Commercial areas, such as University, San Pablo, Telegraph, and South Shattuck, as pedestrian-friendly, visually attractive areas of pedestrian scale and ensure that Avenue areas fully serve neighborhood needs as well as a broader spectrum of needs.
5. Policy UD-17 – Design Elements: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.
6. 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.
7. Policy UD-32 – Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.
8. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.
9. Policy H-12 – Transit-Oriented New Construction: Encourage construction of new medium- and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.
10. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City’s share of regional housing needs.
11. Policy T-16 – Access by Proximity, Action B: Encourage higher density housing and commercial infill development that is consistent with General Plan and zoning standards in areas adjacent to existing public transportation services.
12. Policy T-16 – Access by Proximity, Action E: In locations served by transit, consider reduction or elimination of parking requirements for residential development.
13. Policy T-43 – Bicycle Network, Action C: Encourage, and when appropriate, require new multi-family residential developments to provide secure locker space for resident bicycles.
14. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

APPROVE Use Permit #ZP2022-0126 MOD 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, 2022
3. Notice of Public Hearing
4. ZAB Staff Report 3031 Telegraph, March 25, 2021

Staff Planner: Katrina Lapira, klapira@cityofberkeley.info, (510) 981-7488

ATTACHMENT 1

FINDINGS AND CONDITIONS

APRIL 27, 2023

3031 Telegraph Avenue

Use Permit Modification #ZP2022-0126 to modify the project originally approved under #ZP2020-0069 to construct a six-story (70 feet and 6 inches), 100,992 square-foot mixed-use building with 127 dwelling units (including nine Very Low-Income units) where 117 units were originally proposed. The project also includes 5,666 square feet of commercial space, 7,474 square feet of usable open space, 112 bicycle parking spaces and 29 vehicular parking spaces at the ground level.

PERMITS REQUIRED

- **Use Permit** (Modification) to modify an approved discretionary permit, under Berkeley Municipal Code (BMC) Section 23.404.070(B)

CONCESSIONS/WAIVERS UNDER GOVERNMENT CODE SECTION 65915-65918

- Waiver of BMC Section 23.204.050(D)(1) to exceed the maximum floor area ratio (FAR) of 3.0 to be 3.0.
- Waiver of BMC Section 23.204.050(D)(1) to exceed the number of stories allowed to be 6 where the limit is 4
- Waiver of BMC Section 23.204.050(D)(1) to exceed height maximum of 40 feet, to be 70 feet and 6 inches
- Waiver of BMC Section 23.304.030(C)(2)(a) to reduce the rear (east) setback from a minimum of 20 feet to 5 feet
- Waiver of BMC Section 23.204.050(D)(1) to reduce the usable open space from a minimum of 22,000 square feet to 7,622 square feet

I. CEQA FINDINGS

1. 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 15332 of the CEQA Guidelines (“Infill Development”). The project meets all of the requirements of this exemption, as follows:
 - A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
 - B. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
 - C. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
 - D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
 - E. The site can be adequately served by all required utilities and public services.

2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows:
(a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. DENSITY BONUS FINDINGS

1. Pursuant to Government Code Section 65915, the Zoning Adjustments Board finds that:
 - A. Under the City's methodology for implementing density bonuses, the "Base Project" consists of 98 units;
 - B. The project will provide at least 9 Very Low- Income qualifying units in the 98-unit "base project", as more fully set forth in Conditions 61 to 65;
 - C. The project is entitled to a density increase of 30 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, under the requirements of Government Code Section 65915(b) and (f), plus two concessions or incentives. This equates to a density bonus of 29 units above the Base Project, for a total of 127-units.
2. In accordance with Government Code Section 65915(d), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds that the approval of the concessions is required to provide for affordable rents, as provided in Government Code Section 65915(d)(1)(A) because 1) approval of the concession would result in identifiable and actual cost reduction; 2) approval of the concession would not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) would not be contrary to State or Federal law.
3. In accordance with Government Code Section 65915(e) the Zoning Adjustments Board hereby grants the following waivers:
 - Waiver of BMC Section 23.204.050(D)(1) to exceed the maximum floor area ratio (FAR), to be 3.1, where 3.0 is the limit;
 - Waiver of BMC Section 23.204.050(D)(1) to exceed the number of stories allowed to be 6 where the limit is 4;
 - Waiver of BMC Section 23.204.050(D)(1) to exceed height, to be 70'-6" where 40' is the limit;
 - Waiver of BMC Section 23.304.030(C)(2)(a) to reduce the rear (east) setback which abuts a lot in a residential zone, to be 5' where 20' is the minimum; and
 - Waiver of BMC Section 23.204.050(D)(1) to reduce the usable open space requirement, to provide 7,622 square feet where 22,800 is the minimum

These waivers are required because state law requires the City to modify development standards as necessary to accommodate these density bonus units, and because the Zoning Adjustments Board hereby finds that the density bonus units can best be accommodated by granting these waivers.

4. In accordance with Government Code Section 65915(e), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds approval of waivers is required 1) construct the proposed project at the density permitted

under State law; 2) approval of requested waivers would not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) approval of the requested waivers would not be contrary to State or Federal law.

III. FINDINGS FOR APPROVAL

5. The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, a local agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that:
- The development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density; and
 - There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.

Because the project would comply with applicable, objective general plan and zoning standards, §65589.5(j) does apply to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified by staff. The project includes construction of 127 dwelling units.

6. As required by Section 23B.32.040.A of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, 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 because:

A. Height/Massing/Neighborhood Compatibility: The project is a mixed-use building, including commercial and residential uses, in the C-C General Commercial District, adjacent to commercial and residential uses. As such, the project will implement the General Plan's designations for Avenue Commercial areas. Further, the project will intensify an underutilized site consisting of a small, partially vacant commercial building and surface parking lot with a higher-density, six-story, mixed-use building that will maximize the site's development potential by providing 127 dwelling units and one ground-floor retail tenant space along a high-quality transit corridor. The project will attract additional pedestrian activity and neighborhood-serving goods and services to this area of Telegraph Avenue. The project concentrates the massing on the Telegraph Avenue frontage, thereby reducing potential impacts related to privacy and access to sunlight from surrounding development. The proposed retail tenant space and residential amenity at the ground level are compatible with surrounding commercial uses to the north, west and south along Telegraph Avenue, providing large storefront windows, recessed entryways, and planter boxes along Telegraph Avenue and Webster Street.

B. Shadows: The Density Bonus waiver for additional height beyond the district height limits to accommodate the density bonus units will allow a 70'-6"-tall, six-story building. Shadow impacts on adjacent residential properties will be minor, as the project site is adjacent to commercial properties on the south, west and north. Some shadow impacts on adjacent dwellings are to be expected, because the subject site is located in the C-C district, which allows heights of up to 50' and four stories for mixed-use buildings. The additional height

above the district limits will cast shadows in the affected directions further than if the project were limited to the base district height standards. While the proposed six-story building will be taller than the existing adjacent buildings and will cast new shadows on ten residential buildings nearby, these shading impacts will occur for a limited time during the year, and only for a few hours of the day; such impacts are considered typical of urban settings and are not considered substantial or detrimental.

- C. 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 property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

IV. OTHER FINDINGS FOR APPROVAL

- 7. Pursuant to BMC Section 23.404.070(B), the proposed building would not be detrimental as the proposed project furthers the purposes of the zoning district, provides new ground floor commercial space, and new shading would be limited on residential uses. In addition, the project approval 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 property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
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8. 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; 8-1/2" by 11" sheets are not acceptable.

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 reestablish 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 be in compliance 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. Pay Transparency Acknowledgement (BMC Section 13.104.030)

Prior to the issuance of a building permit for any Project subject to this Chapter:

- A. A Responsible Representative of the Permittee shall certify under penalty of perjury that: (1) the Permittee has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (2) the Permittee will be responsible for demonstrating compliance with this Chapter.
- B. The Permittee shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. A Responsible Representative of the Permittee shall certify under penalty of perjury that the Contractor and all Qualifying Subcontractors performing work on the Project will comply with Chapter 13.104 of the Berkeley Municipal Code and with Labor Code sections 226(a) and 2810.5 for each employee who works on the Project.

10. Pay Transparency Attestations Following Project Completion (BMC Section 13.104.040)

Within 10 days of the approved final inspection of any Project subject to this Chapter, each Permittee shall provide to the City for each Contractor and Qualifying Subcontractor a Pay Transparency Attestation on a form approved by the City. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor shall attest under penalty of perjury that the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code and Labor Code sections 226(a) and 2810.5 for each employee who performed work on the Project. The City will maintain Pay Transparency Attestation forms for period of at least three years after their date of receipt by the City.

11. Posting of Ordinance (BMC Section 13.104.050)

Each day work is performed on the Project, each Permittee shall post, and keep posted in a conspicuous location where it may be easily read by employees during the hours of the workday, a notice that: (A) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (B) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (C) provides current contact information, including

office address, telephone number, and email address of the Labor Commissioner of the State of California.

12. Conditions of Approval (BMC Section 13.104.060)

The requirements of Sections 13.104.030 through 13.104.050 shall be included as conditions of approval of any Use Permit or Zoning Certificate for any Project that is subject to this Chapter. Failure to comply with the requirements of any provision of this Chapter shall be grounds for issuance of an administrative citation under Chapter 1.28 and/or the revocation or modification of any Use Permit issued for the Project under Chapter 23B.60.

13. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

9. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.406.040.E, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

14. 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 #

15. Final Design Review. The Project requires approval of a Final Design Review application by the Design Review Committee.

16. 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 and entered into the City’s database prior to the applicant’s submittal of a building permit application.
17. Construction Noise Reduction Program. The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
 - A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
 - B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
 - C. Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
 - D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
 - E. Prohibit unnecessary idling of internal combustion engines.
 - F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
 - G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
 - H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
 - I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.
18. Damage Due to Construction Vibration. The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall take into account project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to

- eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake an existing conditions study (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage. This study shall
- establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and
 - include written descriptions and photographs.

The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

19. Fee Deferrals. All zoning project application fees that were deferred at the time of application submittal shall be paid in full.
20. Construction Noise Management - Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.
21. Construction Phases. The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.
22. 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.
23. Construction and Demolition Diversion. Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100% diversion

of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

24. 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. Environmental Site Assessments:

- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 2 years old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at: http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
- 3) If the Phase I is over 2 years old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

B. Soil and Groundwater Management Plan:

- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et

seq). The Survey becomes a condition of any building or demolition permit for the project. 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. 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.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

Prior to Issuance of Any Building (Construction) Permit

25. Parcel Merger. The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
26. Percent for Public Art: Consistent with BMC §23C.23, the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
27. Affordable Housing Mitigation Fee: Consistent with BMC §22.20.065, and fee resolution applicable to this project, the applicant shall provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the AHMF, and they shall pay this fee.
28. 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.
29. Interior Noise Levels. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
30. 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.
31. Electric Vehicle (EV) Charging. At least 10 percent of project parking spaces for nonresidential use shall have installed Level 2 (40 amp) electric vehicle (EV) charging stations and/or DC Fast

Charging Stations, and least 40 percent shall be “EV Capable” equipped with raceway, electrical panel service capacity, and an electrical system to support future Level 2 (40 amp) EV charging stations, or any more stringent EV charging requirements, as specified by the Berkeley Green Code (BMC Chapter 19.37). EV charging station installations and EV Capable spaces shall be noted on the construction plans. Public access parking spaces shall provide any applicable mandatory accessibility provisions.

32. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State’s Model Water Efficient Landscape Ordinance (MWELo). MWELo-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET_o) for Berkeley is 41.8.
33. Prohibition of Natural Gas Infrastructure in New Buildings. The project shall comply with the City of Berkeley Prohibition of Natural Gas Infrastructure in New Buildings (BMC Chapter 12.80).
34. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
35. 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.
36. Required Parking Spaces for Persons with Disabilities. Per BMC Section 23.322.040.H of the Zoning Ordinance, “If the number of required off-street parking spaces in a non-residential district is reduced as allowed by this chapter, the number of required parking spaces for persons with disabilities shall be calculated as if there had been no reduction in required spaces.”

Prior to Demolition or Start of Construction:

37. Construction Meeting. The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

During Construction:

38. Construction Hours. Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
39. Construction Hours- Exceptions. It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the

developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.

- 40. Project Construction Website.** The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:
- Contact information (i.e. “hotline” phone number, and email address) for the project construction manager
 - Calendar and schedule of daily/weekly/monthly construction activities
 - The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.
- 41. Public Works - Implement 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’s 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.
- 42. 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.

In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

- 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.
- 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.

43. 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 second page of the original [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.

44. 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%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.

45. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
- Storage of building materials, dumpsters, debris anywhere in the public ROW;
- Provision of exclusive contractor parking on-street; or
- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

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. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

46. 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.
47. 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.

48. 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.
49. 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.
50. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).
- A. *Qualified Paleontologist*. The project applicant shall retain a Qualified Paleontologist prior to excavations or ground disturbance that will exceed three feet in depth. The Qualified Paleontologist shall direct all mitigation measures related to paleontological resources. A qualified professional paleontologist is defined by the SVP standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010).
 - B. *Paleontological Worker Environmental Awareness Program (WEAP)*. Prior to ground disturbance, the applicant shall incorporate information on paleontological resources into the Project's Worker Environmental Awareness Training (WEAP) materials, or a stand-alone Paleontological Resources WEAP shall be submitted to the Department of Planning and Development at the City of Berkeley. The Qualified Paleontologist or his or her designee shall conduct training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The Paleontological WEAP training shall be fulfilled simultaneously with the overall WEAP training, or at the first preconstruction meeting at which a Qualified Paleontologist attends prior to ground disturbance. Printed literature (handouts) shall accompany the initial training. Following the initial WEAP training, all new workers and contractors must be trained prior to conducting ground disturbance work.
 - C. *Paleontological Monitoring*. The extent of required paleontological monitoring for the project shall be determined by the Qualified Paleontologist based on an evaluation of the previously

undisturbed geologic units exposed during ground disturbing activity. The Qualified Paleontologist shall conduct an initial spot check and evaluation of geologic conditions for ground disturbing activity for excavations between 5-10 feet below ground surface (BGS). The evaluation shall be based on field evidence including lithology of geologic units and results of microscreening or other inspections for fossil resources. If the paleontologist determines that geologic units exposed between 5-10 feet BGS have high paleontological sensitivity, then full-time monitoring shall be conducted for the duration of ground disturbing activity. If sediments between 5-10 feet BGS are determined to not be paleontological sensitive, spot checks should be conducted again for ground disturbance between 10-15 feet BGS and again for ground disturbance between 15-20 feet BGS, and again to the full depth of ground disturbance. If spot checks indicate low or no paleontological sensitivity, or if full time monitoring results in no fossil discoveries once the full depth of ground disturbance has been reached, paleontological monitoring can be discontinued for the remainder of project activity. Monitoring shall be reinstated if any new ground disturbances are required to depths exceeding previous depths of previous work, and reduction or suspension shall be reconsidered by the Qualified Paleontologist at that time.

- D. In the event of a fossil discovery by the paleontological monitor or construction personnel, all work in the immediate vicinity of the find shall cease. A Qualified Paleontologist shall evaluate the find before restarting construction activity in the area. If it is determined that the fossil(s) is (are) scientifically significant, the Qualified Paleontologist shall complete the following conditions to mitigate impacts to significant fossil resources:
- 1) *Salvage of Fossils.* If fossils are discovered, the paleontological monitor shall have the authority to halt or temporarily divert construction equipment within 50 feet of the find until the monitor and/or lead paleontologist evaluate the discovery and determine if the fossil may be considered significant. Typically, fossils can be safely salvaged quickly by a single paleontologist and not disrupt construction activity. In some cases, larger fossils (such as complete skeletons or large mammal fossils) require more extensive excavation and longer salvage periods. In this case, the Construction Contractor may be requested to supply heavy equipment and an operator to assist in the rapid removal of a large fossil specimen(s) or sediment sample(s). Bulk matrix sampling may be necessary to recover small invertebrates or microvertebrates from within paleontologically- sensitive Quaternary old alluvial deposits.
 - 2) *Preparation and Curation of Recovered Fossils.* Once salvaged, significant fossils shall be identified to the lowest possible taxonomic level, prepared to a curation-ready condition, and curated in a scientific institution with a permanent paleontological collection (such as the UCMP), along with all pertinent field notes, photos, data, and maps. Fossils of undetermined significance at the time of collection may also warrant curation at the discretion of the Qualified Paleontologist.
- E. *Final Paleontological Mitigation Report.* Upon completion of ground disturbing activity (and curation of fossils if necessary) the Qualified Paleontologist shall prepare a final report describing the results of the paleontological monitoring efforts associated with the project. The report shall include a summary of the field and laboratory methods, an overview of the project geology and paleontology, a list of taxa recovered (if any), an analysis of fossils recovered (if any) and their scientific significance, and recommendations. The report shall be submitted to the Department of Planning and Development at the City of Berkeley. If the monitoring efforts produced fossils, then a copy of the report shall also be submitted to the designated museum repository.

- 51. 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.
- 52. 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 private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the

- proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).
- H. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
 - I. 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.
 - J. 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.
 - K. Restaurants, where deemed appropriate, must be designed with a contained area for cleaning mats, equipment and containers. This contained wash area shall be covered or designed to prevent run-on or run-off from the area. The area shall not discharge to the storm drains; wash waters should drain to the sanitary sewer, or collected for ultimate disposal to the sanitary sewer. Employees shall be instructed and signs posted indicating that all washing activities shall be conducted in this area. Sanitary connections are subject to the review, approval and conditions of the waste water treatment plant receiving the discharge.
 - L. 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.
 - M. 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.
- 53. 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.
- 54. Public Works.** The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

55. 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.
56. 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.
57. 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.
58. Public Works. 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:

59. 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.
60. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated December 9, 2022, except as modified by conditions of approval.
61. Transportation Demand Management. Prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Planning Department staff to confirm that the physical improvements required in Section 23.334.030(C) and 23.322.090 (bike parking) have been installed. The property owner shall also provide documentation that the programmatic measures required in 23.334.030(A) and 23.334.030(B) will be implemented.
- A. Consistent with Section 23.334.030(A), all parking spaces provided for residents be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units, such that potential renters or buyers shall have the option of renting or buying a dwelling unit at a price lower than would be the case if there were a single price for both the dwelling unit and the parking space(s).
- B. Consistent with Section 23.334.030(B), at least one of the following transit benefits shall be offered, at no cost to the resident, for a period of ten years after the issuance of a Certificate of Occupancy. A notice describing these transportation benefits shall be posted in a location or locations visible to all employees.
1. One transit benefit for every bedroom in each dwelling unit.
 2. Subject to the review and approval of the Zoning Officer in consultation with the Transportation Division Manager, a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass.

C. Consistent with Section 23.334.030(C), publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors, shall be provided. Transportation information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.

Property owners may be required to pay administrative fees associated with compliance with this Condition.

BELOW MARKET RATE UNITS

62. Number of Below Market Rate Units. The project shall provide nine below market rate rental dwelling units (“BMR Units”), which are required to comply with the State Density Bonus Law (Government Code Section 65915). The BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR Units shall conform to the addresses assigned to the building by the City.

63. Regulatory Agreement. Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements Government Code Section 65915 and this Use Permit. The Regulatory Agreement may include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The maximum qualifying household income for the BMR Units shall be 50 percent of area median income (AMI), and the maximum housing payment shall be 30 percent of 50 percent of AMI, as set forth in the following paragraphs of this condition. If the BMR units are occupied by very low income tenants receiving a rental subsidy through the Section 8 or Shelter Plus Care programs, the rent received by the project sponsor may exceed the restricted rent to the payment standards allowed under those programs so long as the rent allowed under the payment standards is not greater than the market rents charged for comparable units in the development. The applicant shall submit the Regulatory Agreement to the Housing and Community Services Department (HHCS) via email to affordablehousing@cityofberkeley.info for review and approval.

64. In addition, the following provisions shall apply:

- A. Maximum rent shall be adjusted for the family size appropriate for the unit pursuant to California Health & Safety Code Section 50052.5 (h).
- B. Rent shall include a reasonable allowance for utilities, as published and updated by the Berkeley Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking and refrigeration fuels. Such allowance shall take into account the cost of an adequate level of service. Utilities do not include telephone service. Rent also includes any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.
- C. BMR units will be provided for the life of the project under Section 22.20.065.

65. Determination of Area Median Income (AMI).

- The “AMI” (Area Median Income) shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State

Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.

- The applicable AMI for the purpose of determining the allowable rent for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with the following table:

Unit Size	AMI Standard
Studio unit	AMI for a one person household
One-bedroom unit	AMI for a two person household
Two-bedroom unit	AMI for a three person household
Three-bedroom unit	AMI for a four person household

66. Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.

At All Times:

67. Transportation Demand Management Compliance. The property owner shall submit to the Planning Department periodic TDM Compliance Reports in accordance with Administrative Regulations, subject to the review and oversight of the Zoning Officer. Property owners may be required to pay administrative fees associated with compliance with this Condition, pursuant to BMC Section 23.334.040(B).
68. 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.
69. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
70. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.
71. 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.
72. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
73. 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.
74. Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this

restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.

- 75. Tenant Notification.** The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and entertainment uses, and that each occupant shall not seek to impede their lawful operation.
- 76. Transportation Demand Management.** A Transportation Demand Management compliance report shall be submitted to the Transportation Division Manager, on a form acceptable to the City, prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is in compliance with the applicable requirements.
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LINK APARTMENTS® - ASTER

3031 TELEGRAPH AVENUE, BERKELEY, CA 94705

PROJECT DESCRIPTION:

PROPOSED HOUSING DEVELOPMENT PROJECT TO CONSTRUCT A RESIDENTIAL MIXED USE BUILDING WITH AFFORDABLE HOUSING UNITS AND GROUND FLOOR RETAIL AND PARKING

BUILDING AREA SUMMARY

TOTAL GROSS FLOOR AREA OF PROPOSED PROJECT: **100,270 SF**

BUILDING OCCUPANCY

A-2/ M / S-2 GROUND FLOOR; R-2 ABOVE

ARCHITECT

DEVI DUTTA-CHOUDHURY, AIA
DEVI DUTTA ARCHITECTURE INC.
928 CARLETON STREET, BERKELEY, CA 94710
[510] 705-1937
HELLO@DEVIDUTTA.COM

OWNER

3031 TELEGRAPH BERKELEY, LLC
4601 PARK ROAD, SUITE 450
CHARLOTTE, NC 28209
[704] 372-5616

SHEET LIST

GENERAL

A0.0 COVER SHEET

SURVEY

S0.0 SURVEY

ARCHITECTURE

A0.1 DENSITY BONUS DIAGRAM
A0.1A BASE PROJECT SITE PLAN
A0.2 VICINITY MAP & CONTEXT
A0.3 STREET STRIPS
A0.4 LOT COVERAGE AND USABLE OPEN SPACE
A1.0 EXISTING/DEMO SITE PLAN
A1.0A PROPOSED SITE PLAN
A1.1 LEVEL 1
A1.2 LEVEL 2
A1.3 LEVEL 3
A1.4 LEVEL 4
A1.5 LEVEL 5
A1.6 LEVEL 6
A1.7 ROOF PLAN
A2.4 TRASH ROOM AND BIKE ROOM PLANS
A3.1 NORTH & WEST ELEVATIONS
A3.2 EAST & SOUTH ELEVATIONS
A3.3 COURTYARD ELEVATIONS
A3.4 ENLARGED ELEVATION, SECTION AND DETAILS
A3.5 ENLARGED ELEVATION, SECTION AND DETAILS
A4.1 BUILDING SECTIONS
A4.2 SECTION LOOKING WEST
A6.1 SHADOW STUDY - SUMMER SOLSTICE
A6.2 SHADOW STUDY - WINTER SOLSTICE
A6.3 SHADOW STUDY - APPLICATION DATE
A8.1 RENDERINGS
A8.2 RENDERINGS
A8.3 RENDERINGS
A8.4 RENDERINGS

LANDSCAPE

L1.00 GROUND LEVEL MATERIALS PLAN
L1.01 SECOND LEVEL MATERIALS PLAN
L1.02 FIFTH LEVEL MATERIALS PLAN
L1.03 ROOF DECK MATERIALS PLAN
L1.04 MATERIAL IMAGES
L2.00 GROUND LEVEL PLANTING PLAN
L2.01 SECOND LEVEL PLANTING PLAN
L2.02 FIFTH LEVEL PLANTING PLAN
L2.03 ROOF DECK PLANTING PLAN
L2.04 PLANT LIST
L2.05 PLANT IMAGES 1
L2.06 PLANT IMAGES 2
L3.00 COURTYARD RENDERING
L3.01 COURTYARD RENDERING
L3.02 COURTYARD RENDERING
L3.03 COURTYARD RENDERING
L7.1 IRRIGATION PLAN LEVEL 1
L7.2 IRRIGATION PLAN LEVEL 2
L7.3 IRRIGATION PLAN LEVEL 5
L7.4 IRRIGATION PLAN LEVEL 6
L7.5 IRRIGATION NOTES AND LEGEND
L7.6 IRRIGATION DETAILS
L7.7 BAY-FRIENDLY BASICS LANDSCAPE

PROJECT INFORMATION

ADDRESS: 3031 TELEGRAPH AVE, BERKELEY, CA 94705
ASSESSOR'S PARCEL: 052-157408200
USE DESCRIPTION: MIXED-USE
GENERAL PLAN: AC
ZONING DISTRICT: C-C & R-2A
FLOOD ZONE: NO
FIRE ZONE: 1
ENV. MGMT AREA: YES
LANDMARKS STRUCTURE OF MERIT: NO
LOT AREA: 31,604 SF

PROPOSED CONSTRUCTION TYPE

TBD

EXCAVATION

TBD

APPLICABLE CODES

(INCLUDES LOCAL EMENTMENTS)
2019 CALIFORNIA BUILDING CODE (CBC) 2019 RESIDENTIAL CODE (CRC)
2019 ENERGY CODE 2019 CALIFORNIA ELECTRIC CODE (CEC)
2019 CALIFORNIA PLUMBING CODE (CPC) 2019 CALIFORNIA MECHANICAL CODE (CMC)
2019 CALIFORNIA FIRE CODE (CFC) 2019 CALGREEN
BERKELEY MUNICIPAL CODE

PLANNING INFORMATION

WAIVERS / MODIFICATIONS:

- BUILDING HEIGHT
- STORIES
- OPEN SPACE
- FLOOR AREA RATIO
- SETBACKS

HEIGHT & STORIES	MAXIMUM (INCLUDING U.P. FOR HEIGHT)	BASE PROJECT	PROPOSED W/DENSITY BONUS
STORIES:	4	4	6
MAX. HEIGHT:	50'-0"	49'-10"	MAX. 70'-6" , 67'-0" AVG NORTH EL., 67'-0" AVG WEST EL., 47'-0" AVG EAST EL., 67'-0" AVG SOUTH EL.

SETBACKS	REQUIRED	BASE PROJECT	PROPOSED W/DENSITY BONUS
FRONT (TELEGRAPH)	0	0	0
NORTH (WEBSTER)	0	0	0
SOUTH ADJACENT TO RESIDENTIAL	5'-0"	5'-0"	5'-0"
EAST	10% OF LOT DEPTH AVG LOT DEPTH = 200'	20'-0"	5'-0"/19'-0"/20'-0"

FAR & LOT COVERAGE	MAXIMUM	BASE PROJECT	PROPOSED W/DENSITY BONUS
LOT AREA C-1 ZONING: 30769 SF LOT AREA R-2A ZONING: 835 SF LOT AREA TOTAL: 31,604 SF			
FAR C-1 ZONING (EXCLUDING GARAGE)	3.0 (94,812 GFA/ 31,604 LOT)	2.5 (80,287 GFA / 31,604 LOT)	3.2 (100,270 GFA / 31,604 LOT)
LOT COVERAGE	C-C AREA: 1 R-2A AREA: 0.45	26,488 / 31,604 = 0.84	27,186 / 31,604 = 0.86

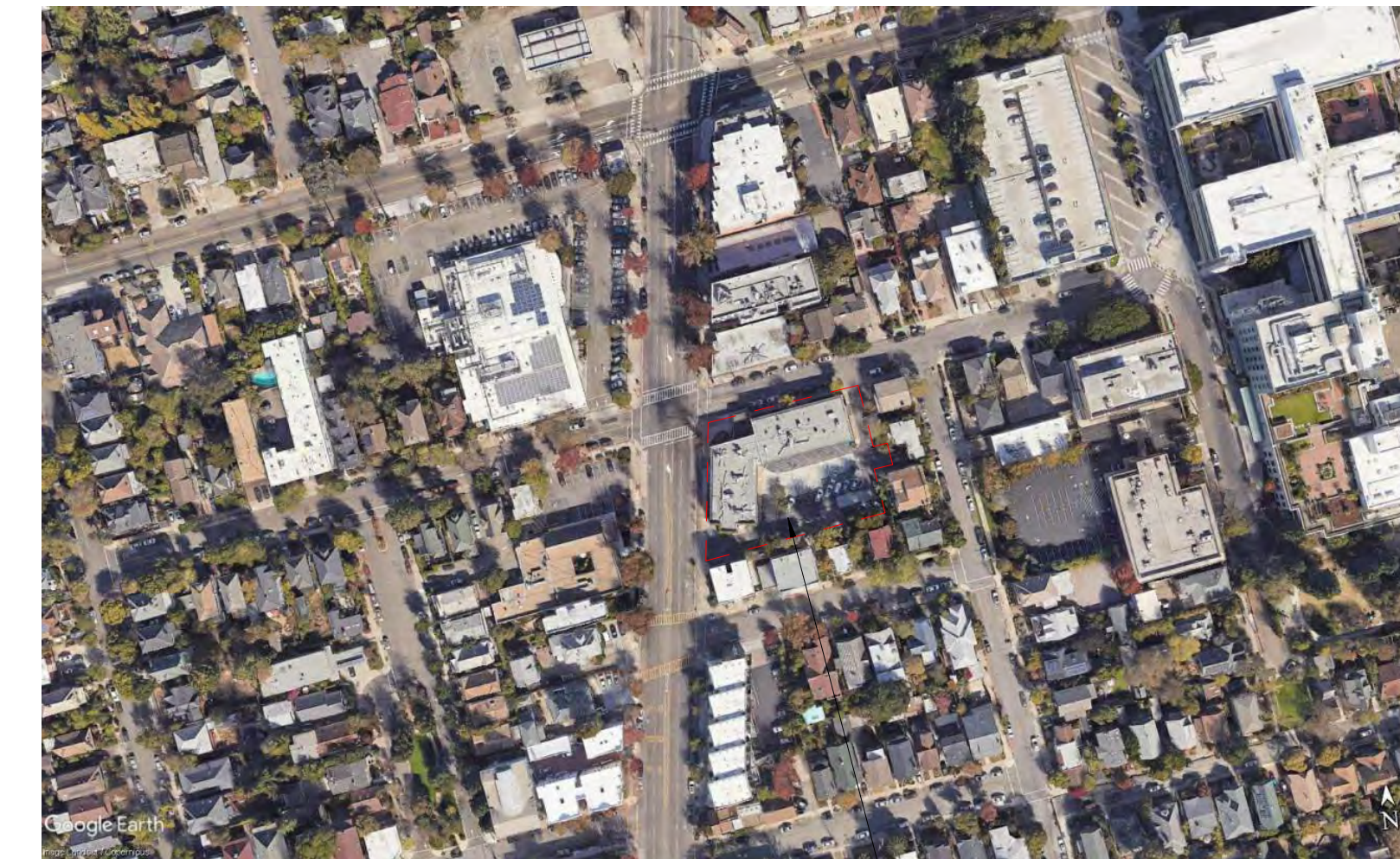
RESIDENTIAL UNIT MIX	BASE PROJECT # OF UNITS	DENSITY BONUS # OF UNITS	PROPOSED W/DENSITY BONUS
	(44) STUDIO - 45% (39) 1 BR - 40% (15) 2 BR - 15%	29	(54) STUDIO - 42.5% (54) 1 BR - 42.5% (19) 2 BR - 15%
	TOTAL: 98		TOTAL: 127

GROSS FLOOR AREAS (GARAGE EXCLUDED)	BASE PROJECT	DENSITY BONUS AREA	PROPOSED W/DENSITY BONUS
RESIDENTIAL	72,244 SF	21,256 SF	93,580 SF
RETAIL	3,948 SF		1921 SF
NON RESIDENTIAL (LEASE OFFICE, BIKE & EQUIPMENT ROOMS)	4,095SF		4,870 SF
TOTAL	80,287 SF		100,992 SF

PARKING: CARS	REQUIRED	PROVIDED BASE PROJECT	PROPOSED W/DENSITY BONUS
RESIDENTIAL	N/A	10	8 + 2 ADA
COMMERCIAL	(2) / 1000 GFA	9	8 + 1 ADA
TOTAL:	4	19	19

PARKING: BIKES	REQUIRED	BASE PROJECT	PROPOSED W/DENSITY BONUS
RESIDENTIAL	N/A	102	62
RETAIL:	(1) PER 2000 GFA	2	2
TOTAL:	2	104	64

OPEN SPACE	REQUIRED (PER R-3)	BASE PROJECT	PROPOSED W/DENSITY BONUS
	200 SF / UNIT	LEVEL 1 - REAR BUFFER LEVEL 2 LEVEL3 - DECK ROOF DECK TOTAL	2885 SF 4640 SF 275 SF 12487SF 20287 SF
			947 SF 4527 SF 275 SF 1873 SF 7622 SF, SEE ALSO LANDSCAPE PLANS



SITE MAP



ZONING MAP



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ASTER

3031 TELEGRAPH AVENUE
BERKELEY, CA 94705

APN
052-157408200

OWNER

3031 Telegraph Berkeley, LLC
4601 Park Road, Suite 450
Charlotte, NC 28209
[704] 372 5616

ARCHITECT

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LANDSCAPE ARCHITECT

GroundWorks office
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submissions

date	Issue
2020.05.29	Zoning Submittal
2020.09.23	Zoning Resubmittal
2021.02.04	Design Review
2021.03.04	ZAB Set
2022.09.07	Zoning Resubmittal

REVISION SCHEDULE

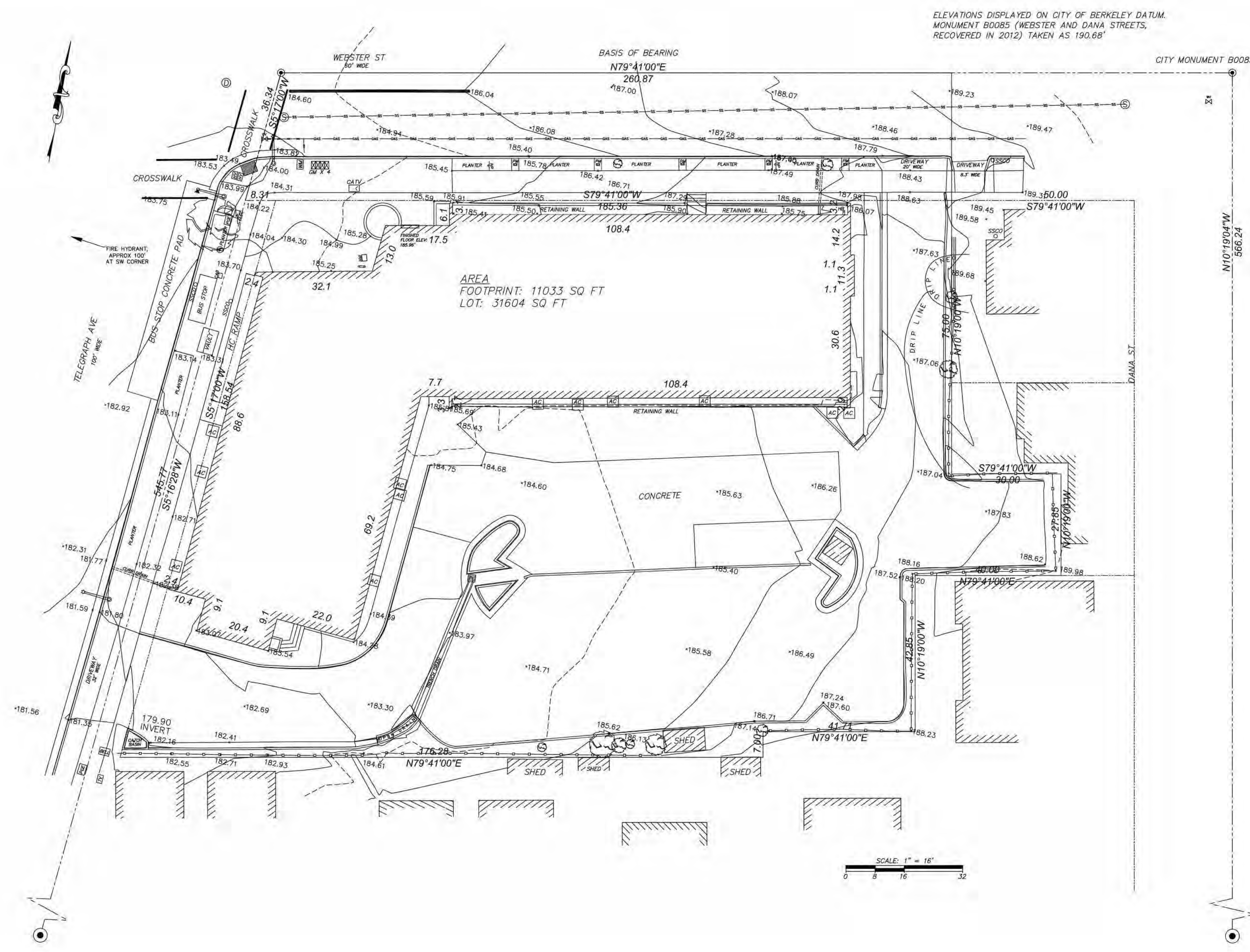
NO.	DATE	DESCRIPTION

drawing scale
As indicated

sheet title
COVER SHEET

sheet number
A0.0

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LEGEND

	CATCH BASIN		PACBELL VAULT
	HIGH VOLTAGE MANHOLE		TELEVISION VAULT/BOX
	UNKNOWN MANHOLE		PC&E VAULT/BOX
	SANITARY SEWER MANHOLE		UNSPECIFIED VAULT
	STORM DRAIN MANHOLE		WATER METER
	FIRE HYDRANT		HOSE BIB
	MONUMENT COVER		CURB
	WATER VALVE		SIDEWALK EDGE
	GAS VALVE		TREE
	PEDESTRIAN SIGNAL		DUTY WIRE
	BACK FLOW VALVE		SIGN, NO PARKING
	ELECTROLIER		OVERHEAD WIRE
	TRAFFIC SIGNAL POLE		AT&T MARKINGS
	AT&T VAULT		GAS LINE MARKINGS
	COMMUNICATIONS VAULT		CABLE TV MARKINGS
	SBC VAULT		UNDERGROUND UTILITY
			SIDEWALK EDGE
			CYCLONE FENCE
			WOOD FENCE

SURVEYOR'S STATEMENT:

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT AT THE REQUEST OF: STEVEN CHO ON MAY 30, 2018.

I HEREBY STATE THAT ALL GRADES AND ELEVATIONS SHOWN ARE BASED UPON THE CITY OF BERKELEY DATUM.

I HEREBY FURTHER STATE THAT TO THE BEST OF MY KNOWLEDGE ALL PROVISIONS OF APPLICABLE STATE LAWS AND LOCAL ORDINANCES HAVE BEEN COMPLIED WITH.

I HEREBY FURTHER STATE THAT THE PARCEL DESIGNATED BY MY SURVEY AND SHOWN ON THIS MAP IS THE SAME AS THAT SHOWN ON: THAT CERTAIN MAP TITLED "TRACT 5614" FILED ON MAY 22, 1987, IN BOOK NO. 169, PAGE NO. 42, ALAMEDA COUNTY RECORDER'S OFFICE.

I HEREBY FURTHER STATE THAT IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT, THE PERFORMANCE OF THIS SURVEY: REQUIRES THAT A CORNER RECORD BE FILED AND WHICH WILL BE FILED IN A TIMELY MANNER.

DATE: _____

JOSEPH M BRAJKOVICH, PLS 5254

BASIS OF SURVEY

- (1) TRACT MAP 5614, "OFFICE CONDOMINIUMS AT 3031 TELEGRAPH AVE" FILED MARCH, 1987 IN BOOK 169, PAGE 42, BY THE ALAMEDA COUNTY RECORDER
- (2) LOT LINE ADJUSTMENT MAP, FILE NO. 403-A-60, FILED WITH CITY OF BERKELEY, DEPT. OF PUBLIC WORKS
- (3) PM 10459, "A 3 UNIT SUBDIVISION FOR CONDOMINIUM PURPOSES" FILED IN BOOK 336, PAGE 79, ON SEPTEMBER 13, 2017 BY THE ALAMEDA COUNTY RECORDER
- (4) CITY OF BERKELEY MONUMENT RECORDS, FIELD NOTES (AMENDED 2012, INCLUDING ELEVATIONS ON CITY DATUM) FOR WEBSTER AND DANA STREETS, AVAILABLE FROM CITY SURVEYOR'S OFFICE
- (5) "SMILIE TRACT" BOOK 21, PAGE 90 OF ALAMEDA COUNTY RECORDS
- (6) OLD REPUBLIC TITLE COMPANY ORDER NO. 0224035483-AN, JUNE 24, 2015

BASIS OF BEARING

THE MONUMENT LINE ON WEBSTER STREET BETWEEN TELEGRAPH AVE AND DANA ST TAKEN AS N71°41'00"E PER (1) AND (2)

NOTES

EXISTING FIRE HYDRANT LOCATED ACROSS TELEGRAPH AVE, APPROXIMATELY 100' FROM THE WEST PROPERTY LINE.

BY	
REVISION	
NO.	

BOUNDARY AND TOPOGRAPHIC SURVEY OF 3031 TELEGRAPH AVE
PORTIONS OF LOTS 1 AND 3
"SMILIE TRACT"; BOOK 21, PAGE 90 AND
TRACT MAP 5614, BOOK 169, PAGE 43
A.P.N. 052-1574-104

PLS Surveys, Inc.
LAND & HYDROGRAPHIC SURVEYORS
2220 Livingston Street, Suite 202
Oakland, California 94606-5203
510.261.0900 FAX 510.261.3303
e-mail: plssurv@pacbell.net

DATE 6/19/2018
SCALE 1" = 16'
DESIGNER GDM
JOB NO. 18060
SHEET 1
OF 1 SHEET

BERKELEY CALIFORNIA

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ASTER

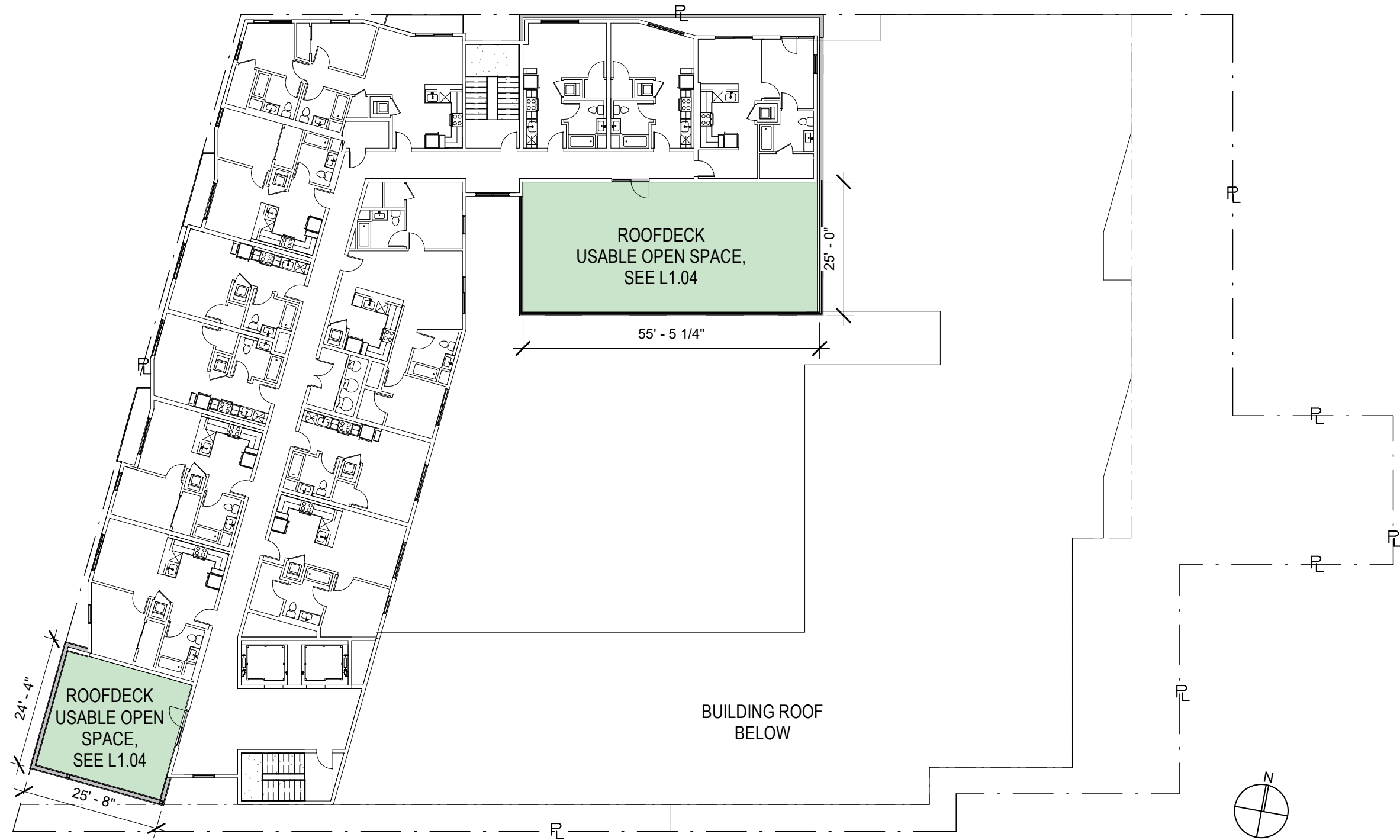
3031 TELEGRAPH AVENUE
BERKELEY, CA 94705

APN
052-157408200

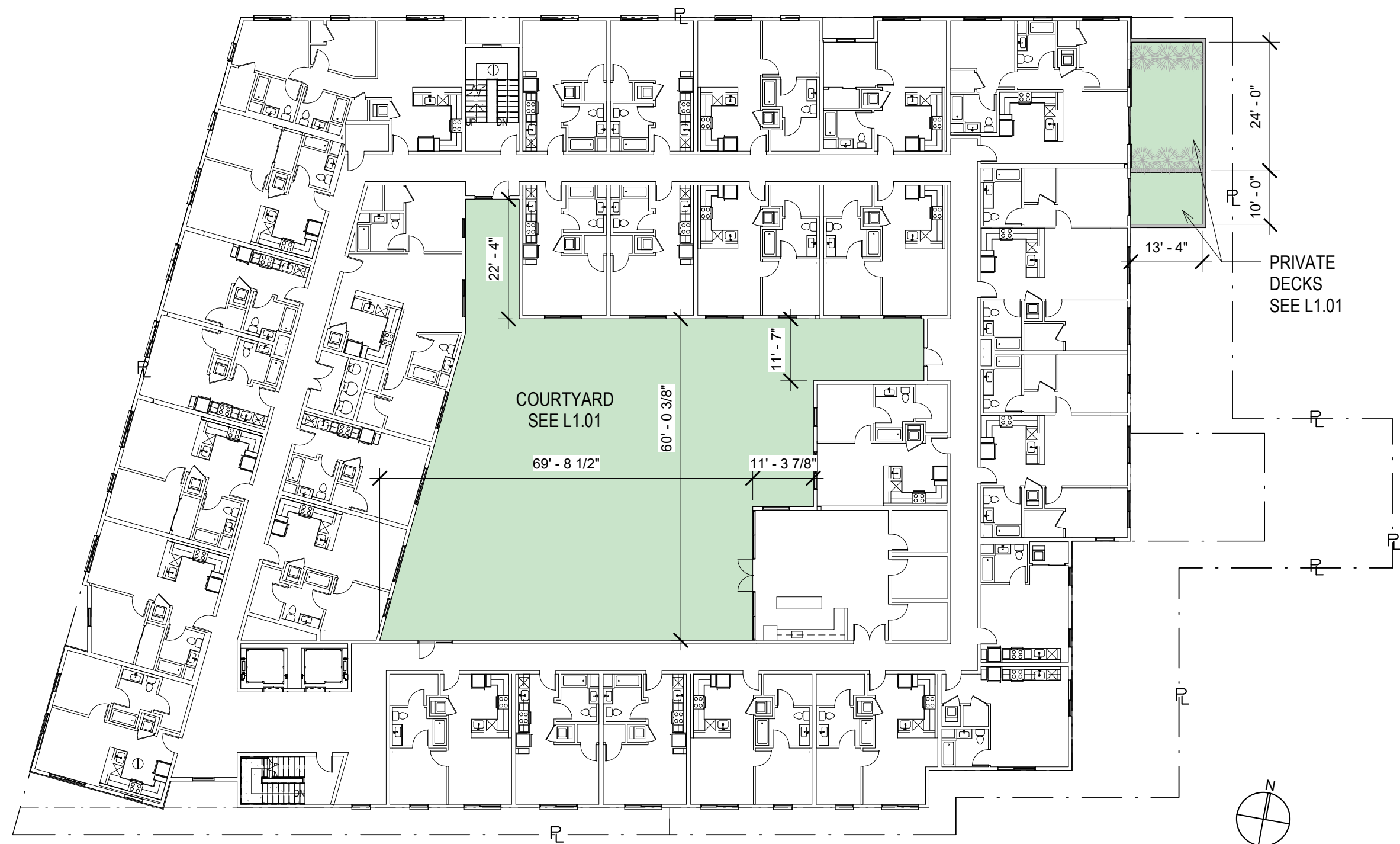
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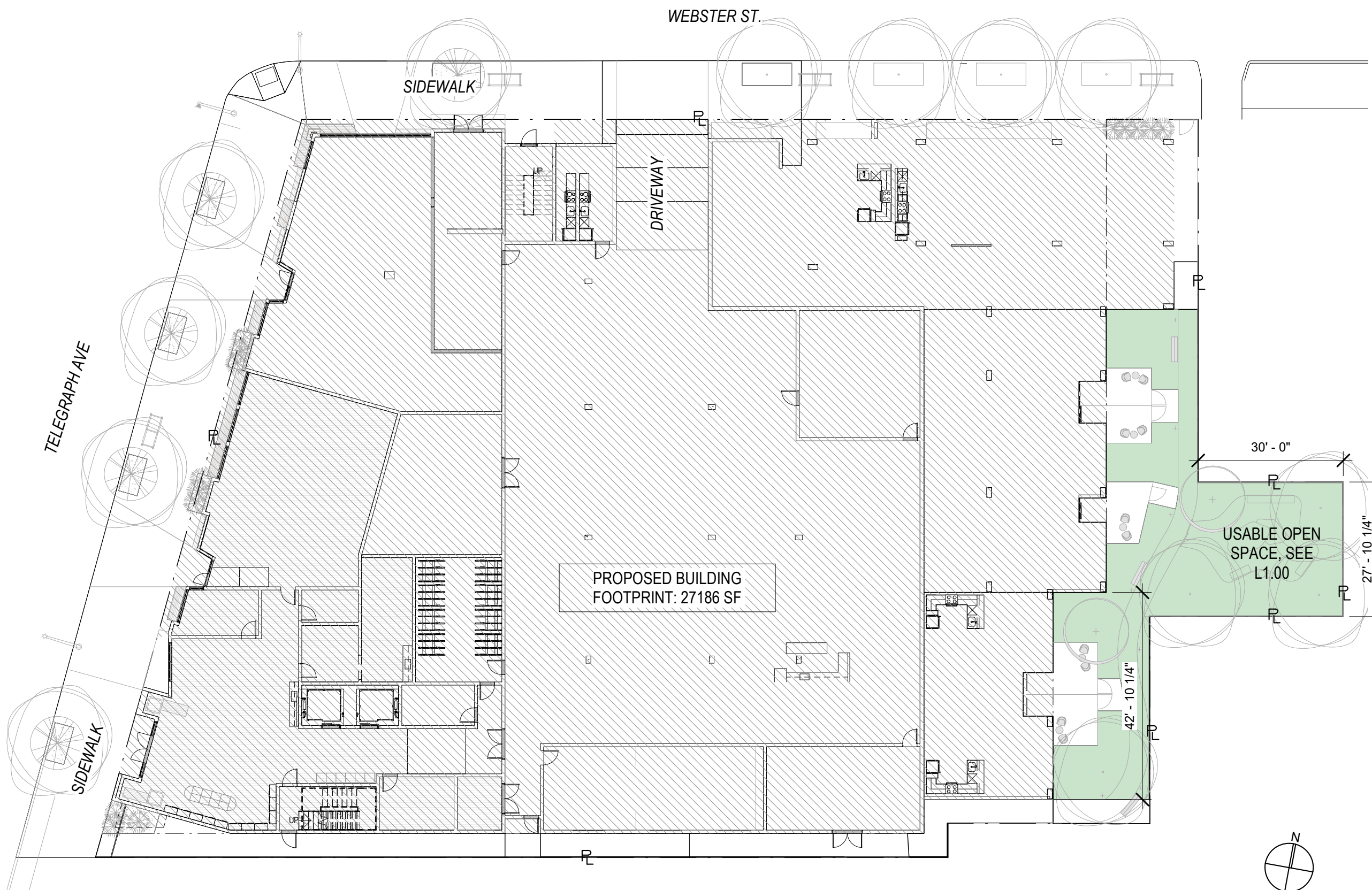
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3 USABLE OPEN SPACE - LEVEL 6
1" = 20'-0"



2 USABLE OPEN SPACE - LEVEL 2
1" = 20'-0"



1 LOT COVERAGE & USABLE OPEN SPACE - LEVEL 1
1" = 20'-0"



submissions

date	Issue
2020.05.29	Zoning Submittal
2020.09.23	Zoning Resubmittal
2021.02.04	Design Review
2021.03.04	ZAB Set
2022.09.07	Zoning Resubmittal

REVISION SCHEDULE

NO.	DATE	DESCRIPTION

drawing scale
As indicated

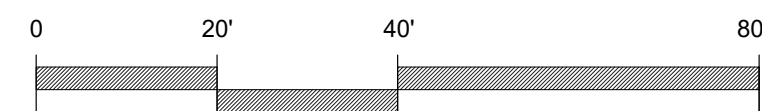
sheet title

LOT COVERAGE AND USABLE OPEN SPACE

sheet number

A0.4

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OPEN SPACE PLAN LEGEND

- PROPOSED BUILDING FOOTPRINT
- USABLE OPEN SPACE

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2022.09.07	Zoning Resubmittal

REVISION SCHEDULE

NO.	DATE	DESCRIPTION

Drawing scale

1/16" = 1'-0"

Sheet title

EXISTING/DEMO SITE PLAN

Sheet number

A1.0

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TELEGRAPH AVENUE PROPOSED IMPROVEMENTS (NORTH OF 52ND STREET)

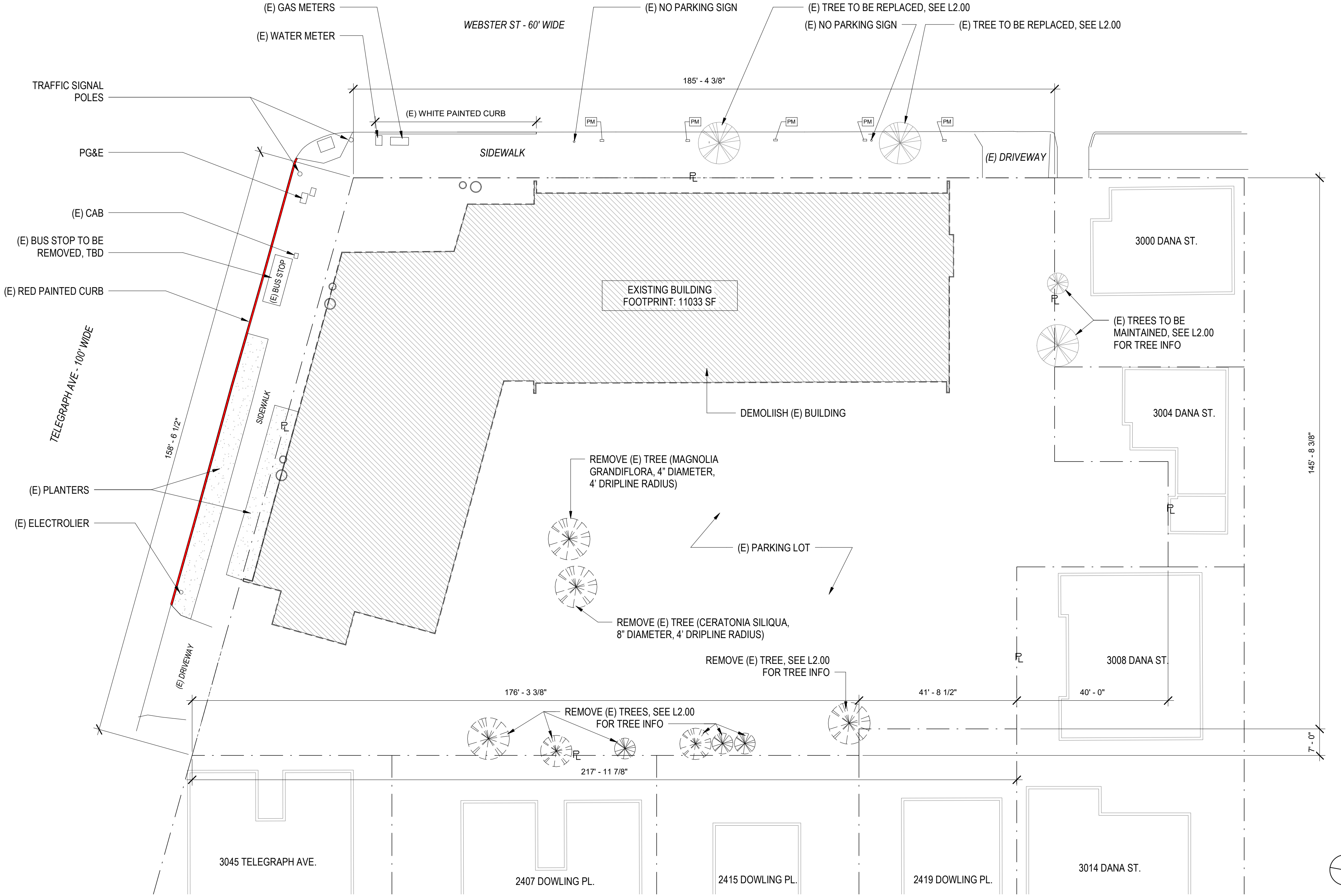


دستگاه ترانسپورت / سیستم حمل و نقل / Verkehrsplanung / Projeção de transporte / Transport planning / 03/03/20

Legend

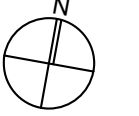
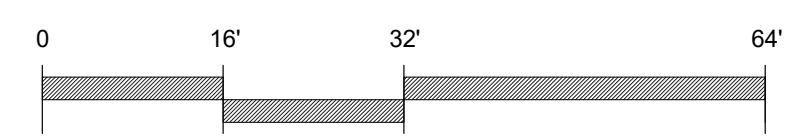
- Bus Stop Changes: Addition (Green circle), Improvement (White circle), Existing to Remain (Grey circle), Remove Existing (Red circle with X)
- Additional Improvements: Traffic Signal Improvements (Red vertical bar), Bus Lines: 800 (Purple bar), 6 (Blue bar)

AC TRANSIT PLAN



EXISTING SITE PLAN LEGEND

- EXISTING BUILDING FOOTPRINT
- STREET PLANTERS AREAS
- PARKING METER



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SHEET NOTES

- FLOOR DRAINS IN THE TRASH ROOM AND GARAGE MUST BE DIRECTED TO THE SANITARY SEWER SYSTEM
- PROVIDE GARAGE AUDIO AND VISUAL EXIT SIGNAL ALARM
- PROVIDE STANBY POWER FOR THE ELEVATORS



submissions

date	Issue
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2020.09.23	Zoning Resubmittal
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2021.03.04	ZAB Set
2022.09.07	Zoning Resubmittal

REVISION SCHEDULE

NO.	DATE	DESCRIPTION
1	12.09.2022	REVISION 1

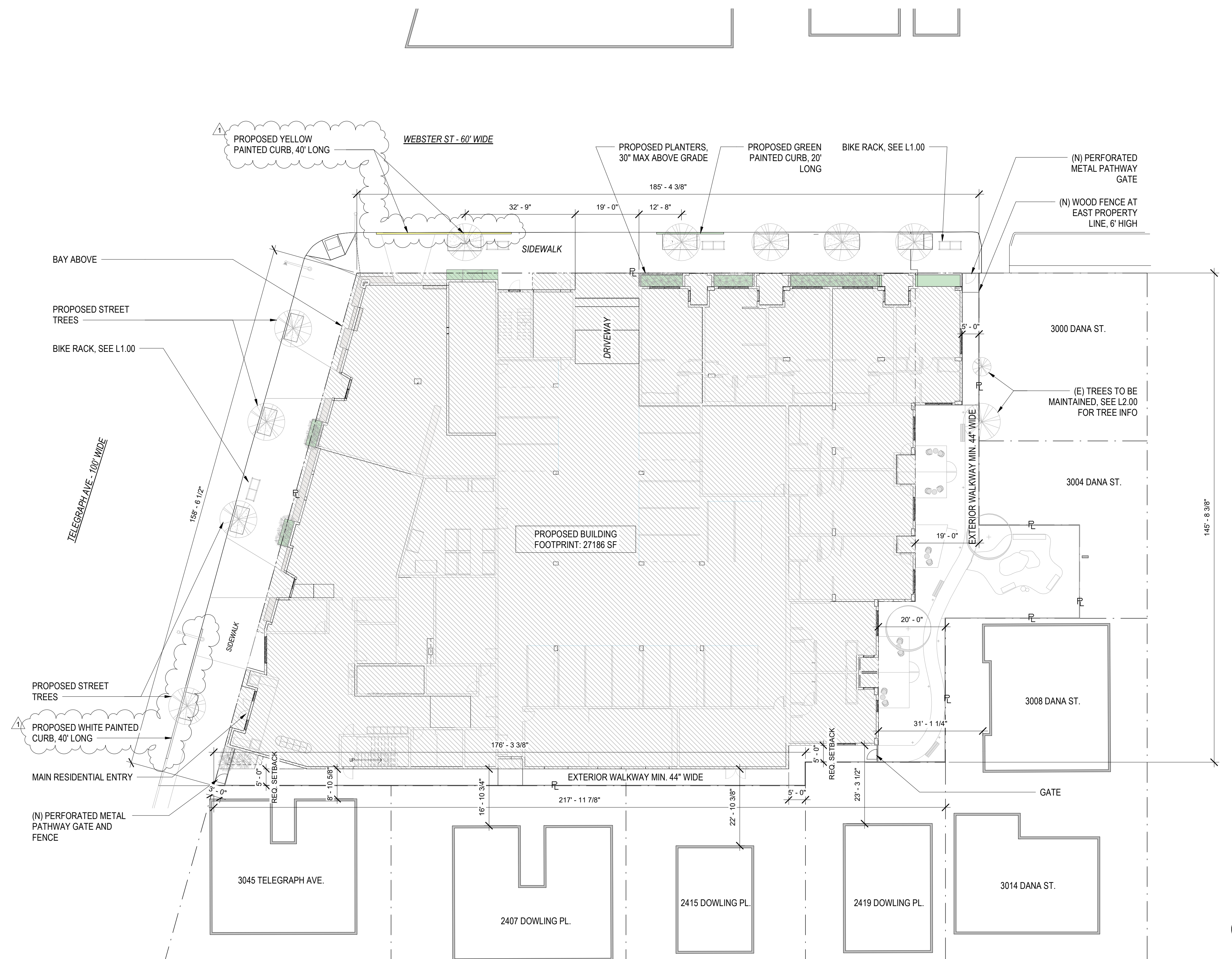
drawing scale
 1/16" = 1'-0"

sheet title
PROPOSED SITE PLAN

sheet number

A1.0A

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SITE PLAN LEGEND

 PROPOSED BUILDING FOOTPRINT

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REVISION SCHEDULE		
NO.	DATE	DESCRIPTION

drawing scale 1/8" = 1'-0"
sheet title LEVEL 4
sheet number

A1.4

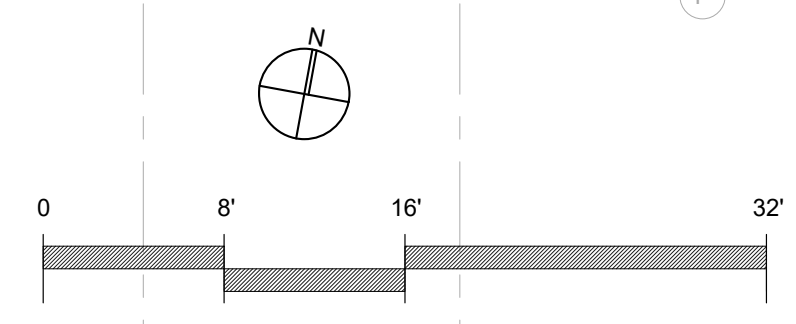
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UNIT TYPE LEGEND

TOTAL UNIT COUNT: 127

- STUDIO - 42.5%
- 1 BEDROOM - 42.5%
- 2 BEDROOM - 15%





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

3031 Telegraph Avenue

Use Permit Modification #ZP2022-0126 to modify the project originally approved under #ZP2020-0069 to construct a six-story (70 feet and 6 inches), 100,992 square-foot mixed-use building with 127 dwelling units (including nine Very Low-Income units) where 117 units were originally proposed. The project also includes 5,666 square feet of commercial space, 7,474 square feet of usable open space, 112 bicycle parking spaces and 29 vehicular parking spaces at the ground level.

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.

When: Thursday, April 27, 2023, 7:00 PM.

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

Please see the Agenda for details:

https://berkeleyca.gov/sites/default/files/documents/2023-04-27_ZAB%20Agenda.pdf

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: AC – Avenue Commercial
- Zoning: C-C - General Commercial District (30,769 square feet of the 31,604 square foot lot), and R-2A – Restricted Multiple-Family Residential District (835 square feet.)

B. Zoning Permits Required:

- Use Permit (Modification) to modify an approved discretionary permit, under Berkeley Municipal Code (BMC) Section 23.404.070(B)

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

- Waiver of BMC Section 23.204.050(D)(1) to exceed the maximum floor area ratio (FAR) of 3.0 to be 3.0.
- Waiver of BMC Section 23.204.050(D)(1) to exceed the number of stories allowed to be 6 where the limit is 4
- Waiver of BMC Section 23.204.050(D)(1) to exceed height maximum of 40 feet, to be 70 feet and-6 inches
- Waiver of BMC Section 23.304.030(C)(2)(a) to reduce the rear (east) setback from a minimum of 20 feet to 5 feet
- Waiver of BMC Section 23.204.050(D)(1) to reduce the usable open space from a minimum of 22,000 square feet to 7,622 square feet

D. CEQA Recommendation: 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 Regulations, Section 15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“Infill Development Projects”).

E. Parties Involved:

- Applicant Grubb Properties, Charlotte, NC 28209
- Property Owner HC Investment Associates, LLC., c/o Grubb Properties

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, Katrina Lapira, at (510) 981-7488 or klapira@cityofberkeley.info.

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

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@cityofberkeley.info. 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@cityofberkeley.info) 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 fourteen (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 ninety (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 ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of

property for public use without just compensation under the California or United States Constitutions, the following requirements apply:

- A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above. If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.
-



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
MARCH 25, 2021

3031 Telegraph Avenue

Use Permit #ZP2020-0069 to demolish an existing two-story commercial building and construct a six-story, 98,338 square-foot mixed-use building with 110 dwelling units (including 7 Very Low-Income units), including 5,666 square feet of commercial space, 7,474 square feet of usable open space, 112 bicycle parking spaces and 29 vehicular parking spaces at the ground level.

I. Background

A. Land Use Designations:

- General Plan: AC – Avenue Commercial
- Zoning: C-1 - General Commercial District (30,769 sq.ft. of the 31,604 sq.ft. lot), and R-2A – Restricted Multiple-Family Residential District (835 sq.ft. with the zoning district boundary along the property line except a portion designated as usable open space).

B. Zoning Permits Required:

- Use Permit to demolish a commercial building, pursuant to BMC Section 23C.08.050.A;
- Use Permit to construct a new mixed-use development, pursuant to BMC Section 23E.36.030;
- Use Permit to construct new floor area of 5,000 square feet or more, pursuant to BMC Section 23E.36.050; and
- Use Permit to construct a fourth floor at a height of 50 feet, pursuant to BMC Section 23E.36.070.

C. Waivers Pursuant to Government Code Sections 65915-65918:

- Waiver of BMC Section 23E.36.070.A to exceed the maximum floor area ratio (FAR), to be 3.11, where 3.0 is the limit;
- Waiver of BMC Section 23E.36.070.B.1 to exceed height, to be 67' where 40' is the limit;
- Waiver of BMC Section 23E.36.070.C.1 to reduce the rear (east) yard which abuts a lot in a residential zone, to be 5' where 20' is the minimum;

- Waiver of BMC Section 23E.36.070.D to reduce the usable open space requirement, to provide 7,474 square feet where 22,000 is the minimum; and
- Waiver of BMC Section 23E.36.080.B to reduce the parking requirement, to provide 29 parking spaces, where 101 are required.

D. CEQA Recommendation: It is staff's recommendation to ZAB that the project is Categorically exempt pursuant to Section 15332 (In-Fill Development Projects) of the CEQA Guidelines. The determination is made by ZAB.

The project meets all of the requirements of this exemption, as follows:

- The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
- The project occurs within the Berkeley City limits on a project site of no more than five acres and is surrounded by urban uses.
- The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
- The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The VMT Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. Standard Conditions of Approval would address potential impacts related to traffic, noise, air quality, and water quality.
- The site can be adequately served by all required utilities and public services.

Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

E. Parties Involved:

- Applicant/Property Owner: HC Investments Associates LLC c/o Rhoades Planning Group, 46 Shattuck Square, Suite 11, Berkeley

Figure 1: Zoning Map



Legend

- C-1: General Commercial District
- R-1: Single-Family Residential District
- R-2: Restricted Two-Family Residential District
- R-2A: Restricted Multiple-Family Residential District
- R-3: Multiple-Family Residential District

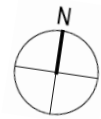


Figure 2: Proposed Site Plan

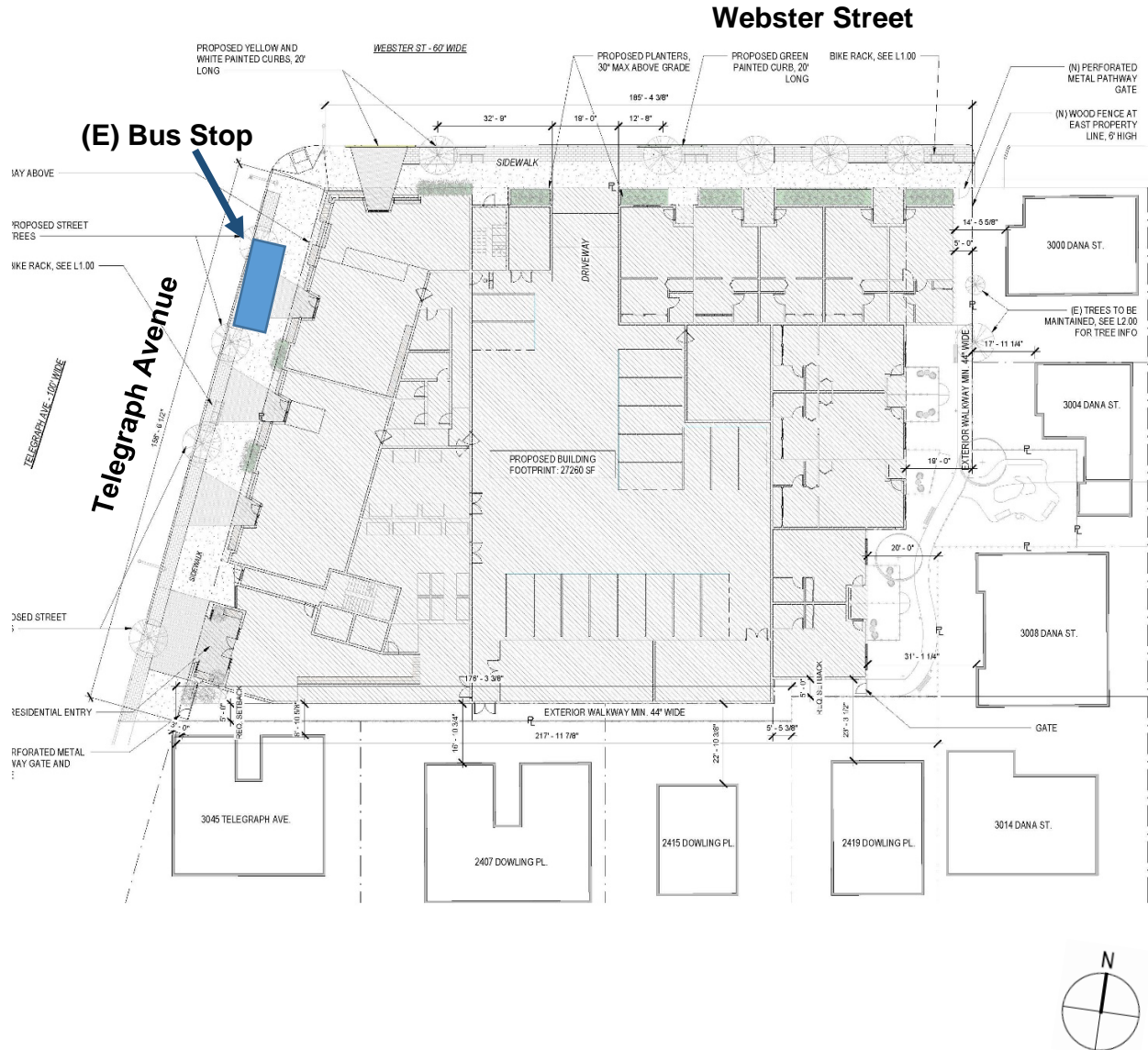


Figure 3: Telegraph Avenue (West) Elevation



Figure 4: Webster Street (North) Elevation



Figure 5: Rear (East) Elevation facing adjacent residential parcels



Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Commercial, Medical Office	C-1 and R-2A	Avenue Commercial (AC)
Surrounding Adjacent Properties	North	Commercial, Medical Office	C-1	
	East	Residential, Single and Multi-Family	R-3 and R-2A	Medium-Density Residential (MDR) and Low-Density Residential (LDR)
	South	Commercial, Medical Office and Residential, Multi-family	C-1 and R-1	Avenue Commercial (AC) and Low-Density Residential (LDR)
	West	Commercial, Medical Office	C-1	Avenue Commercial (AC)

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee & Affordable Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. & 66,617-N.S.)	No	The project includes 5,666 square feet of commercial space, which is less than the 7,500 net square feet threshold. Therefore, the project is not subject to the fees resolutions.
Affordable Housing Mitigations for rental housing projects (Per BMC Section 22.20.065)	Yes	The project includes 5 or more dwelling units and therefore is subject to the City's Affordable Housing Mitigation Fee / Inclusionary Housing Ordinance.
Alcohol Sales/Service	No	The project is not proposing alcohol sales or service with this permit.
Creeks (Per BMC Section 17.08.045)	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30' of the site.
Coast Live Oak Trees (BMC Section 6.52.010)	No	There are no coast live oak trees on or near the project site.
Density Bonus (Per Gov't Code Chapter 65915)	Yes	The project would provide 11% of the Base Project units (7 units) as affordable to Very Low Income households, which qualifies it for a 35% density bonus. The project is requesting five waivers/modifications, pursuant to the Density Bonus regulation. See section V.B for discussion.

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Green Point Rating Version 7.0 (minimum score is 50 and maximum score is 404)	Yes	The project is designed to attain a score of 134 points (Gold), including green building measures such as water-efficient fixtures, on-site renewable energy generation, and meets or exceeds energy compliance pathway and Title 24 performance standards.
Historic Resources (Per Gov't Code §15064.5 or BMC Chapter 3.24)	No	As the existing building is more than 40 years old, it was forwarded to the Landmarks Preservation Commission (LPC) for review (BMC 23C.08.050.C). On November 5, 2020 the LPC took no action to initiate a Landmark or Structure of Merit designation and recommended that the ZAB approve the demolition. See Section IV.B for discussion.
Housing Accountability Act (Govt. Code 65589.5(j))	Yes	The project is a "housing development project" consisting of a mixed-use building. Staff has deemed the project compliant with the HAA, and the Base Project complies with applicable zoning standards. See Section III.C. for discussion.
Public Art on Private Projects (Per BMC Chapter 23C.23)	Yes	The project is subject to the Percentage for Public Art on Private Projects ordinance. The applicant has indicated that they intend to pay the required in-lieu fee prior to issuance of a building permit.
Rent Controlled Units (Per BMC Chapter 13.76)	No	There are no rent-controlled units on the property.
Residential Preferred Parking (RPP) (Per BMC Chapter 14.72)	No	The project site is located within the RPP Area "A". However, pursuant to BMC Section 14.72.080.C.1, no RPP permits shall be issued to residents in newly constructed residential units which do not meet the parking requirements established by the Zoning Ordinance unless a variance for parking requirement set forth in the Zoning Ordinance was issued. Because the applicant is not requesting a variance for parking, the project is ineligible for the RPP Program.
Seismic Hazards Mapping Act (Per State Hazards Mapping Act)	No	The site is not located within an area susceptible to liquefaction, Fault Rupture, or Landslides as shown on the State Seismic Hazard Zones map.
Soil/Groundwater Contamination	Yes	The project site is located within the City's Environmental Management Area, but is not on the Cortese List (an annually updated list of hazardous materials sites). The applicant submitted a Phase I report, reviewed by the City's Toxics Management Division, which concludes that no further site investigation is required.

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Transit and Bicycle Access	Yes	The project site has frontage on Telegraph Avenue, which is served by AC Transit line 6, and is located one block from the Ashby transit corridor, which is served by AC Transit lines 80 and 800 (All-Nighter line). As shown on Sheet A1.0, Attachment 2, a bus stop is currently located at the south side of Telegraph and Webster; that stop is planned for removal, as AC Transit has plans to create a new bus stop at the south side of Ashby on Telegraph. The project site is 0.7-mile east of the Ashby BART Station. There are several designated bikeways within five blocks of the project site, and a bike share station is across Telegraph in front of Whole Foods.

Table 3: Project Chronology

Date	Action
July 2, 2020	Preliminary Application under SB330 submitted
July 13, 2020	Use Permit application submitted
August 3, 2020	Use Permit application deemed incomplete
August 12, 2020	Interdepartmental Roundtable Meeting
October 19, 2020	Revised application submitted
November 5, 2020	LPC demolition referral hearing
November 5, 2020	Application deemed incomplete
November 19, 2020	Revised application submitted
November 20, 2020	Application deemed complete
December 17, 2020	DRC Preliminary Design Review, continued to February meeting
February 18, 2021	DRC Preliminary Design Review with favorable recommendation
March 11, 2021	Public hearing notices mailed/posted
March 25, 2021	ZAB hearing

Table 4: Development Standards

C-1 Standards BMC Sections 23E.36.070-.080		Existing	Proposed	Permitted/ Required
Lot Area (sq. ft.)		31,604	No change	n/a
Gross Floor Area (sq. ft.)		24,500	98,338	94,812 max.
FAR		0.60	3.11	3.0 max.
Dwelling Units	Total	0	110	n/a
	Affordable (VLI)	0	7	7 ¹
Building Height	Average	30'	67' (N, S, W) 47' (E)	n/a
	Maximum	30'	70' – 6"	40' max.
	Stories	2	6	3 max.
Building Setbacks	Front	4'-1/2"	0'	n/a
	Rear (East)	28'	Varies 5' to 20'	20' (10 ft. or 10% of lot depth, whichever is greater, per BMC Section 23E.04.050.C)
	First			
	Second		Varies 19' to 20'	
	Third			
	Fourth		Varies 79' to 147'	
	Fifth			
	Sixth			
	Left (Street) Side	6'	0'	n/a
Right (Interior) Side	31'	5'	5'	
Lot Coverage (%)		35	86	n/a
Usable Open Space (sq. ft.)		n/a	7,474	22,000 min. ²
Parking	Commercial	44	11	11 min.
	Residential	n/a	18	90 min. ³
	Total	17	29	101
	Bicycle	0	112	3 ⁴

■ = Waiver requested to modify the district standard.

¹ 7 Very Low Income units are required to qualify for the maximum 35% density bonus per Government Code section 65915.

² Usable Open Space requirements for the Residential Use portion of a mixed use building shall be as set forth in the R-3 District requirements (BMC Section 23E.36.070.D).

³ Off-street Parking requirements for the Residential Use portion of a mixed use building shall be as set forth in the R-3 District requirements (BMC Section 23E.36.070.D).

⁴ Per BMC Section 23E.36.080.C, 1 bicycle parking space is required per 2,000 sq. ft. of gross floor area of commercial space. Currently, there are no bicycle parking space required for residential floor area. However, the Transportation Division provides recommended bike parking ratios of 1 long term space per 3 bedrooms (152 bedrooms/3 = 51 spaces) and 1 short term space per 40 bedrooms (152 bedrooms/40 = 4 spaces), which yields 55 spaces. The applicant has elected to exceed the recommended ratios for residential bicycle parking by 54 spaces.

II. Project Setting

A. Neighborhood/Area Description: The subject property is located on the east side of Telegraph Avenue, between Webster Street and Dowling Place, about three blocks

from the southern border of the city. It is located approximately one block south of the Ashby Avenue corridor, one block west of the Alta Bates Summit Medical Center campus, and four blocks east of Shattuck Avenue. This area of Telegraph Avenue is developed with various commercial uses, including medical offices, as well as a high-density mixed-use building located at the corner of Telegraph and Ashby. Many of the commercial buildings in the vicinity are flush with the property line and have active, pedestrian-oriented uses on the ground floor, with the exception of the Whole Foods, which is set back from the front property line, separated from Telegraph Avenue by a surface parking lot. The surrounding area to the east and west of Telegraph Avenue is developed with medium and low-density residential uses, consisting mainly of two- to three-story buildings (See Figure 1: Zoning Map). Immediately adjacent land uses are noted in Table 1.

The subject property is served by a local bus line (AC Transit) that operates along Telegraph Avenue and is located approximately 0.7 miles east of the Ashby BART station. There are several bike ways and boulevards within four blocks of Telegraph Avenue and a bike share station is located across Telegraph Avenue in front of Whole Foods.

- B. Site Conditions:** The 31,604-square-foot project site (0.72-acre) is an irregular corner lot with 158'-6" of frontage on Telegraph Avenue and 185'-4" of frontage on Webster Street. The zoning district boundary generally follows the property line, except for a small (825 sq. ft.) portion along the rear property line, which is zoned R-2A. The site contains an approximately 24,500 sq. ft. two-story medical office building situated on the northwestern portion of the parcel, constructed in 1954 in a style that reflects institutional buildings from the Midcentury Modern period. The parcel also includes a paved parking lot with 44 off-street parking spaces with vehicle access from both Telegraph Avenue and Webster Street, as well as nine trees located within the parking lot and two trees with drip lines over the rear (east) property line. A traffic signal and bus stop are located at the Telegraph Avenue at Webster Street intersection (See Sheet A1.0, Attachment 2).

III. Project Description

- A.** The proposed project would involve the demolition of the existing commercial building and the construction of a mixed-use building with the following main components:
- Six stories, 67' average height (47' average height at east (rear) elevation)
 - 110 dwelling units – 35 studios; 43 one-bedroom; 22 two-bedroom; 10 three-bedroom
 - 152 bedrooms total
 - Seven Very Low Income (VLI) units
 - 5,666 square feet of ground-floor commercial space
 - 7,474 square feet of usable open space – ground level "strolling garden", second-floor courtyard, and two roof decks located on the sixth floor (north and south portions of the building)
 - 29 vehicle parking spaces
 - 112 bicycle parking spaces

The ground floor would include two retail and/or co-working spaces, as well as the residential lobby, that would provide storefront windows and entrances to the building along Telegraph Avenue. It would also include 29 automobile parking spaces in a garage, accessed from a new driveway on Webster Street. The curb cut on Telegraph Avenue would be removed. Central within the ground floor would be a room for 112 secure bicycle parking spaces, tenant storage units, mechanical/electrical rooms, and trash room.

Nine studio and one 1-bedroom dwelling units would be located on the north (Webster Street) and east (rear) portions of the building. Units on the ground floor would include private patios. The remaining dwelling units would be distributed throughout the second through sixth floors. Private decks would also be located on the second, fourth, fifth and sixth floors. Usable open space would be provided through a ground-level strolling garden along the rear of the building, a second-floor courtyard in the center of the building, and two roof decks on the sixth floor, which would be located at the northwest and southwest areas of the building.

A new six-foot tall perforated metal fence would be located along the rear (east) and south property lines. The two existing trees with drip lines over the rear property line would be retained, and the nine existing trees within the existing parking lot would be removed.

B. Base Project and Density Bonus: By committing to provide seven VLI units, the project is eligible for a density bonus under Government Code §65915. Under the City's density bonus procedures, the Base Project was calculated to have 63 units, as the *maximum allowable density* for the site.¹ The Base Project has an average unit size of 820 square feet in a three-story building. Seven VLI units, or 11% of the base project, qualifies the project for a 35% density bonus or 23 bonus units. The project includes a request for a Use Permit (UP) to extend the base zoning district height limit (3 stories and 40 feet maximum) to four stories and 50 feet, which would add 20,505 square feet of residential floor area, and 25 units. The resulting Proposed Project would be a six-story building with 110 units, with an average unit size of 818 square feet. (See Tables 6 and 7: Base vs. Proposed Project and Density Bonus.)

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

Table 6: Base vs. Proposed Project

Floor	Base Project		Proposed Project	
	RFA	Units	Units	RFA
1	9,119	63	110*	8,944
2	21,268			21,517
3	21,268			21,181
4				20,973 (UP)
5				10,189
6				7,215
Totals:	51,655			90,019
Average Unit Size:	820 sq. ft.		818 sq. ft.	

* Per Gov't Code 65915(q), all unit calculations are rounded up to the nearest whole number.
(UP) = Use Permit to exceed 40 ft. and three stories in height, to a height of, but not exceeding, 50 ft. and four stories.

Table 7: Density Bonus – CA Gov't Code 65915

Base Project Units*	Qualifying Units	Percent Density Bonus	Number of Density Bonus	Use Permit Floor Units	Proposed Project Units
63	7 VLI (11% of Base Project)	35% (35% max.)	23 max.; requesting 22	25	110

*Per Gov't Code 65915(q), all unit calculations are rounded up to the nearest whole number.

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

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

The Base Project complies with applicable, objective general plan and zoning standards. Further, Section 65589.5(j)(3) provides that a request for a density bonus “shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.” The City may not deny the Base Project or density bonus request or reduced the density with respect to those units without basing its decision on the

written findings under Section 65589.5(j), above. Staff is aware of no specific adverse impacts that could occur with the construction of the Base Project or the density bonus units. The project also requires approval of a Use Permit pursuant to BMC Section 23E.36.070.B.1 to construct a fourth story at a height of 50 feet, where a maximum of three stories and 40 feet are allowed by-right. Only the non-detriment finding for approval of this use permit applies; the non-detriment finding does not include objective standards. Therefore, staff has deemed the project compliant with the HAA, and Section 65589.5(j) **does apply** to the Proposed Project. All findings discussed below are subject to the requirements of Government Code §65589.5.

The analysis on compatibility with the purposes of the C-1 District; sunlight/shadow, air, views and privacy and General Plan consistency are provided for informational purposes only because they are not applicable to HAA-compliant projects.

IV. Community Discussion

A. Neighbor/Community Concerns: On July 16, 2020, the City mailed postcards notifying property owners and occupants within 300' of the project site that a zoning project application was received, and posted a notice at the project site.² On July 20 and August 9, staff received emails from two residents within 300' of the project site expressing concerns regarding the parking/dwelling unit ratio, the scale of the building, its architectural merit, and potential impacts to the east bay hills viewshed. Staff also answered questions about the project's noticing procedures and density bonus requirements. On December 16, staff received an email from the resident at 3000 Dana Street, adjacent to the rear of the project site expressing concerns about the rear setback waiver (5' where 20' is the minimum), the commercial use, inadequate parking, and shadow impacts. Staff has not received any further communications regarding this project.

On March 11, 2021, the City mailed public hearing notices to property owners and occupants within 300' of the site, and to interested neighborhood organizations and the City posted notices within the neighborhood in five locations.

On March 16, the applicant hosted a community meeting via Zoom videoconference. 17 members of the public attended. The topics discussed were related to construction duration and timing, parking, potential vacancy of the retail spaces, impacts to some neighboring residential properties, and provision of below-market rate dwelling units in the project. The complete meeting notes are provided in Attachment #4.

B. Landmarks Preservation Commission: The project involves the demolition of a commercial building that is over 40 years in age. The project site is not designated as a Landmark by the City and has not previously been surveyed individually for historical significance under local, state, or federal historic significance criteria. Per a historic resource evaluation completed in 2019, the building proposed for demolition does not meet the criteria for the California Register or a City of Berkeley Landmark. Pursuant to BMC Section 23C.08.050.C, the proposed demolition was brought before the

² In compliance with local and State Public Health Orders related to Covid-19, the standard zoning project application submittal requirement to host a community meeting and install a Project Yellow Poster prior to submittal has been temporarily waived.

Landmarks Preservation Commission (LPC) for review prior to the consideration of the Use Permit. The Landmarks Preservation Commission considered the demolition on November 5, 2020 and took no action to initiate a Landmark or Structure-of-Merit designation, and did not choose to forward to the Board comments on the application.

- C. Design Review Committee:** The Design Review Committee (DRC) held a Preliminary Design Review (PDR) meeting December 17, 2020, and continued the project with recommendations (See Attachment 7, DRC summaries). On February 18, 2021, the DRC forwarded the project to the ZAB with the following conditions and direction for Final Design Review (FDR) [Motion: Kahn, Clarke; Vote: (6-0-0-0)]: Mitchell, Covarrubias, Finacom, Pink].

Conditions:

- Provide renderings for ZAB of the podium courtyard that are consistent with the design, including window frames.
- Further develop the podium courtyard's south wall at FDR. Consider adding more windows and balconies where possible and creating view connections from elevator lobby to the courtyard.
- Provide final colors and materials at FDR, and a lighter alternate to the black brick; provide brick details at FDR.
- Provide further detail of the roof trellis over the main entry considering this as an opportunity for a design statement.
- Further develop the fence at the southwest corner as a design element for review at FDR.
- If consistent with Public Works direction, provide alternative patterns to the sidewalk at FDR that express the communal aspect of the Public Right of Way.
- Clearly show fiber cement panel joints at FDR.
- Consider small water element in pollinator garden at FDR.

Recommendations:

- Forward recommendation to Public Works for permeable pavers between the street trees along the curb.
- Recommend including native birds in the podium courtyard mural.
- Recommend making rear patios larger for each unit if possible.
- Consider eliminating one of the colors. The facade includes too many materials as designed.

V. Issues and Analysis

- A. SB 330 – Housing Crisis Act of 2019:** The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development projects. A “housing development project” means a use that is: all residential; mixed use with at least two-thirds of the square footage as residential; or transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code §65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, then the city shall not conduct more than five hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with §65920)).

The March 25, 2021 ZAB hearing represents the fourth public hearing for the proposed project since the project was deemed complete. The City can hold up to one additional public hearing on this project, if needed. That hearing must be reserved for any possible appeal to the City Council.

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

As discussed in a historic resource evaluation prepared in October, 2019 for the property, there is no indication of historical significance on the parcel, and the existing building is not considered eligible for listing on the California Register of Historical Resources or as a City of Berkeley Landmarks or Structures of Merit. The LPC took no action to initiate a Landmark or Structure of Merit designation for any property. (See section IV.B for the LPC discussion.) Therefore, it was determined that the site is not an historic resource. Standard conditions of approval have been included to halt work if any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the California Environmental Quality Act. The project was deemed complete on November 20, 2020. Should ZAB determine the application is categorically exempt from CEQA at the March 25, 2021 public hearing, the application must be approved or disapproved by May 24, 2021.
4. Government Code §66300(d) prohibits the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished. The project does not propose the demolition of housing units. Therefore, this section does not apply to the project.

B. Density Bonus Waivers and Concessions: The project is entitled to two concessions (or incentives), under Government Code §65915(d) for providing at least 10 percent of total units to very low-income households, and an unlimited number of waivers, under §65915(e). No concessions are requested under §65915(d).

A waiver is a modification of a development standard that would otherwise physically preclude the construction of the project with the permitted density bonus and concessions. Waivers for FAR, height, setbacks, usable open space and parking are requested because they are necessary to physically accommodate the full density bonus project (Proposed Project) on the site.

The City may only deny the waivers if it finds that the waivers would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low-income, very-low income, and moderate-income households, or if the waiver would be contrary to State or Federal law. Staff has not identified any evidence that would support such a finding.³

C. Demolition of a Non-residential Building: Pursuant to BMC Section 23C.08.050, the Board may approve a Use Permit to demolish a building used for commercial use if it finds that the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and that at least one of the findings in BMC Section 23C.08.050.D can be made. Staff believes that the following two findings in this section are satisfied:

1. The demolition is required to allow a proposed new building or other proposed new Use.
2. Is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority.

Demolition of the existing two-story commercial building would allow the construction of a project that would add 110 units of new housing and two new retail tenant spaces to the neighborhood. The project would help to further the purposes of the C-1, General Commercial District which implements the General Plan's designation for Avenue Commercial Areas. (See section VI.A below for a discussion of the project's compatibility with district purposes.)

D. Special Building Feature Requirements for C-Lots Abutting Residential Zones: The project site abuts residential zones to the east (rear) and south (right). Pursuant to BMC Section 23E.04.060, the project must comply with the following requirements:

1. **Exterior lighting shall be shielded in a manner which avoids direct glare onto abutting lots in a residential district:** Per Condition of Approval #52, the project will comply with this requirement.
2. **A solid wall or fence, measuring six feet in height from existing grade, shall be erected at the lot line of an abutting lot in a residential district in order to provide screening:** The applicant proposes to install a six-foot fence along the south and east property lines (see Figure 3).

³ A "specific, adverse impact" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."

3. **Exhaust air ducts shall be located or oriented in manner which directs vented air flows away from any residential district, and equipment which mitigates odors shall be installed:** Per Condition of Approval #53, the project will comply with this requirement.

VI. Other Considerations

The following analysis of potential impacts of the project as it relates to shadows, views, air and privacy, as well as the project's conformance with District Purposes and the 2002 General Plan goals and policies, is provided for information purposes only, to provide context; they do not require findings of conformance because the proposed project is HAA-compliant.

A. Purposes of the C-1 District/Neighborhood Compatibility: BMC Section

23E.36.030.A allows mixed-use development in the C-1 District with approval of a Use Permit, subject to the Board making a finding of non-detriment, and the findings in Section 23E.36.090.B, listed below. In order to approve any Use Permit in the District, the Board must find that the proposed use or structure would be:

1. Consistent with the purposes of the District; (the project is consistent with the following district purposes):
 - Implement the General Plan's designations for Avenue Commercial area;
 - Provide locations for a wide variety of activities along thoroughfares;
 - Encourage development in underutilized neighborhood and community shopping areas; and
 - Promote development compatible with adjacent commercial and residential areas.
2. Compatible with surrounding uses and buildings;
3. Not interfere with the continuity of retail and service facilities at the ground level; and
4. Not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

The project is a mixed-use building, including commercial and residential uses, in the C-1 General Commercial District, adjacent to commercial and residential uses. As such, the project would implement the General Plan's designations for Avenue Commercial areas. Further, the project would intensify an underutilized site consisting of a small, partially vacant commercial building and surface parking lot by constructing a higher-density six-story mixed-use building. The proposed building would maximize the site's development potential by providing 110 dwelling units and two ground-floor retail tenant spaces along a high-quality transit corridor, bringing more pedestrian activity and neighborhood-serving good and services to this area of Telegraph Avenue. The project concentrates the massing on the Telegraph Avenue frontage, thereby reducing potential impacts related to privacy and access to sunlight from surrounding development (see Figures 4 through 6). Additionally, the proposed retail tenant spaces at the ground level are compatible with surrounding commercial uses to the north, west and south along Telegraph Avenue, providing large storefront windows, recessed entryways, and planter boxes along Telegraph Avenue and Webster Street; the

proposed residential use is compatible with surrounding residences in residential districts located to the east, north and south of the project site (See Figure 3).

Based on the Traffic Impact Analysis prepared by Abrams Associates and submitted as part of the application (see Attachment 5 online), the project would generate a lower VMT (Vehicle Miles Traveled) than the City and regional averages in both 2020 and 2040 conditions, because the travel from the units would be expected to be similar to existing developments in the area. Additionally, the parking impacts created as a result of the project would not be detrimental because, while the applicant has requested a waiver pursuant to State Density Bonus Law to reduce the number of vehicular parking spaces provided for dwelling units from 92 to 18 spaces, the traffic study found that the provision of 112 secure bicycle parking spaces on-site, adjacency to existing bus stops with direct access to a BART station, and proximity to numerous car sharing locations are consistent with the City's General Plan policies that support a reduction of on-site vehicular parking and are sufficient to find that the 18 residential spaces provided can accommodate the project's expected peak residential parking demand. Moreover, the project would be subject to the City's standard condition of approval regarding Transportation Demand Management (see Attachment 1, Findings and Conditions). Therefore, the project would not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

B. Sunlight/Shadows: The project consists of construction of a new six-story mixed-use building on a parcel that is currently developed with a two-story commercial building and surface parking lot. As such, the project would create greater shadowing compared to existing conditions. Shadow studies submitted by the applicant document the building's projected shadow angles and lengths at three times of the day during the summer and winter solstice. New shadows would be cast onto:

- 2409 Webster Street (single-family dwelling) – during noon on the winter solstice, evening hours on the winter solstice.
- 2415 Webster Street (single-family dwelling) – evening hours on the winter solstice.
- 3014 Dana Street (single-family dwelling) - evening hours on the summer solstice.
- 3000 Dana Street (single-family dwelling) - evening hours on the winter solstice, evening hours on the summer solstice.
- 3004 Dana Street (single-family dwelling) - evening hours on the winter solstice, evening hours on the summer solstice.
- 3008 Dana Street (duplex) - evening hours on the summer solstice.
- 2407 Dowling Place (fourplex) - evening hours on the summer solstice.
- 2415-2417 Dowling Place (duplex) – evening hours on the summer solstice.
- 2419 Dowling Place (single-family dwelling) – evening hours on the summer solstice

Shadow impacts on adjacent residential properties would be minor, as the project site is adjacent to commercial properties on the south, west and north. Additionally, some shadow impacts on adjacent dwellings are to be expected, because the subject site is located in the C-W district, which allows heights of up to 50' and four stories for mixed-use buildings. The proposal would include a waiver for additional height beyond the district height limits to accommodate the density bonus units (see section V.B for a discussion of waivers) to allow a 67'-3"-tall, six-story building. The additional height

above the district limits would cast shadows in the affected directions further than if the project were limited to the base district height standards. While the proposed six-story building would be taller than the existing adjacent buildings and would cast new shadows on ten residential buildings nearby, these shading impacts would occur for a limited time during the year, and only for a few hours of the day; such impacts are considered typical of urban settings and is considered substantial or detrimental. (See Attachment 2, Project Plans, sheets A6.1 through A6.3).

- C. Air:** The proposed building would be taller than the adjacent residential buildings to the east and south. The proposed building would be located a minimum of 14'5" from the nearest adjacent residential building to the east, and the building step back above the first floor. The proposed building would be located a minimum of 8'-10" from the nearest residential building to the south. The project would meet the required setbacks that are intended to ensure adequate air flow between dwelling units.
- D. Views:** Because of the relatively flat topography and the existing one- and two-story buildings in the vicinity, the project surroundings generally do not offer significant views of features such as the Berkeley Hills or the San Francisco Bay. Therefore, staff believes that this project would not be substantially detrimental with respect to views (See Sheet A8.4).
- E. Privacy:** The project would have multiple windows on the east façade which face residential buildings to the east. The project would provide a six-foot tall privacy fence at the east property line and landscaping at the ground floor, and the distance between the buildings would meet the required setbacks. Additionally, the building would step back an additional 60' from the east property line at the fifth and sixth floors (See Figure 6). While the applicant proposes private patios and decks at the east elevation on the first, second, and fourth floors, staff believes the impact would not be detrimental because the decks would be approximately 14 feet from the adjacent two-story residence at 3000 Dana Street; the fourth-floor decks would be located above the ridge line of the adjacent residential building, setback approximately 20' from the east property line and would not face directly into openings on the neighboring residential buildings to the east. Further, the proposed massing concentrates the dwelling units at the west (Telegraph Avenue) portion of the property above the fourth floor, and the usable open spaces at the roof deck are approximately 80' from adjacent residences to the east, thereby reducing potential privacy impacts.

In terms of privacy impacts to the residences to the south, staff believes the project would not cause significant privacy impacts because the building meets the minimum setback of 5', proposes a six-foot tall privacy fence along the property line, and there are no units located on this side of the building above the fourth floor. In addition, the roof deck at the southwest portion of the building would be located above the ridge line of the adjacent residential building. Therefore, the adjacent properties to the east and south would not experience unreasonable new privacy impacts.

- F. General Non-Detriment:** Pursuant to BMC Sections 23E.36.050 and 23B.32.040.A, Use Permits to construct 5,000 or more square feet of gross floor area and establish dwelling units require findings of non-detriment. As described above, the proposed project furthers the purposes of the zoning district, provides new ground floor

commercial space, and new shading would be limited on nearby residential uses. In addition, the project approval 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 property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

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

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy LU-25 – Affordable Housing Development: Encourage development of affordable housing in the Downtown Plan area, the Southside Plan area, and other transit-oriented locations.
4. Policy LU-27 – Avenue Commercial Areas: Maintain and improve Avenue Commercial areas, such as University, San Pablo, Telegraph, and South Shattuck, as pedestrian-friendly, visually attractive areas of pedestrian scale and ensure that Avenue areas fully serve neighborhood needs as well as a broader spectrum of needs.
5. Policy UD-17 – Design Elements: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.
6. 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.
7. Policy UD-32 – Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.
8. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.
9. Policy H-12 – Transit-Oriented New Construction: Encourage construction of new medium- and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.
10. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City's share of regional housing needs.
11. Policy T-16 – Access by Proximity, Action B: Encourage higher density housing and commercial infill development that is consistent with General Plan and zoning standards in areas adjacent to existing public transportation services.
12. Policy T-16 – Access by Proximity, Action E: In locations served by transit, consider reduction or elimination of parking requirements for residential development.

13. Policy T-43 – Bicycle Network, Action C: Encourage, and when appropriate, require new multi-family residential developments to provide secure locker space for resident bicycles.
14. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)

VI. Recommendation

Because of the project's consistency with applicable, objective general plan and zoning standards and there is no substantial evidence that the project would have no specific adverse impact on public health or safety, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2020-0069 pursuant to BMC Section 23B.32.030 and subject to the attached Findings and Conditions (Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, dated March 4, 2021
3. Comment Letters: 2020-07-29 and 2020-07-31 Neighbor Letters
4. Virtual Community Meeting Notes, dated March 16, 2021
5. Traffic Impact & VMT Analysis, dated May 5, 2020
6. Notice of Public Hearing
7. Preliminary Design Review Summaries, dated December 17, 2020 and February 18, 2021

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