

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
MAY 9, 2024

2037 Durant Avenue –

Use Permit #ZP2023-0064 for a Density Bonus Project that would demolish a one-story, 13,000 square-foot commercial building and construct an eight-story (90 feet), 76,373 square-foot mixed-use building with 74 dwelling units, including 4 Very Low-Income Density Bonus qualifying units, and 1,552 square feet of ground floor commercial space.

I. Background

A. Land Use Designations:

- General Plan: Downtown
- Downtown Area Plan: Buffer (no tall building exception)
- Zoning: Downtown Mixed-Use – Buffer (C-DMU Buffer)

B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.326.070 to demolish a non-residential main building
- Use Permit pursuant to BMC Section 23.204.020 to construct a mixed-use residential development
- Use Permit pursuant to BMC Section 23.204.030(A)(1) to construct 10,000 square feet of more of gross floor area.
- Use Permit pursuant to BMC Section 23.204.130(E)(1) to increase the maximum allowed height to 60 feet
- Administrative Use Permit pursuant to BMC Section 23.304.050 to allow for rooftop equipment projections above the height limit
- Administrative Use Permit pursuant to BMC Section 23.304.080(A) to allow for a fence more than 6 feet in height and on a lot line (6-foot fence proposed, with 2 foot retaining below)

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

- a. Concession from BMC 23.316 to allow an exemption from the public art allocation in-lieu fee
- b. Waiver from BMC 23.204.130(E)(1) to allow for an increase in building height, up to 90 feet where 60 feet is the limit
- c. Waiver from BMC 23.204.130(E)(3) to allow for reduced setbacks, ranging from 5-7 feet where 15 feet is required for portions of the building over 76 feet in height
- d. Waiver from BMC 23.204.130(E)(4) to allow for a reduction to the usable open space requirement, where 2,098 square feet is provided, but 5,920 square feet is required
- e. Waiver to allow for a reduction in the percentage of landscaping within the usable open space pursuant to BMC 23.204.130(E)(7), where 2,368 square feet is required and 562 square feet is provided

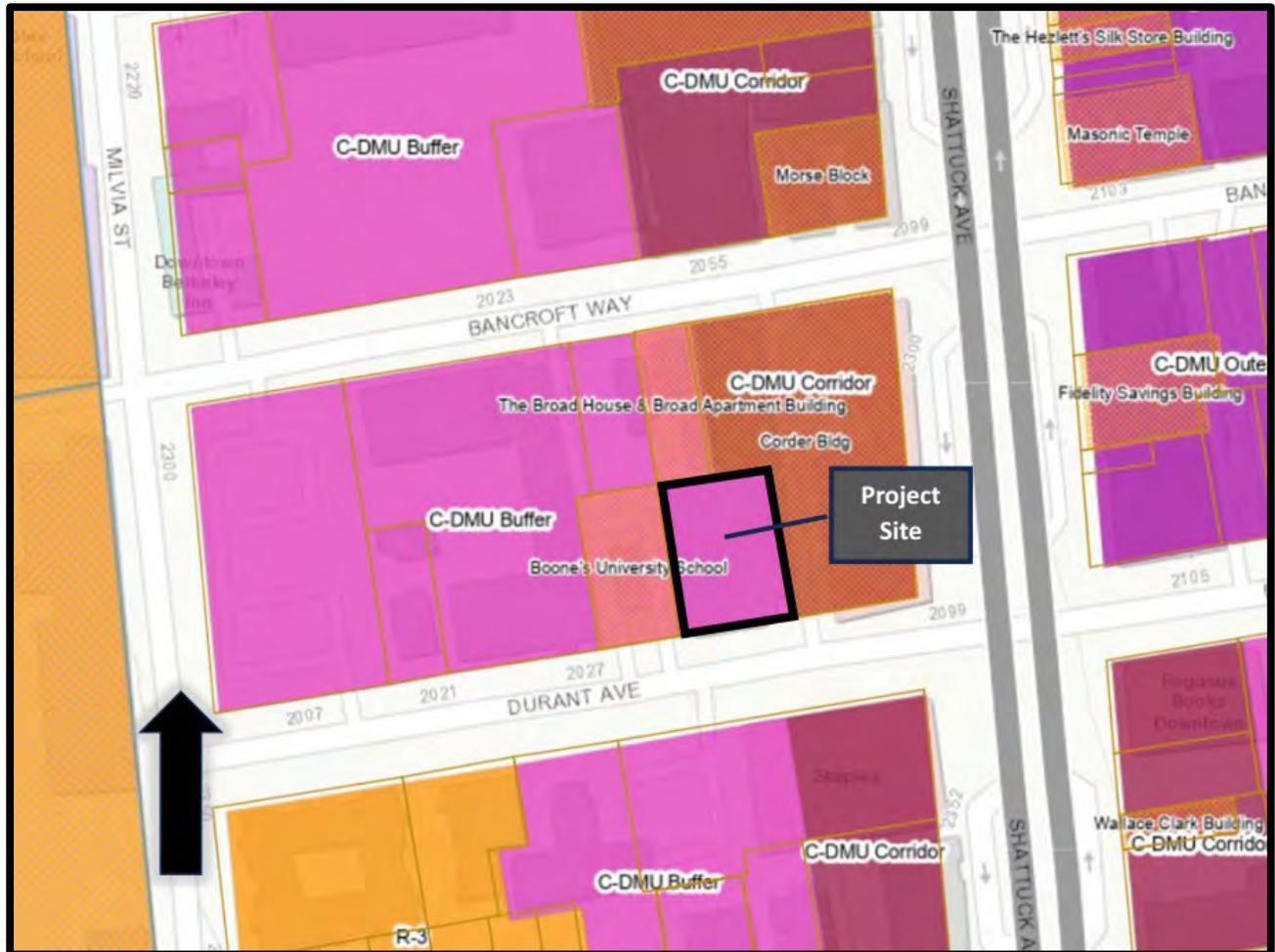
D. CEQA Recommendation:

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 ("Infill Development Project") of the CEQA Guidelines. The determination is made by ZAB.

E. Parties Involved:

- Applicant Kim Fisher, Studio KDA, 1810 6th Street, Berkeley
- Property Owner Janice Yi Lee & Jonathan Yi, 3613 Pontina Court, Pleasanton

Figure 1: Vicinity Map and Zoning Districts Map



Legend:

Zoning

C-DMU Corridor

C-DMU Buffer

R-3 – Multiple-Family Residential District

Hatching – Berkeley Landmarks or Structures of Merit

Figure 2: Proposed Site/Ground Floor Plan



Figure 3: Proposed Elevations





Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Hustead's Auto Body	C-DMU Buffer	Downtown
Surrounding Properties	North	The Broad House & Broad Apartment Bldg, Corder Building (mixed-use)	C-DMU Buffer	Downtown and High Density Residential
	South	Apartments	C-DMU Buffer and Corridor	High Density Residential
	East	Corder Building (mixed-use), various retail and office uses	C-DMU Corridor	Downtown
	West	Persian Cultural Center and Apartments	C-DMU Buffer	High Density Residential

Table 2: Special Characteristics

Characteristic	Applicability	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to net newly constructed nonresidential gross floor area over 7,500 square feet. The proposed project includes 1,552 square feet of commercial space and is therefore not subject to this requirement.
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) ^a	Yes	The project would provide 4 Below Market Rate (BMR) units at the Very Low-Income (VLI) rate, and pay a fee to satisfy the requirements of BMC Section 22.20.065.
Alcohol Sales/Service	No	Alcoholic beverage sales and service could be entitled at a future time if consistent with BMC Chapter 23. 310 "Alcoholic Beverage Sales and Service." Sale of alcohol is not proposed at this time.
Coast Live Oak Trees (BMC Chapter 6.52)		There are no Coast Live Oak (<i>Quercus agrifolia</i>) trees on the project site.
Creeks	No	The property to the west contains an existing non-protected culverted creek, but the creek is not mapped within the site based on City of Berkeley GIS Portal.
Density Bonus	Yes	The proposed project would provide 4 Very Low-income units, or 5 percent of the Base Project units (62), and qualifies for a 20 percent density bonus, or 13 bonus units (13 allowed, 12 proposed) under State Density Bonus Law. Refer to Section III.B for more information.
Historic Resources	No	The existing building proposed for demolition is more than 40 years old. Given its age, the project was forwarded to the Landmarks Preservation Commission (LPC) for review (BMC Section 23.326.070(C)). On December 7, 2023 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 (Gov't Code Section 65589.5(j))	Yes	The project is a mixed-use development in which at least two-thirds of the square footage is designated for residential use and meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2). ^b The base project complies with applicable, objective general plan and zoning standards, and thus section (j) of the Housing Accountability Act applies. See Section III.B of this report for additional discussion on compliance with the Housing Accountability Act.
Housing Crisis Act of 2019 (SB 330)	Yes	The project is a mixed-use project with at least two-thirds of the square-footage residential. See Section V.C of this report for additional discussion on the sections of SB 330 that apply to the project.
Rent Controlled Units	No	The project would demolish a nonresidential structure; no rent-controlled units would be demolished.
Residential Preferred Parking (RPP)	Yes	The site is located in an RPP zone (Zone I). However, the project is not eligible for RPP permits per BMC Section 14.72.080(C)(1) as no permits shall be issued to residents in newly constructed residential units.
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. ^c
Soil/Groundwater Contamination	Yes	A Phase I Environmental Site Assessment dated September 6, 2021 was prepared for the project and found no recognized environmental conditions identified on the site. The project site is not listed on the Cortese List ^d (an annually updated list of hazardous materials sites). The project site is located directly adjacent to the City's Environmental Management Area. The Toxics Management Division will refer this project during building permit review for sign off from the Regional Water Quality Control Board, Department of Toxic Substances Control, or the Alameda County Department of Environmental Health. Also, standard Conditions of Approval related to hazardous materials would apply (Refer to Attachment 1).
Transit	Yes	The Downtown Berkeley Bay Area Rapid Transit (BART) station is located less than 0.25 mile from the project site. This station is located on the Richmond-Fremont Line which connects to other destinations in the Bay Area at the MacArthur Station. There is also direct service to Downtown San Francisco as well as continuing service to Millbrae. There is extensive bus transit service provided by Alameda-Contra Costa County Transit

		(AC Transit) at the BART Station. In addition to local bus routes 6, 18, 51B, and 79, special lines 800 and 851 and Transbay Route F operate adjacent to the project on Shattuck Avenue.
<p>Notes:</p> <p>a. Project vested under SB 330 on/before April 1, 2023, prior to effective date of new inclusionary housing requirements and is therefore subject to the Affordable Housing Mitigations in BMC 22.20.065 that was in effect at the time of vesting.</p> <p>b. Government Code Section 65589.5(h)(2) "Housing development project" means a use consisting of any of the following: (A) residential units only, (B) mixed-use developments consisting of residential and nonresidential uses in which at least two-thirds of the square footage is designated for residential use, and (C) transitional or supportive housing.</p> <p>c. California Department of Conservation. DOC Maps: Geologic Hazards. Available: https://maps.conservation.ca.gov/geologic Hazards/</p> <p>d. The Cortese List is an annually updated list of hazardous materials sites compiled pursuant Government Code Section 65962.5.</p>		

Table 3: Project Chronology

Date	Action
February 10, 2023	SB 330 complete preliminary housing development project application submitted
May 30, 2023	SB 330 Use Permit Application submitted
June 29, 2023	Application deemed incomplete
September 20, 2023	Application resubmitted
October 20, 2023	Application deemed incomplete
November 3, 2023	Application resubmitted
December 1, 2023	Application deemed complete
December 7, 2023	Landmarks Preservation Commission hearing (demo referral)
December 7, 2023	Corrected plan set received
February 1, 2024	Air Quality Analysis submitted (required for CEQA determination)
February 28, 2024	Comments provided on Air Quality Analysis
March 21, 2024	Design Review Committee Meeting
April 25, 2024	Public hearing notices mailed/posted
May 9, 2024	ZAB hearing

Table 4: CDM-U Downtown Mixed-Use District(s) Development Standards BMC Sections 23.204.130 and 23.322 Parking and Loading

Standard	Existing	Proposed Total	Permitted/ Required
Lot Area (sq. ft.)	13,000	13,000	No min
Gross Floor Area (sq. ft.)	13,000	76,373	No max
Floor Area Ratio	1	6.1	No max
Dwelling Units	0	74	No max
Total			

Standard		Existing	Proposed Total	Permitted/ Required	
	Affordable	0	4 VLI	4 VLI to be eligible for 20% density bonus	
Building Height	Maximum (ft.)	20	90 (95 to top of penthouse)	60 max with Use Permit, parapets may exceed height by 5 feet	
	Stories	1	8	No max	
Building Setbacks (ft.)	Front (Durant)	0	0	0'-5' (bldg. ht.≤75') 15' (bldg. ht.>75')	
		Rear	0	7	0' (bldg. ht.≤20') 5' (bldg. ht.>20' ≤75') 15' (bldg. ht.>75')
	Interior East Side	0'-65' from frontage	0	5	0' (bldg. ht.≤75') 5' (bldg. ht.>75' ≤120')
		>65' from frontage	0	5	0' (bldg. ht.≤75') 15' (bldg. ht.>75' ≤120')
	Interior West Side	0'-65' from frontage	0	7	0' (bldg. ht.≤75') 5' (bldg. ht.>75' ≤120')
		>65' from frontage	0	7	0' (bldg. ht.≤75') 15' (bldg. ht.>75' ≤120')
Lot Coverage (%)		100		91.5 per Base Project max	
Usable Open Space (sq. ft.)	Residential Open Space	0	2,298	5,920 - 80 sf per unit min and	
	Non-Residential Open Space	0	191	32 - 1 sf per 50 sf of commercial	
	Landscaping	0	562	2,368 – 40% of Open space	
Parking	Automobile	0	0	No min ^a	
	Bicycle short term for residential	0	5	5 – 1 space for every 40 units for bedrooms	
	Bicycle long term for residential	0	66	66 – 1 space per 3 bedrooms	
	Bicycle for commercial space	0	1	1 per 2,000 sq. ft.	
<p>█ = Concession or Waiver requested to modify the district standard</p> <p>Abbreviations: sq. ft. = square feet; max. = maximum; min. = minimum; n/a = not applicable; % = percent; avg. = average, ft = feet ('), in. = inches (")</p>					

Standard	Existing	Proposed Total	Permitted/ Required
<p>Notes:</p> <p>a. AB-2097, effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses.</p>			

II. Project Setting

A. Neighborhood/Area Description:

The project site is located along the north side of Durant Avenue, just west of Shattuck Avenue within the Downtown Mixed-Use District (C-DMU), Buffer Sub-Area, as identified in the City’s Downtown Area Plan (DAP). The project site is surrounded primarily by multi-family residential/mixed-use buildings ranging in height from three stories (Persian Center directly to the west) to 8 stories (Identity Logan Park, a mixed-use residential building directly to the south of the site) and commercial uses. The site is surrounded by several historical landmark and/or structure of merit buildings, including the Corder Building to the north and east, the Broad House and Broad Apartment Building to the north and Boone’s University School to the west. The project site is located in an area where several modes of public transportation are available – multiple AC Transit bus lines, the University of California, Berkeley Shuttle, a bike share station, and the Downtown Berkeley BART station, which is located 0.25 miles to the north of the site.

B. Site Conditions:

The site, at 2037 Durant Avenue, is currently occupied by Husted’s Auto Body, a one-story 13,000 square foot commercial building. The building sits on a rectangular parcel on the north side of Durant Avenue, between Milvia Street and Shattuck Avenue. Topography in the area is flat. The building fills its lot with a broad concrete sidewalk bordering the front (south side). Driveways run along the east and west sides of the building, separating it from neighboring buildings. The east side of the building’s rear (north) facade directly abuts a neighboring building, while only a small margin of space is located between the west side of the rear facade and a neighboring building. There is no vegetation or other landscape features on the property. The building was constructed in 1949 and a Historic Resources Evaluation prepared by Left Coast Architectural History found that the property, including building, was not historically significant or eligible for listing as a historical resource at the local, state, or national level.

III. Project Description

A. Proposed Project Details:

The proposed project would demolish a 13,000 square foot commercial structure and construct a new mixed-use building with the following primary components:

1. Eight stories, 90 feet in height

2. 74,821 square feet of residential uses
 - o 74 dwelling units (including 4 VLI units)
 - o 197 bedrooms
 - o 25 Two-bedroom units
 - o 172 Three-bedroom units
3. 1,552 square feet of ground floor commercial space
4. 2,098 square feet of residential open space including shared balconies and a ground floor outdoor space
5. 66-space bike room
6. Three bike racks along Durant Avenue
7. A six-foot wide driveway apron for trash is proposed on the west side of the site
8. New sidewalk, curbs and landscaping along Durant
9. Six-foot tall cedar wood fence with up to 2 feet concrete retaining wall below (retaining occurs along north and east property lines)

The project does not propose on-site vehicle parking. The existing driveway, sidewalk and curb cuts are proposed for removal.

B. Base Project and Density Bonus:

The applicant has requested a density bonus under the State Density Bonus Law. Under the City’s density bonus procedures, the “base project¹” is 62 units, as the maximum allowable density for the site. The 6-story base project has an average unit size of approximately 944 square feet and the resulting 8-story proposed project has an average unit size of 832 square feet, which is substantially consistent. By providing 4 Very Low Income (VLI) below market rate (BMR) units on site (5 percent of the 62 - unit base density), the project is eligible for a 20 percent density bonus, or 13 additional units. Therefore, the applicant proposes 12 additional units above the base density for a total of 74 dwelling units. Table 5 below shows the Density Bonus calculations.

Table 5: Density Bonus

Base Project Units ^a	Qualifying Units	Percent Density Bonus	Number of Density Bonus Units ^a	Proposed Project Units ^a
62	4 VLI (5% of base project)	20%	13 (20% 62 units)	74 (12 used)

Notes:

a. Pursuant to Government Code 65915(q), all unit calculations are rounded up to the nearest whole number.
Abbreviations: % = percent

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

IV. Community Discussion

A. Neighbor/Community Concerns:

Prior to submitting this application to the city, the applicant invited interested neighborhood organizations as well as owners and occupants within 300 feet of the project to a project preview meeting. The meeting was held on May 2, 2023, and attended by five people. A pre-application poster was installed by the applicant on May 2, 2023. On April 25, 2024, the City mailed public hearing notices to property owners and occupants located within 300 feet of the project site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has received one letter in opposition to the project, as described below (See Attachment 4).

On March 9, an email was received from a neighbor to the northwest of the site in the Berkeley Apartments expressing concern about the project's potential to block morning and midday sun and the effects that would have on the resident (heating, not able to air/hang dry clothes, mental health).

B. Landmarks Preservation Commission:

The project would demolish one commercial building over 40 years in age. Pursuant to BMC Section 23.326.070(C)(1), the proposed demolition was brought before the Landmarks Preservation Commission (LPC) for review. A historic resources evaluation of the property was completed by Left Coast Architectural History in March 2021 and determined that the building proposed for demolition does not meet the criteria for the California Register or a City of Berkeley Landmark or Structure of Merit. The LPC reviewed the demolition referral on December 7, 2023 and took no action.

According to the December 7, 2023 LPC staff report, the building was determined to not be worthy of preservation as part of a neighborhood, a block, or a street frontage, or group of building which include City Landmarks because it is:

- Not the same age as the nearest City Landmark Building
- Not an example of good architectural design;
- Not comparable to the type/use, design or style of nearby Landmarks; and,
- Not associated with events that are historically significant to the City of Berkeley.

C. Design Review Committee:

On March 21, 2024, the Design Review Committee (DRC) reviewed the project design for 2037 Durant Avenue, gave a favorable recommendation on the design as presented, and provided the following direction for Final Design Review (FDR):

Recommendations

- Base design needs more development. Consider adding more detail to the retail entrance, as well as the windows at the office.
- Explore alternate treatment of top floor windows that continues to add more detail and interest.

- Continue to refine the color palette. Consider more contrast between the base and accent colors.
- Simplify window details throughout the project where possible.
- Consider larger windows for units overlooking the courtyard where possible.
- Committee supports and encourages the open staircase to the lobby.

V. Issues and Analysis

A. CEQA Approach and Recommendation

It is staff's recommendation that the project qualifies for a Class 32 Categorical Exemption pursuant to CEQA Guidelines Section 15332 ("Infill Development Projects"). The determination is made by ZAB. Specifically:

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

Additionally, none of the exceptions to eligibility for a categorical exemption as listed under CEQA Guidelines Section 15300.2, apply to the project. The project is not located in an environmentally sensitive area; the cumulative impact of successive projects of the same type in the same place, over time would not be significant; there are no "unusual circumstances" at the project site that would result in significant environmental effects; there are no designated scenic highways in the City of Berkeley; therefore, the project site is not in view of a state scenic highway; the site is not included on a list compiled pursuant to Section 65962.5 of the Government Code; and the project would not result in a substantial adverse change in the significance of a historical resource.

B. 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 adverse² impact on public health or safety² unless disapproved, or approved at a lower density; and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The project is a “housing development project” consisting of a mixed-use building with at least two-thirds of the floor area in residential use. The Base Project includes Use Permits and/or Administrative Use Permits³ to modify the height and complies with applicable, objective general plan and zoning standards. Government Code Section 65589.5(j)(3) provides that a request for a density bonus “shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.” Therefore, the City may not deny the Base Project or density bonus request or reduce the density with respect to those units without basing its decision on the written findings under Section 65589.5(j), above.

As shown in Table 4 above, the project complies with the 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 therefore the project still complies with the HAA. The ZAB has the discretion to approve, deny or modify the request according to the zoning findings, provided the action does not reduce the project density or effectively deny the project by making it infeasible, unless the ZAB is also able to make the required findings for denial set forth under Section 65589.5(j), above.

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

C. 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. Housing development is defined as a project that is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for 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)).

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

³ The City has determined that the “protections afforded by the HAA and the definition of a base project for density bonus calculations apply to a housing development project up to and including the maximum development allowed with use permits and/or administrative use permits.”

The May 9, 2024 ZAB hearing represents the third public hearing for the proposed project since the project was deemed complete. The City can hold up to two 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 §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.

As discussed in an historic resource evaluation prepared for the property in March of 2021, the property does not appear to be historically significant and therefore is not eligible for listing on the California Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit. The demolition referral was heard at the December 7, 2023 Landmark Preservation Commission Agenda, and no action was taken. Therefore, it was determined the site is not a historic resource.

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 December 1, 2023. Should ZAB determine the application is categorically exempt from CEQA at the May 9, 2024 public hearing, the application must be approved or disapproved by July 8, 2024.

D. Density Bonus Concessions and Waivers:

The project is entitled to 1 concession (or incentives) under Government Code Section 65915(d), and an unlimited number of waivers under Section 65915(e).

1. **Concessions:** A concession is a modification of a development standard that reduces the cost of providing affordable housing. The applicant is requesting one concession for the project to allow an exemption from the public art allocation in-lieu fee.

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

2. **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 four waivers from the following development standards:
 - BMC 23.204.130(E)(1) to allow for an increase in building height, up to 90 feet, where 60 feet is the limit.
 - BMC 23.204.130(E)(3) to allow for reduced setbacks ranging from 5-7 feet where 15 feet is required for portions of the building over 76 feet

- BMC 23.204.130(E)(4) to allow for a reduction to the usable open space requirement where 2,098 square feet is provided, but 5,920 square feet is required
- BMC 23.204.130(E)(7) to allow for a reduction in the percentage of landscaping within the usable open space where 2,368 square feet is required and 562 square feet is provided

The waivers are requested because they are necessary to physically accommodate the additional 12 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.⁴

E. Demolition of Nonresidential Buildings and Structures:

Pursuant to BMC Section 23.326.070 main nonresidential buildings may be demolished provided that the demolition would not be materially detrimental to the commercial needs and public interest of the impacted neighborhood and one of the following findings can be made: that the demolition of the structure is required to allow a proposed new building or other proposed new use; will remove a building which is unusable for activities which are compatible with the purposes of the District in which it is located or which is infeasible to modify for such uses; will remove a structure which represents an un-abatable attractive nuisance to the public; or is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority.

The most recent use of the existing building is an automobile repair facility. The demolition of the building is proposed to allow the development of a new mixed-use building which would provide new dwelling units and commercial space in this District, and thus would be compatible with adjacent and nearby commercial and residential uses. Staff finds that the proposed demolition of the existing nonresidential buildings would not be detrimental to the commercial needs of the neighborhood, as the project would redevelop an underdeveloped lot with a new mixed-use building with ground floor commercial that is compatible with existing development patterns along Durant Avenue. Staff finds that the project aligns with the General Plan and the C-DMU district goals and objectives to promote appropriate new mixed-use development that would be compatible with the area.

F. Findings for Use Permits in C-DMU District:

Pursuant to BMC Section 23.204.130(I), in order to approve any Use Permit in the district, the ZAB must make the findings that the proposed use or structure:

1. Is compatible with the purposes of the district:

⁴ 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."

The purpose of the C-DMU district is to implement the vision and goals of the Downtown Area Plan (DAP) (adopted 2012), which include: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development.

Environmental Sustainability and Access. DAP goals: Integrate environmentally sustainable development and sustainability best practices; encourage high density, highly livable development to utilize regional transit and improve the availability of diverse walk-to destinations; promote “green” buildings; promote ecologically beneficial landscaping and stormwater features; minimize waste generated Downtown; improve options that increase access to Downtown on foot, by bicycle, and via transit; provide parking to meet the needs of Downtown, while discouraging commuter parking; promote transit as an efficient, attractive choice and as a primary mode of travel.

The project is a high-density mixed-use development in proximity to regional transit, shops and amenities, and would provide more housing in the Downtown to increase access to local services and amenities by foot, by bicycle and via transit, while promoting public transit as an efficient and attractive choice through its location. The project would comply with the State’s Model Water Efficient Landscape Ordinance (MWELo), provide landscaping in its open space areas, and would feature a number of native plant species in its landscape palette. The building will be required to attain either LEED Gold rating or higher as defined by the U.S. Green Building Council or attain a building performance that is equivalent to this rating.

Land Use. DAP goals: Encourage a thriving, livable Downtown that is a focal point for the city and a major destination for the region, with a unique concentration of housing, jobs and cultural destinations near transit, shops and amenities; new development contributes fair share toward Downtown improvements; cultivate Downtown as an attractive residential neighborhood with a range of housing opportunities, with an emphasis on affordable housing and family housing; new development enhances Downtown’s vitality, livability, sustainability, and character through appropriate land use and design; enhance Downtown as a center for employment and innovative businesses.

The mixed-use project, which includes 4 Very Low-Income units, would add affordable housing to the Downtown area. Ground floor commercial uses would contribute to the area’s vitality, livability, sustainability, and character. New street trees and landscaping along Durant Avenue would add to the cultivation of the Downtown as an attractive residential neighborhood.

Historic Preservation and Urban Design: DAP goals: Conserve Downtown’s historic resources and unique character and sense of place; enhance areas of special character in Downtown, such as clusters of historic resources; provide continuity and harmony between the old and the new in the built environment; improve the visual and environmental quality of Downtown, with an emphasis on pedestrian environments that are active, safe and visually engaging.

The project involves demolition of a building that was constructed prior to 1940. The Landmarks Preservation Commission took no action on the demolition referral for the

building. The historic resource evaluation for the subject property was completed by Left Coast Architectural History in March 2021 and determined that the building proposed for demolition does not meet the criteria for the California Register or a City of Berkeley Landmark or Structure of Merit. The building was also found to not be worthy of preservation as part of a neighborhood, a block, or a street frontage, or a group of buildings as described under Section IV.2 above. The project architecture, including consistency with Downtown Design Guidelines, was reviewed by the Design Review Committee, who provided a favorable recommendation on the project to ZAB. The project would add to the pedestrian environment by maintaining commercial uses on the ground floor and new landscaping to add to a visually engaging streetscape.

Streets and Open Space: DAP Goals: Enhance public open spaces and streets to benefit pedestrians, improve Downtown's livability, and foster an exceptional sense of place; promote watershed health through the use of ecologically beneficial landscaping and other features; adequately fund Streets and open space improvements, maintenance, and cleaning; new development contributes to greenery and open space.

In addition to the new landscaping in the parkway in front of the proposed building, the project includes 2,098 square feet of private open space, including common area balconies with landscaping on fourth through eight floors; a 365 square foot garden on ground level; and, 191 square feet of public open space in front of the building. Additional landscaping has been provided around the perimeter of the site and includes stormwater planters.

Housing and Community Health and Services: DAP Goals: Encourage Downtown as a thriving, livable, diverse residential neighborhood with a mix of supportive uses; offer diverse housing opportunities for persons of different ages and incomes, households of varying size, and persons of varying abilities; preserve existing affordable housing Downtown, and expand the supply of affordable housing to low-income, very low-income and working-class households in Downtown.

The project would involve construction of a mixed-use building with 4 units reserved for Very-Low Income. The project would expand the supply of affordable housing in Downtown.

Economic Development: DAP Goals: Make Downtown a more attractive regional destination, by building on Downtown's unique blend of cultural, historic, entertainment and by promoting successful retail businesses and other attractions with daytime and nighttime populations to support them; make Downtown more attractive and economically successful, encourage placemaking through the preservation of historic buildings, street and open space improvements, and high-quality new construction; Invest in civic improvements (such as streets, open spaces, and community facilities) to enhance Downtown as a place to live, work, and visit; Increase the number of Downtown jobs that go to Berkeley residents, and support the development of job skills for Berkeley residents – especially Berkeley's youth; serve the housing needs of all income groups and provide a growing base of residents who support a broad range of Downtown retail and other business.

The project would bring new residents and a greater range of household incomes to the Downtown area, while preserving the character of the Downtown Historic neighborhood, to contribute to the area's vitality and success. The project would bring 1,552 square feet of ground-floor retail to the area to contribute to making Downtown an attractive regional destination for living, working and visiting.

2. Is compatible with surrounding uses and buildings.

The project site is located in Downtown Berkeley in an urban area with access to transit, and currently contains a building used for automobile repair. The project site is surrounded primarily by multi-family residential/mixed-use buildings ranging in height from three stories (Persian Center directly to the west) to 8 stories (Identity Logan Park, a mixed-use residential building directly to the south of the site) and commercial uses. The project would be compatible with surrounding uses and buildings.

G. Administrative Use Permit for Rooftop Projections

BMC Section 23.304.050(A) requires an Administrative Use Permit for roof-top projections, such as mechanical penthouses, elevator equipment rooms or stair towers, that would exceed the maximum height limit. Such projections are limited to no more than 15 percent of the average floor area of all of the building's floors and cannot be used as habitable space or for commercial purposes. The project would include a staircase/elevator penthouse totaling 1,006 square feet that would extend four feet over the 85-foot roof height. The penthouses represent less than 9.3 percent of the 10,108-square-foot average of all the floor areas. The projection is, therefore, permissible.

VI. Other Considerations (Zoning and Land Use Considerations)

A. General Non-Detriment Finding:

BMC Section 23.406.040(E) states that before the ZAB approves an application for a Use Permit, it must find that 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.

1. Shadows: According to the shadow studies submitted for the project, new shadow impacts would occur in the summer and in the winter months, in the morning and afternoon hours, at the residential buildings at 2025, 2028 and 2029 Durant Avenue to the north, west and east of the site.

Shadow impacts on adjacent residential uses are to be expected because the subject site is located in the Downtown Mixed-Use District (C-DMU Corridor), which allows heights of up to 50 feet without a use permit, 60 feet with a use permit, and roof top projections beyond the base height with an administrative use permit. 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.

Staff recommends that shadow impacts from the project would be reasonable and not detrimental.

2. Views: The proposed project would not result in additional obstruction of significant views in the neighborhood because the area is generally flat, developed with three- to eight-story buildings and there are limited significant views as defined in BMC Section 23.502.020 (Defined Terms) available to residences in the area.
3. 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.

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-A Neighborhood Quality of Life, Action: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
4. 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.

Staff Analysis: The project would be compatible with surrounding land uses, which include site is surrounded primarily by multi-family residential/mixed-use buildings ranging in height from three stories (Persian Center directly to the west) to eight stories (Identity Logan Park, a mixed-use residential building directly to the south of the site) and commercial uses. The project would reinforce the City's effort to redevelop underutilized sites in a way that would increase the quality of the built environment and provide new housing and commercial opportunities. The project would further improve the neighborhood character and quality of life by increasing existing street level activity and bringing in new residents and new business patrons along a major commercial and transit corridor. The project site would be served by multiple bus lines, including local, rapid, and Transbay lines, that operate along Durant Avenue and Shattuck Avenue, which is to the east of the site, and a nearby BART Station.

5. Policy LU-23–Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking

requirements in areas with above-average transit service such as Downtown Berkeley.

Staff Analysis: The project would help to encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, the university, jobs, and basic goods and services without providing vehicle parking. Several transit lines have stops directly across the street from the project and the Downtown Berkeley BART station is located less than 0.25 miles from the project site, which has connecting service throughout the Bay Area.

6. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City’s share of regional housing needs.

Staff Analysis: The project would provide four dwelling units for very low-income households in addition to increasing the City’s housing supply by adding new dwelling units in close proximity to the university and transit.

7. 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.)
8. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The proposed project would be constructed to the latest building codes which include green building standards. The building would be required to attain either LEED Gold rating or higher as defined by the U.S. Green Building Council or attain a building performance that is equivalent to this rating. Roof-top solar would be provided.

C. Area Plan Consistency: The Downtown Area Plan, adopted in 2012, also contains several policies applicable to the project, including the following:

- Goal ES-3: Encourage high density, highly livable development to take advantage of Downtown’s proximity to regional transit and to improve the availability of diverse walk-to destinations – such as retail, services, culture, and recreation.
- Goal ES- 4: Promote “green” buildings.
- Goal LU-4: New development should enhance Downtown’s vitality, livability, sustainability, and character through appropriate land use and design.
- Goal HD-4: Improve the visual and environmental quality of Downtown, with an emphasis on pedestrian environments that are active, safe and visually engaging. Encourage appropriate new development Downtown.
- Goal HC-1: Encourage Downtown as a thriving, livable, diverse residential neighborhood with a mix of supportive uses.
- Goal HC-3: Offer diverse housing opportunities for persons of different ages and incomes, households of varying size, and persons of varying abilities. Give Downtown a significant role in meeting Berkeley’s continuing need for additional housing.

The project is for a 74-unit high density, mixed-use building that provides four dwelling units for very low-income households and 1,552 square feet of ground floor commercial. The project is located close to other commercial uses, shopping and restaurants, and in

proximity to multiple modes of public transit. The project would be consistent with the goals and policies of the Downtown Area Plan.

D. Findings for Use Permits for new floor area in the C-DMU district: Pursuant to BMC Section 23.204.030(A)(2), to approve a Use Permit for new floor area in the C-DMU district, the ZAB must find that:

(a) The addition or new building is compatible with the visual character and form of the district; and

(b) No designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed addition.

Staff Analysis: As stated in Section IV.B and C above, the project has been reviewed by the LPC and the DRC. The historic resource evaluation for the subject property determined that the building proposed for demolition does not meet the criteria for the California Register or a City of Berkeley Landmark or Structure of Merit. The demolition referral was presented to the Landmark Preservation Commission in December of 2023 and the LPC took no action. The building was determined to not be worthy of preservation as part of a neighborhood, a block, or a street frontage, or group of building which include City Landmarks because it is not the same age as the nearest City Landmark Building, nor a good architectural design, nor comparable to the type/use, design or style of nearby Landmarks and not associated with events that are historically significant to the City of Berkeley.

Additionally, the DRC reviewed the project on March 21, 2024, including the project's consistency with the Downtown Design Guidelines which apply to projects in the district, and made a favorable recommendation to the ZAB. The project site is surrounded primarily by multi-family residential and mixed-use buildings ranging in height from three stories to eight stories and the project's height is compatible with the height, character and form of surrounding buildings. The project will be compatible with the visual character and form of the district.

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:

1. **FIND** that the project is categorically exempt from the provisions of the CEQA pursuant to Section 15332 of the CEQA Guidelines ("Infill Development"); and
2. **APPROVE** Use Permit No. ZP2023-0064 pursuant to Section 23.406.040(D) and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
Exhibit A: Downtown Mitigation, Monitoring, and Reporting Program
2. Project Plans, received December 7, 2023

3. Notice of Public Hearing
4. Correspondence Received

Staff Planner: Lisa Gordon, lgordon@rinconconsultants.com (805) 324-7207 or Claudia Garcia, cgarcia@berkeleyca.gov, (510) 981-7412

ATTACHMENT 1

FINDINGS AND CONDITIONS

MAY 9, 2024

2037 Durant Avenue –

Use Permit #ZP2023-0064 for a Density Bonus Project that would demolish a one-story, 13,000 square-foot commercial building and construct an eight-story (90 feet), 76,373 square-foot mixed-use building with 74 dwelling units, including 4 Very Low-Income Density Bonus qualifying units, and 1,552 square feet of ground floor commercial space.

ZONING PERMITS REQUIRED

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.326.070 to demolish a non-residential main building
- Use Permit pursuant to BMC Section 23.204.020 to construct a mixed-use residential development
- Use Permit pursuant to BMC Section 323.204.030(A)(1) to construct 10,000 square feet of more of gross floor area.
- Use Permit pursuant to BMC Section 23.204.130(E)(1) to increase the maximum allowed height to 60 feet
- Administrative Use Permit pursuant to BMC Section 23.304.050 to allow for rooftop equipment projections above the height limit
- Administrative Use Permit pursuant to BMC Section 23.304.080(A) to allow for a fence more than 6 feet in height and on a lot line (6-foot fence proposed, with 2 foot retaining below)

CONCESSIONS/WAIVERS UNDER GOVERNMENT CODE SECTION 65915-65918

- Concession from BMC 23.316 to allow an exemption from the public art allocation in-lieu fee
- Waiver from BMC 23.204.130(E)(1) to allow for an increase in building height, up to 90 feet where 60 feet is the limit
- Waiver from BMC 23.204.130(E)(3) to allow for reduced setbacks, ranging from 5-7 feet where 15 feet is required for portions of the building over 76 feet in height
- Waiver from BMC 23.204.130(E)(4) to allow for a reduction to the usable open space requirement, where 2,098 square feet is provided, but 5,920 square feet is required
- Waiver to allow for a reduction in the percentage of landscaping within the usable open space pursuant to BMC 23.204.130(E)(7), where 2,368 square feet is required and 562 square feet is provided

I. CEQA FINDINGS

- A.** The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development”).
- B.** 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 will 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 will 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.
- C.** 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 will not affect any historical resource.

II. HOUSING ACCOUNTABILITY ACT FINDINGS

- A.** The Housing Accountability Act, Government Code Section 65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, a local agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that: (1) the development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density; and (2) there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.
- B.** The project includes construction of a “housing development project” consisting of a mixed-use building with at least two-thirds of the floor area in residential use. Because the base project complies 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.

III. DENSITY BONUS FINDINGS

- A.** Pursuant to Government Code Section 65915, the Zoning Adjustments Board finds that:
- Under the City’s methodology for implementing density bonuses, the base project consists of 62 units;

The project will provide at least four Very Low-Income qualifying units in the 62-unit base project, as more fully set forth in Condition "Number of Below Market Rate Units";

The project is entitled to a density increase of 20 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, under the requirements of Government Code Section 65915(b) and (f), plus one concession or incentive. This equates to a density bonus of up to 13 units (12 taken) above the base project, for a total of up to 75 units (74 proposed).

- D.** In accordance with Government Code Section 65915(d) and (k), the Zoning Adjustments Board hereby grants the following concessions in order to provide for affordable housing costs:
1. Concession from BMC 23.316 to allow an exemption from the public art allocation in-lieu fee
- E.** 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.
- F.** In accordance with Government Code Section 65915(e) the Zoning Adjustments Board hereby grants the following waivers to modify development standards as necessary to accommodate these density bonus units:
1. Waiver from BMC 23.204.130(E)(1) to allow for an increase in building height, up to 90 feet where 60 feet is the limit.
 2. Waiver from BMC 23.204.130(E)(3) to allow for reduced setbacks, ranging from 5-7 feet where 15 feet is required for portions of the building over 76 feet in height
 3. Waiver from BMC 23.204.130(E)(4) to allow for a reduction to the usable open space requirement, where 2,098 square feet is provided, but 5,920 square feet is required
 4. Waiver to allow for a reduction in the percentage of landscaping within the usable open space pursuant to BMC 23.204.130(E)(7), where 2,368 square feet is required and 562 square feet is provided
- G.** In accordance with Government Code Section 65915(e), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds that the approval of waivers is required 1) to construct the proposed project at the density permitted under State law; 2) approval of requested waivers will not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) approval of the requested waivers will not be contrary to State or Federal law.

IV. FINDINGS FOR APPROVAL

- A. As required by Section 23.406.040(E) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
1. The project is consistent with all applicable C-DMU District standards and qualifies for waivers and concessions for the listed district standards granted pursuant to State Density Bonus, Government Code, Section 65915;
 2. Shadows: According to the shadow studies submitted for the project, new shadow impacts will occur in the summer and in the winter months, in the morning and afternoon hours, at the residential buildings at 2025, 2028 and 2029 Durant Avenue to the north, west and east of the site. The extent of the new shadow impact from the project on the site's adjacent areas is not unreasonable for a development in the dense, downtown district that allows building heights up to 60 feet and zero to five-foot setbacks from property lines, by right.
 3. Views: The project will not result in additional obstruction of significant views in the neighborhood because the area is generally flat, developed with three- to eight-story buildings and there are limited significant views as defined in BMC Section 23.502.020 (Defined Terms) available to residences in the area.
 4. The project will be subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, which will ensure that the project will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

V. OTHER FINDINGS FOR APPROVAL

- H. As required by BMC Section 23.326.070(D), the Zoning Adjustments Board finds that the proposed demolition of the non-residential building will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and that the demolition of the structures is required to allow a proposed new building or other proposed new use.

The proposed demolition of the non-residential buildings will not be detrimental to the needs of the neighborhood, as the project redevelops an underutilized site with a new mixed-use building that is compatible with existing development patterns along Durant Avenue. The project is aligned with the district's objectives to promote appropriate new mixed-use development that is compatible with the area within the C-DMU district. The most recent use of the existing building is an automobile repair facility. The demolition of the building will allow the development of a new mixed-use building which will provide 74 new dwelling units, including four Very-Low Income units, and commercial space in this District, and thus will be compatible with adjacent and nearby commercial and residential uses.

- I. As required by BMC Section 23.204.130(I), ZAB finds that the project is:
1. Compatible with the purposes of the district:
 - a. Environmental Sustainability and Access. The project is a high-density mixed-use development in proximity to regional transit, shops and amenities, and will provide more housing in the Downtown to increase access to local services and amenities by foot, by bicycle and via transit, while promoting public transit as an efficient and attractive choice through its location. The project will comply with the State's Model Water Efficient Landscape Ordinance (MWELo), provide landscaping in its open space areas, and would feature a number of native plant species in its landscape palette. The building will be required to attain either LEED Gold rating or higher as defined by the U.S. Green Building Council or attain a building performance that is equivalent to this rating.
 - b. Land Use. The mixed-use project, which includes four Very Low-Income units, will add affordable housing to the Downtown area. Ground floor commercial uses will contribute to the area's vitality, livability, sustainability, and character. New landscaping along Durant Avenue would add to the cultivation of the Downtown as an attractive residential neighborhood.
 - c. Historic Preservation and Urban Design: The project involves demolition of a building that was constructed prior to 1940. The Landmarks Preservation Commission took no action on the demolition referral for the building. The Historic Resource Evaluation (HRE) for the subject property was completed by Left Coast Architectural History in March 2021 and determined that the building proposed for demolition does not meet the criteria for the California Register or a City of Berkeley Landmark or Structure of Merit. The building was also found to not be worthy of preservation as part of a neighborhood, a block, or a street frontage, or a group of buildings. The project architecture, including consistency with Downtown Design Guidelines, was reviewed by the Design Review Committee, who provided a favorable recommendation on the project to ZAB. The project will add to the pedestrian environment by maintaining commercial uses on the ground floor and new landscaping to add to a visually engaging streetscape.
 - d. Streets and Open Space: In addition to the new landscaping in the parkway in front of the proposed building, the project includes 2,098 square feet of private open space, including common area balconies with landscaping on fourth through eight floors; a 365 square foot garden on ground level; and, 191 square feet of public open space in front of the building. Additional landscaping has been provided around the perimeter of the site and includes stormwater planters.
 - e. Housing and Community Health and Services: The project will involve construction of a mixed-use building with four units reserved for Very-Low Income. The project will expand the supply of affordable housing in Downtown.
 - f. Economic Development: The project will bring new residents and a greater range of household incomes to the Downtown area, while preserving the character of the Downtown Historic neighborhood, to contribute to the area's vitality and success. The

project will bring 1,552 square feet of ground-floor retail to the area to contribute to making the Downtown an attractive regional destination for living, working and visiting.

2. Compatible with surrounding uses and buildings:

- a. The project site is located in Downtown Berkeley in an urban area with access to transit, and currently contains a building used for automobile repair. The project site is surrounded primarily by multi-family residential/mixed-use buildings ranging in height from three stories (Persian Center directly to the west) to eight stories (Identity Logan Park, a mixed-use residential building directly to the south of the site) and commercial uses. The base project includes a Use Permit to allow for a height of 60 feet. The 60-foot height, which would result in a six-story building, is consistent with other projects to the north and east which are five stories in height and a project to the south which is eight stories in height. The project will be compatible with surrounding uses and buildings.

J. As required by BMC Section 23.204.030(A)(2), ZAB finds that the new floor area is compatible with the visual character and form of the district. The Design Review Committee reviewed the project on March 21, 2024, including the project’s consistency with the Downtown Design Guidelines which apply to projects in the district, and made a favorable recommendation to the ZAB. The project site is surrounded primarily by multi-family residential and mixed-use buildings ranging in height from three stories to eight stories and the project’s height is compatible with the height, character and form of surrounding buildings. The project will be compatible with the visual character and form of the district.

K. As required by BMC Section 23.304.050(A), the Zoning Adjustments Board finds that the proposed rooftop equipment, which exceeds the district height limit, does not exceed 15 percent the average floor area of the building’s floors. The project will include a staircase/elevator penthouse totaling 1,006 square feet that will extend four feet over the 85-foot roof height. The penthouses represent less than 9.3 percent of the 10,108-square-foot average of all the floor areas. None of the equipment structures will be used as habitable or commercial space.

VI. 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 and Mitigation Monitoring and Reporting Program Shall be Printed on Plans.**

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings.
- 2. Compliance Required (BMC Section 23.102.050).** All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.
- 3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060(B)(1) and (2)):**
 - A.** This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
 - B.** When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To re-establish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.
- 4. Conformance to Approved Plans (BMC Section 23.404.060(B)(4)).**

All work performed under an approved permit shall comply with the approved plans and any conditions of approval.
- 5. Exercise and Expiration of Permits (BMC Section 23.404.060(C)):**
 - A.** A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
 - B.** A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
 - C.** The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
 - D.** A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

- 6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060(D)).** Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.
- 7. Permit Modifications (BMC Section 23.404.070).** No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.
- 8. Permit Revocation (BMC Section 23.404.080).** The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.
- 9. 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 Wage Theft 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. Wage Theft Prevention 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 BMC Chapter 23.404.

13. Hold Harmless. The permittee agrees as a condition of approval of this application to indemnify, protect, defend with counsel selected by the City, and hold harmless, the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorney’s fees and disbursements (collectively, “Claims”) arising out of or in any way relating to the approval of this application, any actions taken by the City related to this entitlement, or any environmental review conducted under the California Environmental Quality Act, Public Resources Code Section 210000 et seq., for this entitlement and related actions. The indemnification shall include any Claims that may be asserted by any person or entity, including the permittee, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents. The permittee’s duty to defend the City shall not apply in those instances when the permittee has asserted the Claims, although the permittee shall still have a duty to indemnify, protect and hold harmless the City.

VII. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.404.050(H), the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

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. Address Assignment. The applicant shall file an “Address Assignment Request Application” with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and, except for new buildings on vacant lots, entered into the City’s database after the building permit is issued but prior to final inspection.

16. 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.

17. 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 consider 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 study of existing conditions (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.

18. Compliance with Conditions of Approval and Environmental Mitigations. The building permit application is subject to verification of compliance of these Conditions of Approval and the adopted Downtown Area Plan Mitigation Monitoring and Reporting Program (Exhibit A). The applicant shall be responsible for demonstrating compliance with all conditions of approval and mitigation measures per the timeline set forth by this use permit. The applicant shall deposit \$10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with these Conditions of Approval and other applicable conditions and regulations. Should compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses upon the request of the Zoning Officer; any unused deposit will be refunded to the applicant.

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

19. 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.

- 20. Final Design Review.** The Project requires approval of a Final Design Review application by the Design Review Committee.
- 21. 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.
- 22. 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.
- 23. Construction and Demolition Diversion.** Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100 percent diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65 percent diversion of other nonhazardous construction and demolition waste.
- 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. Phase I and Phase II Environmental Site Assessment (ESA) (per ASTM 1527).** A recent Phase I ESA (less than 2 years old) shall be submitted to the Toxics Management Division for developments for: all new commercial, industrial and mixed-use developments and all improvement projects that require work 5 or more feet below grade, and all new residential buildings with more than four dwelling units located in the Environmental Management Area (or EMA). The EMA can be viewed at: [City of Berkeley Community GIS Portal \(arcgis.com\)](#)
 - B.** Depending on the findings in the Phase I, a Phase II or additional investigation may be necessary. Any available soils and groundwater analytical data available for projects listed in this section must also be submitted to TMD.
 - C. Environmental Site Clearance.** The applicant shall provide environmental screening clearance from either the San Francisco Bay Regional Water Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC), or the Alameda County Department of Environmental Health's Local Oversight Program (LOP). Clearance from one of these regulatory agencies will ensure that the property meets development investigation and cleanup standards for the specific use proposed on the property. Environmental screening clearance shall be submitted to the City of Berkeley's Toxics Management Division prior to issuance of any building permits.

D. Soil and Groundwater Management Plan. A site-specific Soil and Groundwater Management Plan (SGMP) shall be submitted to Toxics Management Division (TMD) for all non-residential projects, and residential or mixed-use projects with more than four dwelling units, that: (1) are in the Environmental Management Area (EMA), as shown on the most recent City of Berkeley EMA map, and (2) propose any excavations deeper than 5 feet below grade or if significant soils removal is anticipated. The SGMP shall be submitted to the TMD with the project's building permit application and shall be approved by TMD prior to issuance of the building permit.

The SGMP shall comply with the hazardous materials and waste management standards required by BMC Section 15.12.100, the stormwater pollution prevention requirements of San Francisco Bay Regional Water Quality Control Board's Order No. R2-2009-0074, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) 66260 et seq.), and the East Bay Municipal Utility District's Ordinance 311, and shall include the following:

- i. procedures for soil and groundwater management including identification of pollutants and disposal methods;
- ii. procedures to manage odors, dust and other potential nuisance conditions expected during development;
- iii. notification to TMD within 24 hours of the discovery of any previously undiscovered contamination; and
- iv. the name and phone number of the individual responsible for implementing the SGMP and who will respond to community questions or complaints.

TMD may require additional information or impose additional conditions as deemed necessary to protect human health and the environment. All requirements of the approved SGMP shall be deemed conditions of approval.

E. Demolitions & Renovations – Building Materials Survey. A hazardous materials survey for building materials and plans on hazardous materials and hazardous waste removal and disposal is required and must be prepared by qualified professionals, and submitted to the Toxics Management Division (TMD) prior to issuance of the building permit.

- i. The survey shall include the identification of all materials to be disturbed for lead-based paints, PCB containing equipment and caulking, hydraulic fluids, refrigerants, treated wood, and mercury containing devices (including fluorescent light bulbs and mercury switches), asbestos and other hazardous materials and chemicals.
- ii. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center. Contractors must follow state regulations where there is asbestos-related work involving 100 square feet or more of asbestos containing material (8 Cal. Code Regs. §1529, §341.6 et seq.)
- iii. The report to the TMD shall include, in addition to the survey, plans on hazardous materials and hazardous waste removal and disposal that comply with State and Federal codes including California Code of Regulations (CCR) 66260 et seq.

- iv. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition.

Please note, the PCB Screening Form required by Public Works, Engineering, is a separate requirement and does not address the PCB identification requirement of the Toxics Management Division.

- F. Hazardous Materials Business Plan.** A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 and California Health & Safety Code, Chapter 6.95 Div. 20, shall be submitted to the Toxics Management Division through the California Environmental Reporting System: <http://cers.calepa.ca.gov/> for chemicals used or stored on site during construction that exceed reporting thresholds. The reporting is required if your facility stores or handles hazardous materials in aggregate quantities equal to or greater than 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet of compressed gases, or generates any quantity of hazardous waste. This includes welding gases, emergency generator fuel, paints, etc.

Additionally, the business occupant must submit an HMBP within 30 days of starting operations.

- G. Petroleum Storage.** An (SPCC) Plan is required to be prepared and implemented for facilities with any one of the following:

- i. aggregate aboveground petroleum storage capacities of 1,320 gallons or more stored in aboveground storage containers, tanks, oil-filled equipment, or
- ii. one or more tank(s) in an underground area (TIUGA) with petroleum storage capacities of 55 gallons or greater. More information on TIUGAs can be found here: <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/tank-in-an-underground-area-tiuga/>

The SPCC plan must be prepared prior to beginning operations and you must submit facility information to Toxics Management Division (TMD) through the California Environmental Reporting System: <http://cers.calepa.ca.gov/>. The SPCC plan will be reviewed during the site inspection and shall not be submitted in CERS or to the TMD.

Prior to Issuance of Any Building (Construction) Permit

- 25. Affordable Housing Mitigation Fee.** Consistent with BMC Section 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.

- 26. 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.

- 27. 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.
- 28. Streets and Open Space Improvement Plan.** Street Frontage Improvements. Consistent with the Downtown Streets and Open Space Improvement Plan (SOSIP) (or subsequent iterations as adopted by the City), the developer shall construct improvements along Durant Avenue to the centerline. Such improvements shall be included with the building permit submittal, designed and constructed as directed by the Public Works Engineering, Public Works Transportation, and Fire Departments, and constructed prior to certificate of occupancy. At the discretion of the City Engineer, the developer may be required to pay a fee in lieu of certain improvements as specified in COA #29, below.
- 29. SOSIP Improvements.** At the discretion of the City Engineer, the developer shall make an in-lieu payment for roadway improvements which are not constructed as part of the project. Maximum payment amount shall be increased annually (if applicable) based on the Engineering News Record's construction prices for the San Francisco Bay Area. The first half of these payments shall be made prior to issuance of a building permit, and the second half shall be made prior to issuance of a certificate of occupancy.
- 30. Streets and Open Space Improvement Plan.** Impact Fee: As required by BMC Section 23.204.130(F), the project shall pay an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP) per the fee schedule adopted by the Council by resolution. The City shall deposit this payment into the Downtown Streets and Open Space Improvement Fund (SOSIF), or its equivalent, to pay for the design and construction of the SOSIP Major Projects. The fee shall apply to the project's "Gross Floor Area" as defined in BMC Section 23.106.030, less any existing Gross Floor Area removed as part of the project.
- At the City's discretion, the City Manager or her designee may reduce the required SOSIP Impact Fee, on a \$1 to \$1 ratio, as a credit for constructing all or a portion of a Major SOSIP Improvement Project beyond the frontage improvements already required by this Permit. The first half of this fee shall be paid prior to issuance of a building permit, and the second half shall be paid prior to issuance of a certificate of occupancy.
- 31. Green Building Certification.** The applicant shall submit documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation shall include proof of payment of the registration/application fee to the organization administering the green building certification system (e.g. USGBC/GBCI for LEED, Build It Green for GreenPoint Rated, etc.), a copy of the updated green building checklist that reflects anticipated points, and a statement from the appropriate project team professional (e.g. LEED Accredited Professional, GreenPoint Rater, etc.) verifying that the project is on track for certification at the required level or above. The submitted green building checklist must be a type that is appropriate for the project and a version that is being accepted by the organization granting the green building certification at the time of building permit application. Whenever applicable, measures from the green building checklist shall be incorporated and noted on site plans.

- 32. Solar Photovoltaic (Solar PV) and Battery Energy Storage Systems (ESS).** A solar PV system shall be installed, subject to specific limited exceptions, as specified by the Berkeley Energy Code (BMC Chapter 19.36). Energy storage system (ESS) readiness (new single-family, duplex, and townhouse homes) or ESS installation (new multifamily and most nonresidential buildings) shall be completed as specified by BMC Chapter 19.36. Location of the solar PV system and the ESS, if applicable, shall be noted on the construction plans. (Project required to meet applicable code at time of building permit application, if different from above.)
- 33. 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 (ETo) for Berkeley is 41.8.
- 34. Recycling and Organics Collection.** Applicant shall provide recycling and organics collection areas for occupants, clearly marked on plans, which comply with the Alameda County Organics Reduction and Recycling Ordinance (2021-02). Contact the Zero Waste Division's Recycling Program Manager, Julia A. Heath, at jheath@berkeleyca.gov.
- 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.

BELOW MARKET RATE UNITS

- 36. Affordable Housing Mitigation Fee (AHMF).** Consistent with BMC 22.20.065 and fee resolution No. 68,074-N.S., 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, or provide an alternative to the fee payment as permitted by the BMC. Payment of the AHMF may be reduced if paid prior to the building permit per resolution No. 68,074-N.S., and shall be paid no later than prior to the issuance of a certificate of occupancy for the project.

As indicated on the development application, the applicant shall provide four below market rate rental dwelling units ("BMR Units") and will be required to pay the AHMF as calculated in BMC Section 22.20.065(D). The applicant may elect to avoid the AHMF by providing, for the life of the project, a number of units equal to 20 percent of the total units in the project at rental rates affordable to Low-Income and Very Low-Income Households in accordance with the BMC. The applicant may also elect to provide BMR units below 20 percent of total units for a reduced AHMF as calculated in BMC Section 22.20.065(D). The applicant must contact and coordinate with the Department of Health, Housing and Community Services (HHCS) via email to affordablehousing@berkeleyca.gov for review and approval. The final number of affordable onsite units must be declared prior to issuance of the first building permit for the project.

- 37. Number of Below Market Rate Units.** The project shall provide four (Very Low-Income) 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.
- 38. Affordable Housing: 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 should they elect to provide BMR units to avoid or reduce their AHMF obligation. The Regulatory Agreement shall include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The maximum qualifying household income for very low income BMR Units shall be 50 percent of Area Median Income (AMI), and their maximum housing payment shall be 30 percent of 50 percent of AMI. The maximum qualifying household income for Low Income BMR units shall be 80 percent of Area Median Income (AMI), and their maximum housing payment shall be 30 percent of 80 percent of AMI for Low-Income households, 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 Department of Health, Housing and Community Services (HHCS) via email to affordablehousing@berkeleyca.gov for review and approval.
- 39. Affordable Housing: Below Market Rate Program.** In addition, affordable units must adhere to the administrative guidelines for the City’s Below Market Rate program. These guidelines can be found online at <https://berkeleyca.gov/community-recreation/affordable-housing-berkeley/below-market-rate-rental-information-owners-and>. The guidelines are updated annually by HHCS and posted online. Please note the following key provisions from the guidelines:
- A. Maximum rent shall be adjusted for the family size appropriate for the unit pursuant to
 - B. California Health & Safety Code Section 50052.5 (h).
 - C. Rent shall include a reasonable allowance for utilities, as published and updated by the
 - D. 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.
 - E. BMR units will be provided for the life of the project under Section 22.20.065.
 - F. Determination of Area Median Income (AMI):

- The AMI 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

- 40. Affordable Housing.** 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, then are required in the foregoing provisions.
- 41. Affordable Housing.** Dwellings that are approved as rental units, but in which a condo map is approved prior to issuance of an occupancy permit, shall be subject to the affordability requirements within BMC 23.328 in effect on March 31, 2023. (A) Residential housing projects for the construction of five or more Dwelling Units; (B) Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four-unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter; (C) Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.
- 42. Affordable Housing – Density Bonus.** If a density bonus was granted for the project, the regulatory agreement shall reflect the number of qualifying units set forth in Section 65915(f)(4) that are needed to support the bonus that was granted.

Prior to Demolition or Start of Construction:

- 43. 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.
- 44. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) may be required, particularly for the following activities:
- A. Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - B. Storage of building materials, equipment, dumpsters, debris anywhere in the public ROW;
 - C. Provision of exclusive contractor parking on-street; or
 - D. Significant truck activity.

Please contact the Office of Transportation at (510) 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be stamped and signed by a registered engineer prior to submittal. The TCP shall be consistent with any other requirements of the construction phase. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

- 45. Construction/No Parking Permits.** Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood.

During Construction:

- 46. 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.
- 47. 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.
- 48. 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.

- A. Contact information (i.e. “hotline” phone number, and email address) for the project construction manager
 - B. Calendar and schedule of daily/weekly/monthly construction activities
 - C. 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.
- 49. Public Works - Implement Bay Area Air Quality Management District (BAAQMD)-**
Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District’s phone number shall also be visible to ensure compliance with applicable regulations.
- 50. Air Quality - Diesel Particulate Matter Controls during Construction.** All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with one of the following measures:
- A. The project applicant shall prepare a health risk assessment that demonstrates the project’s on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or

- B.** All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.
- C.** In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:
- i.** An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
 - ii.** A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.
- 51. Construction and Demolition Diversion.** Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.
- 52. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25 percent. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff. (Project required to meet applicable code at time of building permit application, if different from above.)

53. 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.

54. 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.

- 55. 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.
- 56. 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.
- 57. 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.
- 58. 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 5,000 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). (Project required to meet applicable code at time of building permit application, if different from above.)
- 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.
- 59. Public Works.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
- 60. 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.
- 61. Public Works.** The applicant shall ensure that all excavation accounts for surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 62. 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.
- 63. 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.

- 64. 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.
- 65. Public Works / Building and Safety.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

- 66. Compliance with Conditions and Environmental Mitigations.** 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. Occupancy is subject to verification of compliance to the Mitigation Monitoring and Reporting Program.
- 67.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated December 7, 2023.
- 68. Number of Below Market Rate Units.** Should the Applicant elect to provide BMR units prior to receiving a building permit for the Project, they are entitled to eliminate or receive a proportional reduction in the AHMF consistent with BMC Section 22.20.065. The BMR Units shall be designated in the Regulatory Agreement; comply with the City's BMR administrative guidelines; 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. Any additional BMR units the applicant may choose to provide must also conform with these conditions.
- 69. Transportation Demand Management.** Prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Land Use Division staff to confirm that the physical improvements required in BMC Section 23.322.060 have been installed. A Parking and Transportation Demand Management (PTDM) compliance report documenting that the programmatic measures required in BMC Section 23.322.060 are implemented shall be submitted to the Land Use Division prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is compliant with the applicable requirements in this section:
- A.** For new structures or additions over 20,000 square feet, the property owner shall provide transportation benefits at no cost to every employee, residential unit, and/or group living accommodation resident, one pass for unlimited local bus transit service; or (subject to the review and approval of the Zoning Officer in consultation with the Transportation Division) a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted adult monthly local bus pass. A notice describing these transportation benefits shall be posted in a location or locations visible to all employee and residents.

70. Green Building Certification. The applicant shall submit updated documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation expected at this stage includes proof of submission of the final application materials and payment of the certification fee. If this submission has not yet occurred, a detailed explanation and timeline indicating when it will happen must be submitted to the Zoning Officer for review and approval. Once awarded by the organization administering the green building certification system, the applicant shall forward a copy of the certification award to the Zoning Officer.

At All Times:

71. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit.

72. 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.

73. 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.

74. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.

75. 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.

76. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.

77. 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.

78. Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The Finance Department, Customer Service Center shall add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts.

79. Required Bike Parking. Secure and on-site bike parking for at least 72 bicycles (66 long-term and 6 short-term spaces) shall be provided for the life of the building.

80. 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.

- 81. Guaranteed Ride Home.** If qualifying for participation in the Alameda County Guaranteed Ride Home program (or successor program), shall participate in the “Guarantee Ride Home” program to reduce employee single occupant vehicle trips by providing alternate means of leaving work in an emergency. Enrollment shall be encouraged by providing Guarantee Ride Home information to all employees. An affidavit/statement indicating number of participating employees shall be provided annually to the Transportation Division Manager
- 82. Transit Subsidy Condition.** If 10 or more employees, the business operator shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area as per BMC Chapter 9.88.
- 83. Periodic Review and Reporting.** The City may require periodic review of this approved project to verify compliance with permit requirements and conditions of approval. The permit holder or property owner is responsible for complying with any periodic reporting, monitoring, or assessments requirement. This permit is subject to the provisions of BMC Section 23.404.080 (Permit Revocation) if violations of the permit requirements are found by the Zoning Officer.
- 84.** This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

RESOLUTION NO. 65,647-N.S.

CERTIFYING THE 2009 DOWNTOWN AREA PLAN FINAL ENVIRONMENTAL IMPACT REPORT FOR PURPOSES OF APPROVAL OF THE 2012 DOWNTOWN AREA PLAN AND RELATED GENERAL PLAN AMENDMENTS, ZONING AMENDMENTS AND REZONING OF PROPERTIES; AND ADOPTING FINDINGS OF FACT RELATED TO ENVIRONMENTAL IMPACTS, MITIGATION MEASURES, ALTERNATIVES, OVERRIDING CONSIDERATIONS AND OTHER MATTERS IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, the City of Berkeley ("City") has prepared, in conformance with the California Environmental Quality Act (CEQA), an Environmental Impact Report (EIR) for a Downtown Area Plan (DAP); and

WHEREAS, the Draft EIR was released on January 21, 2009 for review and public comment, and the period for public comment was adequate and closed on March 13, 2009; and

WHEREAS, the City received comments from interested individuals, organizations and agencies on the Draft EIR, both in writing and at a duly noticed Public Hearing before the Planning Commission on February 18, 2009; and

WHEREAS, responses to comments on the Draft EIR, as well as revisions to the Draft EIR were prepared and released to the public as required by law; and

WHEREAS, the Draft EIR as revised and the Responses to Comments Document together constituted the Final EIR on the Project; and

WHEREAS, the Final EIR considered a reasonable range of alternatives; and

WHEREAS, on May 13, 2009, the Planning Commission found the Final EIR to be complete and adequate, and the Planning Commission recommended the Final EIR to the City Council to be certified; and

WHEREAS, on July 14, 2009, the Berkeley City Council ("Council") adopted Resolution No. 64,581-N.S certifying the EIR and making Findings of Fact Regarding Environmental Impacts, Mitigation Measures, Alternatives and Overriding Considerations with respect to the proposed 2009 DAP; and

WHEREAS, on February 23, 2010, the Council adopted Resolution No. 64,782-N.S. rescinding Resolution No. 64,581-N.S; and

WHEREAS, on July 13, 2010, the Council adopted Resolution No. 65,005-N.S., certifying the 2009 EIR for purposes of the "Green Vision for Downtown" November 2010 Ballot Measure ("Ballot Measure"), associated amendments to the City's General

Plan, and adopted the required CEQA Findings of Fact and Mitigation Monitoring and Reporting Program; and

WHEREAS, the certified Final EIR consisted of the January 2009 Berkeley Downtown Area Plan Draft EIR, the April 2009 Final Environmental Impact Report including Revisions of the Draft EIR, Comments and Responses, and Appendices, and the Addendum approved as Exhibit A of Resolution No. 65,005-N.S, which corrected certain numbers from the "Alternatives" section of the Draft 2009 EIR; and

WHEREAS, the Ballot Measure, which passed in November 2010, provided direction and guidance for adoption of a new DAP and other actions to implement the DAP; and

WHEREAS, the Project ("Project") now before the Council consists of the following:

- Downtown Area Plan 2012; and
- Minor amendments to the City's General Plan that replace references to the rescinded 2009 DAP with references to the DAP 2012, modify the General Plan Map to reflect the DAP 2012 boundaries, and revise General Plan text to reflect the Ballot Measure and DAP 2012 policies; and
- Zoning regulations to implement the DAP 2012, including:
 - A new zoning district: the Commercial-Downtown Mixed Use (C-DMU),
 - A new zoning chapter: Green Pathway, which provides a streamlined permit process for projects meeting certain criteria, and
 - Revisions to definitions; and
- Rezoning of properties for consistency with the DAP 2012, including:
 - Rezone from R-4 to R-3 the parcels located within the southwest corner of the DAP, generally bordered by MLK Jr. Way, Dwight Way, Allston Street and Milvia Street, with three half-blocks extending east of Milvia towards Shattuck,
 - Rezone parcels along the north side of Dwight Way, west of Fulton from R-4 to C-SA,
 - Replace the C-2 Zoning District and portions of the C-1, C-SA, R-2A and R-4 within the Downtown area to C-DMU and include the following four subareas within the C-DMU District: Core, Outer Core, Corridor, and Buffer; and

WHEREAS, the Project is consistent with the 2009 DAP described in the Final EIR, except for the following minor changes:

- strengthens language regarding sustainability measures to be incorporated into new development proposals;
- strengthens transportation demand management (TDM) measures;
- allows ground floor live-work within areas with mixed-use land use designations;
- reduces the number of potential buildings with heights of 100, 120, 180, or 225 feet from 12 to a maximum of seven including:
 - four over 75 feet, but not more than 120 feet (two reserved for UC Berkeley buildings), and
 - three over 120 feet, but not more than 180 feet, and

- requires significant public benefits to be provided for all buildings that exceed 75-feet in height;
- retains two through-lanes on Shattuck Avenue in each direction rather than reduce traffic to one through lane in each direction; and
- establishes the details for zoning to implement the DAP, including a voluntary “Green Pathway” development review process that provides for a streamlined permit process for projects that provide extraordinary public benefits that could not otherwise be obtained, while maintaining development and historic preservation standards; and

WHEREAS, the Project Description changes described above reduce potential adverse environmental impacts relative to the Project evaluated in the 2009 Final EIR by encouraging sustainable development, by reducing development intensity and by maintaining vehicle carrying capacity on Shattuck Avenue; and

WHEREAS, none of the Project Description changes require a subsequent or supplemental EIR pursuant to Public Resources Code Section 21166; and

WHEREAS, the Final EIR identifies and clearly communicates various potentially significant adverse environmental impacts that would result from the DAP 2012, as well as mitigation measures and alternatives that could eliminate or substantial reduce those potential impacts; and

WHEREAS, the City Council has carefully reviewed the Final EIR, and in its independent judgment, finds it adequate and sufficient in all respects.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby certifies the Final EIR and adopts the Findings of Fact Regarding Environmental Impacts, Mitigation Measures, Alternatives and Overriding Considerations for the Downtown Area Plan 2012 attached hereto and incorporated herein by reference Exhibit A and the Mitigation Monitoring and Reporting Program attached hereto and incorporated herein by reference in Exhibit B.

The foregoing Resolution was adopted by the Berkeley City Council on March 20, 2012 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Wozniak and Bates.

Noes: Worthington.

Absent: None.

Attest:


Mark Numainville, CMC, Acting City Clerk

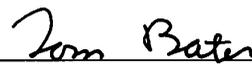

Tom Bates, Mayor

Exhibit A

**CEQA FINDINGS OF FACT REGARDING ENVIRONMENTAL IMPACTS,
MITIGATION MEASURES, ALTERNATIVES, AND OVERRIDING CONSIDERATIONS
FOR THE DOWNTOWN AREA PLAN 2012 AND IMPLEMENTING REGULATIONS**

The Final Environmental Impact Report ("FEIR") consists of the January 2009 Berkeley Downtown Area Plan Draft EIR; the April 2009 Final Environmental Impact Report, including Revisions of the Draft EIR, Comments and Responses and Appendices, and the Addendum approved as Exhibit A of Resolution No. 65,005-N.S, which corrected certain numbers from the "Alternatives" section of the Draft EIR.

The FEIR for the Downtown Area Plan, prepared in compliance with the California Environmental Quality Act, evaluated the potentially significant and significant adverse environmental impacts that could result from the proposed 2009 DAP. The Council certified the EIR for adoption of the Ballot Measure and the associated General Plan amendments. The Council now proposes to adopt DAP 2012; minor additional General Plan amendments, zoning ordinance amendments, and rezoning of properties (i.e., the Project), all of which are consistent with the FEIR, to implement the approved Ballot Measure.

Pursuant to California Code of Regulations ("CEQA Guidelines") Section 15091, the City is required to make certain findings with respect to the impacts of the Project now before the Council, as described above. The required findings appear in the following sections of this document. These Findings of Fact Regarding Environmental Impacts, Mitigation Measures, Alternatives and Overriding Considerations ("Findings") list all identified potentially significant and significant impacts of the Project, as well as mitigation measures for those impacts where feasible. All mitigation measures will be enforced through the Mitigation Monitoring and Reporting Program ("MMRP"), adopted by the City in conjunction with its adoption of the Project. Where an impact has been identified that cannot be mitigated to a less-than-significant level, the City nevertheless finds this impact acceptable based on a determination that the benefits of the Project (listed in these Findings and in the Statement of Overriding Considerations) outweigh its potential significant adverse environmental effects .

**I. SIGNIFICANT OR POTENTIALLY SIGNIFICANT IMPACTS WHICH CAN BE
AVOIDED OR MITIGATED TO A LESS THAN SIGNIFICANT LEVEL**

As authorized by Public Resources Code Section 21081 and CEQA Guidelines Sections 15091, 15092, and 15093, the City finds that mitigation measures will avoid or substantially lessen the significant environmental impacts listed below, as identified in the Final EIR and as further described or modified below. These mitigation measures will be implemented through the development review process, as further set forth in the MMRP and in the new C-DMU and Green Pathway chapters of the Zoning Ordinance.

The City's Zoning Ordinance requires approval of a Use Permit prior to construction of new buildings or any addition of 10,000 square feet or more; therefore, at the project level, the MMRP checklist will be used in conjunction with the project review process to

ensure compliance with the FEIR mitigations for all non-Green Pathway projects. The Use Permit process allows the City to impose conditions that can mitigate impacts, and the new C-DMU chapter includes a performance standard that all projects that may create potentially significant environmental impacts as described in the DAP FEIR shall be subject to the adopted Mitigation Monitoring and Reporting Program. The Project also includes a new Green Pathway chapter that establishes regulations for a new "as-of-right" project type for buildings 75 feet or less in height that provide extraordinary benefits to the City. These proposed Green Pathway regulations incorporate a process for protection of historic structures and development standards, including setbacks within view corridors, shadow analysis for buildings over 60 feet, and a requirement that Green Pathway projects are subject to applicable mitigation measures in the MMRP. These and other requirements ensure that implementation of the Green Pathway does not result in any significant impacts not evaluated in the EIR.

These findings are supported by substantial evidence in the record or proceedings before the City as stated below. Each significant impact that will be reduced to a less-than-significant level is discussed below, and the appropriate mitigation measure stated and adopted for implementation by approval of these Findings of Fact. Additional factual information supporting these Findings of Fact is set forth in the MMRP and Final EIR.

AIR QUALITY

Potential Impact AIR-3: Construction Period Air Quality Impacts. Construction of development projects under the Project would result in temporary emissions of dust and diesel exhaust that may result in both nuisance and health impacts. Without appropriate measures to control these emissions, these impacts would be considered significant.

Mitigation AIR-3: Implement BAAQMD-Recommended Measures to Control PM10 Emissions during Construction. Measures to reduce diesel particulate matter and PM10 from construction are recommended to ensure that short-term health impacts to nearby sensitive receptors are avoided.

Dust (PM10) Control Measures:

- Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times.
- Cover all hauling trucks or maintain at least two feet of freeboard.
- Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
- Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
- Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles.
- Limit traffic speeds on any unpaved roads to 15 mph.

- Replant vegetation in disturbed areas as quickly as possible.
- Suspend construction activities that cause visible dust plumes to extend beyond the construction site.

Measures to Reduce Diesel Particulate Matter and PM2.5:

- Clear signage at all construction sites will be posted indicating that diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite or adjacent to the construction site.
- Opacity is an indicator of exhaust particulate emissions from off-road diesel powered equipment. The project shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.
- The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g. compressors).
- Properly tune and maintain equipment for low emissions.

Finding: The City Council finds that the potential significant impact identified in the Final EIR will be avoided or substantially lessened through incorporation of the foregoing mitigation measure into standard conditions of approval for future development projects. In particular, the proposed C-DMU zoning district and the Green Pathway regulations include the following requirement:

C-DMU District - 23E.68.065 Performance Standards - Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program.

Green Pathway - 23.34.070E Development Standards - To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

Consistent with CEQA Guidelines for Program EIRs, future development projects will be analyzed according to the MMRP's checklist to determine whether the environmental effects of such subsequent actions were covered in the Program EIR and mitigated.

Facts in Support of Finding: The foregoing mitigation measure is based on the BAAQMD CEQA Guidelines. According to these guidelines, PM10 is the pollutant of greatest concern with respect to construction activities. Construction emissions of PM10 can vary greatly depending upon the level of activity, construction equipment, local soils, and weather conditions, among other factors. As a result, the BAAQMD CEQA Guidelines specify that "[t]he District's approach to CEQA analyses of construction impacts is to emphasize implementation of effective and comprehensive control measures rather than detailed quantification of emissions." Therefore, the

determination of significance with respect to construction emissions should be based on a consideration of the control measures to be implemented. If all the applicable control measures for PM10 indicated in the BAAQMD CEQA Guidelines are implemented, then air pollutant emissions from construction activities would be considered less than significant.

CULTURAL RESOURCES

Potential Impact CUL-2: Substantial Adverse Changes in Character-Defining Features in Portions of the Downtown Area that may have the Potential for Future Designation as Historic Districts. Implementation of the Project may cause substantial adverse changes in the character-defining features of structures in areas within the Downtown Area that may have the potential for future designation as historic districts. Because implementation of the Project could result in a cumulative impact on the existing character-defining features in those portions of the Downtown Area that may be formally designated as historic districts at some point in the future, any significant adverse change to those features would represent a potentially significant impact.

Mitigation CUL-2: Establish Parameters for Compatible Infill Development in the Downtown Area within Updated Design Guidelines. Using the Secretary of the Interior's "Standards" as a starting point, Design Guidelines for future development in the Downtown Area shall be updated to ensure that new construction respects the authentic character, significance and integrity of the existing building stock in areas that may have the potential for designation as historic districts. Specific guidelines that could be added for this purpose include, but are not limited to, the following:

- Consider the difference in character of individual blocks. The scale of buildings change within the potential historic district(s) and new construction should reflect the appropriate scale per block.
- Priorities for new construction and additions include: build-to-the-street, particularly at corners; construct infill buildings at vacant or underutilized sites along major streets; and modify non-historic buildings so that they contribute visual interest and quality.
- Construct new buildings, of compatible design with the surrounding neighborhood.
- Build consistently with the street wall, particularly at corner sites. Continue dominant rhythms for structural bays, bay windows, large pilasters, and other repeating vertical elements. Also, continue dominant cornice lines, such as between ground floors and upper stories, and at the top of facades that meet a street.
- Design new buildings to respond to the existing building context within a block, and provide continuity to the overall streetscape. Frequently, a new building will be inserted on a site between two existing buildings of disparate scale and design.
- Set back upper floors where taller buildings are permitted, so that dominant roof and cornice lines remain generally consistent in the Downtown, as seen from the street.

- Provide multi-tenant retail space and other active publicly-accessible uses at the street level. These should be accessible directly from the sidewalk, rather than through common interior lobbies.
- Provide easy-to-locate building entrances on all street-facing facades. Where a building extends through an entire block or is located at a corner, connect its entrances with a suitably scaled public lobby. Highlight entrances with signage and lighting to distinguish them from storefronts.
- Use vertically-proportioned windows. Group such windows in sets where a horizontally proportioned window opening is desired, especially for the expression of structural bays.

Finding: The City Council finds that the potential significant impact identified in the Final EIR will be avoided or substantially lessened by requiring conformance with Design Guidelines, which have been revised consistent with the foregoing mitigation measures. The Planning Commission adopted revised Downtown Design Guidelines to ensure that new construction respects the authentic character, significance and integrity of the existing building stock in areas that may have the potential for designation as historic districts. In particular, the Design Guidelines include a new section – “Subareas Where Historic Resources are Concentrated” – that stresses the importance of compatibility between new development and historic resources and that states:

- Design new construction and alterations to resonate with prevalent architectural characteristics of historic development in the vicinity of the project including but not limited to: materials, color, cornice, fenestration patterns, structural bays, roof form, vertical projections, overhanging elements, and motif. New features should not precisely replicate but should generally reinforce patterns associated with historic development.
- Build consistently with the existing streetwall, particularly at corner sites. Continue dominant rhythms for structural bays and other vertical elements, and for dominant cornice lines, such as between ground floors and upper stories and at the top of facades that meet a street. Set back upper floors so that dominant roof and cornice lines remain generally consistent as seen from the street.
- Substantial building renovations should be accompanied by façade improvements that reinforce a subarea’s historic character. Where prior alterations that have led to the loss of features that once reinforced the historic character of a subarea, restore such features based on historical evidence.
- Refer to the Downtown Area Plan Draft Environmental Impact Report (DEIR) for additional discussion on “character-defining features” in the Downtown Area. Use criteria pertaining to historic district designations in Berkeley’s Landmark Preservation Ordinance (LPO) and applicable guidelines in the National Register Bulletin “How to Apply the National Register Criteria for Evaluation.”

In addition to the above language regarding subareas where historic resources are concentrated, EIR mitigations have been incorporated into the Design Guidelines as follows:

- Maintain: a consistent “streetwall” at or near the property line; consistent cornice lines between ground floor storefronts and upper stories; typical rhythm of structural bays and enframed storefronts of 15 – 30 feet spacing a ground level;
- Encourage: storefront spaces with taller ceilings, which are also expressed on the façade, generally with transom windows; publicly-accessible street-level entrances for every 40 feet along a public-serving frontage.

Compliance with the Design Guidelines will take place through the development review process, which requires site-specific analysis and project revisions as necessary to ensure that future development projects comply. Consistent with CEQA Guidelines for Program EIRs, subsequent activities will be analyzed according to the MMRP's checklist to determine whether the environmental effects of the subsequent action were covered in the Program EIR and mitigated.

Facts in Support of Finding: Impact CUL-2 will be mitigated pursuant relevant policies in the DAP, specific requirements in the C-DMU and Green Pathway chapters, and the revised Design Guidelines. The DAP Historic Preservation and Urban Design Chapter includes several goals and policies that address potential impacts on portions of Downtown that may have the potential for future designation as historic districts. To implement the relevant policies, the Planning Commission adopted revised Design Guidelines as described above, which ensure that new construction respects the character, significance and integrity of the existing building stock in areas that may have the potential for designation as historic districts. The City's development review process requires projects in commercial districts conform with the Design Guidelines. The Green Pathway process includes consideration by the Landmarks Preservation Commission to ensure that a development project adjacent to an historic resource meets the Secretary of the Interior's Standards, and also requires conformance with Design Guidelines.

Finally, both the C-DMU zoning regulations and the Green Pathway regulations require conformance with the MMRP as specifically cited in AIR-3.

Potential Impact CUL-3: Possible Disturbance of Unidentified Subsurface Archaeological Resources. Although no archaeological resources are currently known to exist in the Downtown Area, ground-disturbing activities associated with new construction and related underground utility installation could result in the destruction or disturbance of unidentified subsurface archaeological resources, which would represent a potentially significant impact.

Mitigation CUL-3: Halt Work/ Archaeological Evaluation/Site-Specific Mitigation. If archaeological resources are uncovered during construction activities, all work within 50 feet of the discovery shall be redirected until a qualified archaeologist can be contacted to evaluate the situation, determine if the deposit qualifies as an archaeological resource, and provide recommendations. If the deposit does not qualify as an archaeological resource, then no further protection or study is necessary. If the deposit

does qualify as an archaeological resource, then the impacts to the deposit shall be avoided by project activities. If the deposit cannot be avoided, adverse impacts to the deposit must be mitigated. Mitigation may include, but is not limited to, archaeological/data recovery. Upon completion of the archaeologist's assessment, a report should be prepared documenting the methods, findings and recommendations. The report should be submitted to the City, the project proponent and the NWIC.

Potential Impact CUL-4: Possible Disturbance of Unidentified Subsurface Paleontological Resources. Although no paleontological resources are currently known to exist in the Downtown Area, ground-disturbing activities associated with new construction and related underground utility installation could result in the destruction of unidentified subsurface paleontological resources, which would represent a potentially significant impact.

Mitigation CUL-4: Halt Work/ Paleontological Evaluation/Site-Specific Mitigation. Should paleontological resources be encountered during construction or site preparation activities, such works shall be halted in the vicinity of the find. A qualified paleontologist shall be contacted to evaluate the nature of the find and determine if mitigation is necessary. All feasible recommendations of the paleontologist shall be implemented. Mitigation may include, but is not limited to, in-field documentation and recovery of specimen(s), laboratory analysis, the preparation of a report detailing the methods and findings of the investigation, and curation at an appropriate paleontological collection facility.

Potential Impact CUL-5: Possible Disturbance of Unidentified Human Remains. Ground-disturbing activities associated with new construction and related underground utility installation could result in the disturbance of unidentified subsurface human remains, which would represent a potentially significant impact.

Mitigation CUL-5: Halt Work/Coroner's Evaluation/Native American Heritage Consultation/Compliance with Most Likely Descendent Recommendations. If human remains are encountered during construction activities, all work within 50 feet of the remains should be redirected and the County Coroner notified immediately. At the same time, an archaeologist shall be contacted to assess the situation. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and any associated grave goods. The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion of the archaeologist's assessment, a report should be prepared documenting methods and results, as well as recommendations regarding the treatment of the human remains and any associated archaeological materials. The report should be submitted to the City, the project proponent and the NWIC.

Finding for Potential Impacts CUL-3, CUL-4, and CUL-5: The City Council hereby finds that the potential significant impacts CUL-3, CUL-4, and CUL-5 identified in the Final EIR will be avoided or substantially lessened through incorporation of the foregoing

mitigation measures into standard conditions of approval for future development projects. In particular, the proposed C-DMU zoning district and the Green Pathway regulations include the following requirement:

C-DMU District - 23E.68.065 Performance Standards - Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program.

Green Pathway - 23.34.070E Development Standards - To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

Consistent with CEQA Guidelines for Program EIRs, future development projects will be analyzed according to the MMRP's checklist to determine whether the environmental effects of such subsequent action were covered in the Program EIR and mitigated.

Facts in Support of Finding: There are no known subsurface archeological resources, subsurface paleontological resources, or unidentified human remains within the Project area. Potential impacts described in CUL-3, CUL-4, and CUL-5 would only come to light during construction. The City's practice is for mitigation measures as described above to be included as standard conditions of approval for development projects. Both the C-DMU zoning regulations and the Green Pathway regulations require conformance with the MMRP.

NOISE

Potential Impact NOI-2: Exposure of Downtown Area Residents to Noise Associated with Commercial Activities and/or Mechanical Equipment. The proposed development would introduce commercial uses adjacent to residential land uses. Specific tenants for the commercial uses have not been identified, but uses would probably include retail stores, restaurants, or cafes. New commercial development proposed along with (or next to) residential development could result in noise levels exceeding City standards. Typical noise levels generated by loading and unloading would be similar to noise levels generated by truck movements on local roadways. Mechanical equipment would also have the potential to generate noise, and would represent a potentially significant impact.

Mitigation NOI-2: Site-Specific Noise Studies/Activities Scheduling. The following measures should be implemented to reduce noise exposure of Downtown Area residents to noise associated with nearby commercial activities:

- Noise levels at residential property lines from commercial development should be maintained not in excess of the Berkeley Municipal Code Limits. The approvals of the commercial development should require a noise study demonstrating how the business (including loading docks, refuse areas, and ventilation systems) would meet, and be consistent with, the City's noise standards.
- Ensure that noise-generating activities, such as maintenance activities and loading and unloading activities are limited to the hours of 7:00 AM to 9:00 PM.

Finding: The City Council hereby finds that the foregoing mitigation measures are included in the Berkeley Municipal Code (BMC) and potential significant impacts identified in the FEIR will be avoided or substantially lessened through incorporation of the foregoing mitigation measures into standard conditions of approval for future development projects. In particular, the proposed C-DMU zoning district and the Green Pathway regulations include the following requirement:

C-DMU District - 23E.68.065 Performance Standards - Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program.

Green Pathway - 23.34.070E Development Standards - To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

Compliance with the FEIR mitigations and the MMRP will be ensured through enforcement of the BMC and performance standards. In particular, the project approval process will require site-specific analysis and project revisions as necessary to ensure that future development projects comply. Green Pathway projects will be required to demonstrate conformance with the MMRP. Consistent with CEQA Guidelines for Program EIRs, such subsequent activities will be analyzed according to the MMRP's checklist to determine whether the environmental effects of such subsequent actions were covered in the Program EIR and mitigated.

Facts in Support of Finding: Impact NOI-2 will be mitigated by existing regulations and procedures and by incorporation of performance standards into the Zoning Ordinance. For example, the BMC Section 13.40.070) already prohibits loading activities between 10 p.m. and 7 a.m., and prohibits construction, drilling, repair, alteration, or demolition work between weekday hours of 7 p.m. and 7 a.m., or 8 p.m. and 9 a.m. on weekends or holidays.

TRANSPORTATION / TRAFFIC

The EIR evaluated a range of potential modifications to the circulation system and a worst-case assumption about the amount of traffic that would be generated by development and by modifications in the roadway network, such as reducing the number of lanes on Shattuck Avenue from two lanes to one (and from three lanes to one lane for three blocks). The Project would allow less development intensity than evaluated in the EIR. Therefore, the impacts will be less than forecast in the EIR.

The City Council hereby finds that it is infeasible to implement some of the mitigations that would reduce traffic levels to less than significant levels because it cannot ensure that funding will be available for implementation of these mitigations. While compliance with these FEIR mitigations and the MMRP may lessen impacts, full mitigation in all

areas cannot be ensured. As noted on page 4-285 of the DEIR, "[b]aseline 2030 traffic conditions show an increase in auto traffic in the Downtown Area and deterioration in level of service at major roadway intersections in the Downtown Area, even in the absence of the DAP. . . . [T]his is largely the result of regional traffic, rather than auto trips with origins and destinations inside the Downtown Area." Background traffic analysis work prepared during the DAP development process found that for the Project analyzed in the FEIR, trips with Downtown origins or destinations grows only one percent from 12% to 13% of all vehicle trips in Downtown -- a small fractional increase of all trips [IBI Group, Future Conditions Transportation Briefing, October 1, 2008].

Because any new development contributes only a small fraction of the Downtown traffic, providing full funding for any traffic related project is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement proposed mitigations. Because the City cannot assure at this time that all mitigations will be implemented prior to a potentially significant impact, the City Council finds that Traffic Impacts TRA 1, 2, 3,4, 6, 9, 10, 11 and 14 are significant and unavoidable. Further discussion is found under "Significant and Unavoidable Impacts".

Potential Impact TRA-5: Unacceptable LOS during PM Peak Hour at Shattuck Avenue/Center Street Intersection. LOS E occurs in Year 2030 Baseline condition, but deteriorates to F in Year 2030 With Project condition. The likely cause of this impact is the reconfiguration of the Downtown Area street network, in particular the changes in the number of lanes on Shattuck Avenue. Shattuck Avenue is a one-way street, with four lanes in the southbound direction: one through-left, two through lanes and one through-right lane (Shattuck Avenue in the southbound direction at Center Street has three lanes, comprised of one through-left lane, one through lane, and one through-right lane). Center Street in the eastbound direction has one through-right lane and one through-left lane in the westbound direction. In the eastbound and eastbound directions, there is one through-left lane. In 2030 With Project condition (with Shattuck Avenue converted into a two-way street, with one through and one left turn lane in the northbound direction and one through and one right turn lane in the southbound direction, with Center Street closed to traffic east of Shattuck Avenue and the eastbound direction having one right turn lane and one left turn lane), the intersection of Shattuck Avenue and Center Street would operate at LOS F in the PM peak hour, a potentially significant impact.

Mitigation TRA-5: Modify Lane Configuration at Shattuck Avenue/Center Street. The significant impact at this intersection is mitigated by maintaining at least two traffic through lanes in the northbound direction on Shattuck Avenue along with a left turn lane. The 2009 EIR analyzed the potential impacts if Shattuck was narrowed to one lane from 3 lanes between Allston and University and 2 lanes between Durant and Allston; the EIR also analyzed the realignment of through traffic so that it would run in both the northbound and southbound direction along the west side of Shattuck Square. To mitigate significant potential impacts, the EIR recommended that 2 lanes be maintained from Durant to University (i.e. a reduction from 3 to 2 lanes from Allston to University). Consistent with the rescinded 2009 DAP, the DAP 2012 includes this

reduction from 3 to 2 lanes. The EIR indicates that narrowing Shattuck to two lanes and making it two-way along west Shattuck Square can be accommodated with no significant impacts. Should the City decide in the future to undertake further narrowing of Shattuck to one through lane in each direction, additional environmental review and findings will be required.

Finding: The City Council hereby finds that the potential significant impact identified in the Final EIR will be avoided or substantially lessened by no longer including narrowing of Shattuck to one lane in each direction in the Project, thereby maintaining two through lanes in each direction as stated in the mitigation.

Facts in Support of Finding: Figure AC-3 in the DAP 2012 implements the mitigation by showing potential lane modifications on Shattuck Avenue between Allston and University as follows: Shattuck Square from 6 to 4 lanes: 2-way through traffic on west side; plaza or slow street on east side. In addition, Goal AC-1 c) states as follows: "Travel lanes should not be eliminated until analysis has determined that safety, transit, and traffic operations can be adequately addressed, however the DAP EIR has indicated that traffic lane reductions appear to be feasible in the following locations: Shattuck Avenue and Shattuck Square between University Avenue and Allston"; and Goal AC-1 e) states, in part: "Reconfigure automobile traffic on Shattuck Square, so that the west side of Shattuck Square accommodates two-way through traffic, and the east side of Shattuck Square can become a slow street or plaza with a high level of pedestrian amenity."

Potential Impact TRA-7: Unacceptable LOS during PM Peak Hour at Shattuck Avenue/Bancroft Way Intersection. LOS B occurs in Year 2030 Baseline condition, and deteriorates to E in Year 2030 With Project condition. This impact results from the combination of the increase in trips due to increased development under the DAP and the reconfiguration of the Downtown Area street network evaluated in the DEIR but no longer proposed. This impact was associated with the changes proposed to lane geometries on Shattuck Avenue. The existing geometry of this intersection is one left turn lane and one through lane in the northbound direction, one left turn lane and one through-right lane in the westbound direction, one through and one through-right lane in the southbound direction, and one right turn lane in the eastbound direction. In 2030 With Project condition (with the northbound direction configuration changed to one left turn lane and one through-right lane and reducing the southbound direction to one lane, maintaining the existing lane configuration in the eastbound and westbound directions), the intersection of Shattuck Avenue and Bancroft Way would operate at LOS E in the PM peak hour, a potentially significant impact.

Mitigation TRA-7: Modify Lane Configurations at Shattuck Avenue/ Bancroft Way Intersection. The existing number of lanes in the southbound direction should be maintained as included in DAP 2012.

Finding: The City Council hereby finds that the potential significant impact identified in the Final EIR will be avoided or substantially lessened by no longer including this proposed element in the Project, thereby maintaining the existing configuration as stated in the mitigation.

Facts in Support of Finding: Nothing in the DAP 2012 calls for changing the existing number of lanes at the Shattuck Avenue/Bancroft Way intersection.

Potential Impact TRA-8: Unacceptable LOS during AM and PM Peak Hours at Shattuck Avenue/Durant Avenue Intersection. LOC C occurs in the AM peak hour and LOS B occurs in the PM peak hour in Year 2030 Baseline condition, and both periods experience deterioration to LOS F in Year 2030 With Project condition. The likely cause of this impact is the reconfiguration of lane geometry on Shattuck Avenue as evaluated in the EIR. The existing geometry of this intersection is one left turn, one through and one through-right lane in the northbound and southbound directions. Durant Avenue provides one through-left and one through-right lane in the eastbound direction at Shattuck Avenue. In 2030 With Project condition (with northbound and southbound directions both changed to one left turn lane and one through-right lane, and existing lane configurations in eastbound and westbound directions maintained), the intersection of Shattuck Avenue and Durant Avenue would operate at LOS F in the AM peak hour and LOS F in the PM peak hour, a potentially significant impact.

Mitigation TRA-8: Modify Lane Configurations at Shattuck Avenue/Durant Avenue Intersection. The existing number of lanes in the northbound direction should be maintained as included in the DAP proposed for adoption. The existing number of lanes in the northbound direction should be maintained as included in the DAP 2012.

Finding: The City Council hereby finds that the potential significant impact identified in the Final EIR will be avoided or substantially lessened by no longer including this proposed element in the Project, thereby maintaining the existing configuration as stated in the mitigation.

Facts in Support of Finding: Nothing in the DAP calls for changing the existing number of lanes at the Shattuck Avenue/Durant Avenue intersection.

Note: Impact TRA-12 and Mitigation TRA-12 have been deleted per "Revisions of the Draft EIR", as described in the Final EIR.

Potential Impact TRA-13: DAP-Related Reduction of Emergency Access along Center Street. The EIR evaluated the impact of the closure of Center Street between Shattuck Avenue and Oxford Street. This closure would eliminate the existing emergency access to several buildings located along this segment of Center Street. This would represent a potentially significant impact.

Mitigation TRA-13: Incorporate Emergency Access Lane in Design for Center Street Pedestrian Corridor. In order to maintain adequate emergency access to buildings located along Center Street between Shattuck Avenue and Oxford Street, the design of the proposed Center Street pedestrian corridor shall be required to incorporate a clear area, a minimum of 20 feet in width, where permanent and temporary structures, landscaping, and other physical features are prohibited. This area shall be designated as an emergency access lane, and must be accessible from both Shattuck Avenue and Oxford Street.

Finding: The City Council hereby finds that the potential significant impact identified in the Final EIR will be avoided or substantially lessened by requiring that the above mitigation measure be incorporated into the design of Center Street improvements. Consistent with CEQA Guidelines for Program EIRs, future development projects will be analyzed according to the MMRP's checklist to determine whether the environmental effects of such subsequent actions were covered in the Program EIR and mitigated.

Facts in Support of Finding: Impact TRA-13 will be mitigated at such time as Center Street improvements are designed and developed consistent with the mitigation. DAP Goal AC-1 c) states, in part, as follows: "Travel lanes should not be eliminated until analysis has determined that safety, transit, and traffic operations can be adequately addressed".

UTILITIES AND SERVICE SYSTEMS

Potential Impact UTIL-1: Sanitary Sewer Conveyance Capacity Constraints. Individual development projects proposed under the Project could exceed the capacity of the existing sanitary local sewer conveyance system serving the specific project. This would represent a potentially significant environmental impact.

Mitigation UTIL-1: Site-Specific Analysis of Project-Related Effects on the Sanitary Sewer Conveyance System/Project-Related Contribution to Necessary Capacity Expansion. As individual development projects are proposed in the Downtown Area, each project will be subject to site-specific analysis by the City of Berkeley to determine whether the development proposed would exceed the capacity of the sanitary sewer conveyance system that directly serves the project. In the event that existing sanitary sewer modeling demonstrates that sanitary sewer conveyance system capacity would be exceeded by the proposed project, then the project proponents and the City shall enter into negotiations to determine the financial contribution required from the project proponents to enable the City to expand sanitary sewer conveyance capacity as necessary to accommodate the project as proposed.

Finding: The City Council hereby finds that the potential significant impacts identified in the Final EIR will be avoided or substantially lessened through will be avoided or substantially lessened through incorporation of the foregoing mitigation measure into standard conditions of approval for future development projects. In particular, the proposed C-DMU zoning district and the Green Pathway regulations include the following requirement:

C-DMU District - 23E.68.065 Performance Standards - Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program.

Green Pathway - 23.34.070E Development Standards - To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring and Reporting Program. Consistent with CEQA Guidelines for Program EIRs, future development projects will be analyzed according to the MMRP's checklist to determine whether the environmental effects of such subsequent action were covered in the Program EIR and mitigated.

Facts in Support of Finding: As described in the FEIR, a citywide "Sewer System Evaluation and Capacity Assurance Plan" is currently underway and will provide the City with more exact analytical tools for assessing the impacts of individual projects through hydraulic modeling. Current City practice requires development projects to evaluate the capacity of the local conveyance line to meet the immediate needs of a project and to replace it if inadequate. All new development is also required to pay a per fixture fee to help defray the maintenance costs and the cost of upgrading anomalous chokepoints that serve the larger system.

II. SIGNIFICANT UNAVOIDABLE IMPACTS

The Council has determined that the Project would result in the following potentially significant unavoidable environmental impacts, as disclosed in the Final EIR.

AESTHETICS

Potential Impact AES-1: DAP-Related Reduction in Views of the Berkeley Hills from the Downtown Area. Development anticipated under Project would result in a reduction in the existing views of the Berkeley Hills available to observers traveling east along east-west streets in the Downtown Area (e.g., University Avenue, Center Street and Allston Way). This would represent a potentially significant impact.

Mitigation AES-1: Conduct Site-Specific Visual Analysis for Buildings Proposed Between Shattuck Avenue and Oxford Street. In order to reduce development-related impacts on existing views of the Berkeley Hills for observers traveling east along east-west streets in the Downtown Area, the City should require site-specific visual analysis for proposed buildings that have the potential to affect existing view corridors to determine the extent to which such structures may interfere with existing views of the Berkeley Hills, and should consider whether stepping back such buildings is feasible and would result in a substantial reduction in impact.

The EIR concludes that, while mitigation measures could reduce potential adverse impacts related to views of the Berkeley Hills from the Downtown Area, the impact would remain significant and unavoidable.

Finding: The City Council hereby finds that the foregoing mitigation measure regarding view impacts is included in the Downtown Area Plan policies and zoning regulations. The potential significant impact identified in the Final EIR will be substantially lessened, but will remain significant and unavoidable. The development review process will require site-specific analysis as required by the Mitigation Monitoring and Reporting Program.

Facts in Support of Finding: Impact AES-1 will be reduced by DAP policies, zoning revisions, design guidelines and compliance with the MMRP. In particular, DAP Table LU-1, Allowable Building Heights, specifically requires buildings over 85 feet in height to undergo a view analysis and possible design modification to reduce impacts; Policy LU-1.5, Downtown Intensities & Building Heights, requires that buildings exceeding a height of 85 feet be subject to visual analysis and modifications including setbacks and step backs to reduce view impacts; and Policy LU-4.2, Development Compatibility, requires that view impacts be reduced to an acceptable level.

The C-DMU zoning regulations specifically require a 15-foot minimum front setback for portions of a building that exceed 75 feet in height. The revised Design Guidelines state as follows: "For new construction projects located on narrow east-to-west streets and over 75 feet in height.....east of Shattuck, analyze visual impacts of ridgeline views to the east. Based on such analyses, consider upper floor setbacks at street corners or other techniques to mitigate negative impacts."

The C-DMU zoning regulations and the Green Pathway regulations require that all projects that may create potentially significant environmental impacts as described in the DAP Final EIR conform with the adopted MMRP. In addition, Green Pathway projects that exceed 75-feet in height are subject to review by the Zoning Adjustments Board, public hearing, and findings.

While all projects will be subject to review for conformance with standards in the zoning ordinance and Design Guidelines, the extent of the impact will depend on the location, height and bulk of proposed development projects; since it is not possible to determine with certainty the level of impact from future development, the impact will remain significant and unavoidable.

Potential Impact AES-2: DAP-Related Shadows Falling onto University "Crescent". Shadow modeling indicates that development anticipated under the Project would be expected to add new shadows that would fall on the "crescent" open space on the western edge of the University of California campus (between Addison Street and University Avenue) in the late afternoons/early evenings during fall and winter. This would represent a potentially significant impact.

Mitigation AES-2: Evaluate Shadow Effects for Proposed Structures near the Eastern Edge of the Downtown Area. The extent of the impact on the Crescent will depend on the location, height and bulk of structures to the southwest. While the impact may be significant, it is not possible to determine with any certainty the level of impact. Accordingly, all structures with a proposed height of 85 feet or more to be located within an area bounded by Addison Street on the north, Oxford Street on the east, Allston Way on the south, and Shattuck Avenue/Shattuck Square on the west shall be evaluated in a site-specific basis to determine the extent to which such buildings may cast shadows within the Crescent. Modifications to building heights, bulk or location should be considered as a way to reduce such shadowing. However, because the project allows for taller buildings in an area that may increase shadowing of the Crescent, the impacts of the project are significant and unavoidable.

Finding: The City Council hereby finds that the foregoing mitigation measure regarding shadowing impacts is included in the Downtown Area Plan policies and zoning regulations. The potential significant impact identified in the Final EIR will be substantially lessened, but will remain significant and unavoidable. The development review process requires site-specific analysis and conformance with the MMRP.

Facts in Support of Finding: Impact AES-2 will be reduced by DAP policies, zoning regulations, and compliance with the MMRP. In particular, DAP Table LU-1, Allowable Building Heights, specifically requires buildings over 85 feet in height to undergo a solar analysis and possible design modification to reduce impacts; Policy LU-1.5, Downtown Intensities & Building Heights, requires that buildings exceeding a height of 85 feet be subject to shadow analysis and modifications including setbacks and step backs to reduce impacts; and Policy LU-4.2, Development Compatibility, requires that shadow impacts be reduced to an acceptable level. The C-DMU zoning regulations specifically require setbacks for portions of a building that exceed 75 feet in height, and the revised Design Guidelines call for analysis and setbacks of upper stories to minimize shading.

The zoning ordinance has been modified for the downtown area to ensure that all mitigation measures, including the requirement for shadow impact analysis, to determine the extent to which structures may interfere with shadows falling onto the University Crescent. In particular, the C-DMU District, Section 23E.68.065, Performance Standards) requires that all projects that may create potentially significant environmental impacts as described in the DAP Final EIR conform with the adopted Mitigation Monitoring and Reporting Program.

However, because all shadowing impacts on the Crescent cannot necessarily be eliminated through these policies, the impact remains significant and unavoidable.

AIR QUALITY

Impact AIR-1: Conflict with Clean Air Plan (CAP). Development anticipated under the Downtown Area Plan would increase population and employment at a greater rate than assumed when preparing the latest update to the CAP. This could lead to greater regional emissions of nonattainment air pollutants (or their precursors) than assumed in the CAP. This would be a significant and unavoidable impact.

Finding: The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

Facts in Support of Finding: Until the current CAP is modified to reflect changed assumptions regarding future growth within the Downtown Area and the City of Berkeley generally, adoption and implementation of the Project will remain technically inconsistent with the Bay Area Air Quality Management District's (BAAQMD) current Clean Air Plan (CAP). The inconsistency between the Project and current CAP results from BAAQMD's methodology for making assumptions for local growth and air pollutant estimates within a region-wide context. BAAQMD projections are based on land use designations developed by cities and counties through each local General Plan process;

the Berkeley General Plan was updated in 2001 and was the basis for BAAQMD's growth assumptions and CAP (updated in its Bay Area 2005 Ozone Strategy).

The BAAQMD methodology is not dynamic with regard to local growth and air pollution estimates. The methodology is poorly suited for factoring additional growth in one location (such as Downtown Berkeley) while also factoring a reduction in growth elsewhere in the region. In fact, an overall reduction in region-wide air quality impacts can be expected if more of the region's growth occurs in the Downtown Area (with low driving rates) rather than other parts of Berkeley and other parts of the region (with significantly higher driving rates).

The City expects that new growth estimates that include an increase in projected development in the Downtown Area will be incorporated into the next round of CAP revisions, which will eliminate the technical disparity between air pollution generated by Downtown Area growth and the outdated estimates embedded in the CAP.

A favorable adjustment to the CAP is especially likely because encouraging additional development in the Downtown Area models the land use principles promoted by the Bay Area Quality Management District (BAAQMD) in its Bay Area's Smart Growth Vision (co-published with the Metropolitan Transportation Commission and the Association of Bay Area Governments). The Smart Growth Vision encourages the development of communities that promote transit, walking, and bicycling by encouraging compact, infill development with a mix of uses and high development densities, such as that proposed by the Project. The Smart Growth Vision:

- Focuses higher density development near transit stations and corridors;
- Encourages compact development with a mix of uses that locates housing near jobs, shops and services, schools and other community facilities;
- Locates shops and services near employment centers;
- Encourages infill development of underutilized land;
- Designs streets, sidewalks and bicycle routes to ensure safe and convenient access for pedestrians and bicyclists; and
- Designs individual development projects to provide safe, convenient pedestrian and bicycle access to transit stops and nearby services.

Impact AIR-2: Possible Exposure of Sensitive Receptors to Toxic Air Contaminants (TACs) and Odors. Development anticipated under the Downtown Area Plan may expose sensitive receptors to TACs or odors through development of new residential units near non-residential uses that may be sources of TACs or odors, or through development of new non-residential development that may be sources of TACs or odors near existing residences or other sensitive receptors. Such exposure would represent a potentially significant impact.

Mitigation AIR-2: Buffer TAC and Odor Emission Sources and Sensitive Land Uses. Consider potential air pollution and odor impacts from future development that may emit pollution and/or odors when locating (a) air pollution sources, and (b) residential and other pollution-sensitive land users in the vicinity of air pollution sources (which may include areas where buses idle, diesel generators, parking garage vents, restaurants,

and other similar uses). Buffer sensitive receptors from TACs whenever possible, and if buffering is not feasible, apply appropriate mitigation to reduce impacts to a less than significant level, such as air filtration systems or other technologies.

Finding: The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

Facts in Support of Finding: While the above mitigation should address any potentially significant impacts from such sources, and will be implemented through the MMRP (compliance with which is required by the C-DMU District, Section 23E.68.065, Performance Standards and Green Pathway Section 23.34.070E Development Standards), the mitigation is not consistent with BAAQMD CEQA Guidelines that require sensitive receptors to be buffered from uses that generate odors or TACs. Downtown Berkeley is already (and will continue to be) an intensely developed area with a wide mix of closely-spaced uses. In a downtown environment, it is not always possible to provide adequate buffers for odors for restaurant uses, for example. While the above mitigation can address most conflicts, because buffering will not always be feasible, the Project is technically inconsistent with BAAQMD CEQA Guidelines, and the impact remains significant and unavoidable.

CULTURAL RESOURCES

Impact CUL-1: Demolition of Historic Resources. Despite the substantial protections in place in City policy, it is possible that development anticipated under the Project could result in the demolition of historic resources located within the Downtown Area. Were demolition of historic resources to occur, this would represent a significant and unavoidable impact associated with the Project.

Finding: The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

Facts in Support of Finding: The following considerations make it infeasible to mitigate this impact to a less-than-significant level.

Existing policies and ordinances, proposed DAP policies, and proposed zoning amendments provide strong protections for historic resources and potential historic resources. The DAP includes a chapter on the importance of historic preservation and urban design with numerous goals and policies promoting the preservation of historic resources. The Green Pathway as-of-right process would not be available to sites with, or affecting, an identified historic resource. Should an applicant propose the demolition of a historic resource, a separate, site-specific environmental review would be required, requiring an analysis of alternatives and project-specific mitigations.

Despite the many procedural and other protections afforded existing and potential historic resources, new development under the Project could result in the demolition of historic resources. Additional mitigations for reducing the potential for demolitions to a level of insignificance do not appear to exist. Reducing the feasibility of new development in the Downtown would reduce the potential for development projects and demolitions, but would be contrary to the Project goals, especially those related to

increasing the supply of affordable housing, encouraging economic revitalization, and providing a model of sustainability by locating growth in pedestrian-/transit-oriented locations (see below). New development and development revenues are expected to play a vital role in: financing street and open space improvements, funding transportation demand management programs, supporting social services, etc.

NOISE

Potential Impact NOI-1: Exposure to Excessive Noise Levels. New development under the Project (particularly residential uses adjacent to principal streets), could be exposed to excessive noise levels. With completion of the development anticipated under the Project, noise levels along many Downtown Area roadways would exceed those considered compatible with exterior residential land uses (60 dBA Ldn), a potentially significant impact. Where exterior noise levels exceed 70 dBA Ldn, such as along University Avenue and Shattuck Avenue, residential units would not be able to meet the 45-dBA Ldn interior standard simply through typical construction methods. This would be a potentially significant impact. Retail units developed under the Project along most of the area roadways would meet the exterior commercial land use compatibility guideline of 70 dBA Ldn established in the Noise Element. Exterior noise levels would exceed 70 dBA Ldn along University Avenue and Shattuck Avenue. This would be a potentially significant impact.

Mitigation NOI-1: Site-Specific Noise Studies/Site Planning/Noise Control Treatments. Future residential units proposed under the Project would be exposed to outdoor noise levels in excess of 60 Ldn and indoor levels in excess of 45 L_{dn}, which would exceed the City's and state's established land use compatibility thresholds. In areas where residential development would be exposed to an L_{dn} of greater than 60 dBA, site-specific noise studies should be conducted to determine the area of impact and to present appropriate mitigation measures, which may include the following:

- Utilize site planning to minimize noise in shared residential outdoor activity areas by locating these areas behind the buildings, in courtyards, or orienting the terraces to alleyways rather than streets, whenever possible.
- The California Building Code and the City of Berkeley require project-specific acoustical analyses to achieve interior noise levels of 45 dBA Ldn or lower in residential units exposed to exterior noise levels greater than 60 dBA Ldn. Building sound insulation requirements would need to include the provision of forced-air mechanical ventilation in noise environments exceeding 70 dBA Ldn so that windows could be kept closed at the occupant's discretion to control noise.
- Special building construction techniques (e.g., sound-rated windows and building facade treatments) may be required where exterior noise levels exceed 65 dBA L_{dn}. These treatments include, but are not limited to, sound rated windows and doors, sound rated exterior wall assemblies, acoustical caulking, etc. The specific determination of what treatments are necessary will be conducted on a unit-by-unit basis during project design. Results of the analysis, including the description

of the necessary noise control treatments, will be submitted to the City along with the building plans and approved prior to issuance of a building permit.

Feasible construction techniques such as these would adequately reduce interior noise levels to 45 dBA Ldn or lower.

Finding: The City Council hereby finds that the potential significant noise impacts will be avoided or substantially lessened through incorporation of the foregoing mitigation measures into standard conditions of approval for future development projects. In particular, the proposed C-DMU zoning district and the Green Pathway regulations include the following requirement:

C-DMU District - 23E.68.065 Performance Standards - Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program.

Green Pathway - 23.34.070E Development Standards - To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

While the project approval process will require site-specific analysis and project revisions as necessary to ensure that future development projects mitigate noise impacts as much as possible. However, full mitigation may not be feasible and impacts may remain significant and unavoidable.

Facts in Support of Finding: Impact NOI-1 will be mitigated by existing noise standards and procedures, through implementation of Downtown Area Plan policies (see Policies ES-4.5 and HC-2.2), which call for the strengthening of noise mitigation measures, and through the incorporation of the MMRP's performance standards into the Zoning Ordinance. However, as noted under NOI 3 and 4, noise impacts may remain significant and unavoidable in certain locations.

Impact NOI-3: Increase in Traffic Noise. Implementation of the Project could increase traffic noise levels substantially along two street segments (Shattuck Avenue between University Avenue and Allston Way, and Allston Way between Shattuck Avenue and Oxford Street), potentially exposing residences to excessive noise levels. This would represent a significant impact.

Mitigation NOI-3: Site-Specific Noise Analysis/Noise Barriers/Pavement Modifications/Traffic Calming/Sound Insulation. Where anticipated noise levels would exceed City of Berkeley standards for interior noise, methods available to mitigate Project-related noise level increases would need to be studied on a case-by-case basis as individual development projects are proposed at receivers that would be considered noise impacted along Shattuck Avenue between University Avenue and Allston Way, and along Allston Way between Shattuck Avenue and Oxford Street. Since these increases in noise levels are related to the closure of Center Street and the elimination of travel lanes on Shattuck Avenue assumed under the DAP, retaining existing travel lane configurations in the Downtown Area street network would reduce this impact to a

level of less than significant. The Project no longer includes reduction of lanes on Shattuck to one through lane in each direction.

However, closure of Center Street is included in the DAP 2012 (see Figure AC-3). If the proposed Center Street modification takes place, additional noise reduction methods could include the following:

- Installing traffic calming measures to slow traffic. Typically, each 5 mph reduction in travel speeds equates to 1 dBA of noise reduction.
- Affected residences could be provided building sound insulation such as sound-rated windows and doors on a case-by-case basis as a method of reducing noise levels in interior spaces.

Finding: The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below. While compliance with the FEIR mitigations and the MMRP may lessen the impact, full mitigation in all areas cannot be ensured.

Facts in Support of Finding: DAP policy HC-2.2, Noise Mitigation, recognizes that the intensity of use in downtown can create noise impacts and recommends use of best-available technologies to minimize noise, increased monitoring, and enforcement. Mitigations NOI-1, NOI-2, and NOI-3 will help mitigate noise impacts from increased traffic, however, given the scope of the Project and expected noise level increases resulting from Project-related traffic, the cost to reduce Project-related traffic noise at all affected receivers would likely be prohibitive.

Potential Impact NOI-4: Cumulative Increase in Downtown Area Noise Levels. Implementation of the Project would make a "cumulatively considerable" contribution to noise levels along three street segments in the Downtown Area (Shattuck Avenue between University Avenue and Allston Way, Allston Way between Shattuck Avenue and Oxford Street, and Durant Avenue between Milvia Street and Shattuck Avenue) that would be substantially increased as a result of cumulative growth in the area, a significant cumulative impact.

Mitigation NOI-4: Site-Specific Noise Analysis/Noise Barriers/Pavement Modifications/Traffic Calming/Sound Insulation. Where anticipated noise levels would exceed City of Berkeley standards for interior noise, methods available to mitigate Project-related noise level increases would need to be studied on a case-by-case basis as individual development projects are proposed at receivers that would be considered noise impacted along Shattuck Avenue between University Avenue and Allston Way, along Allston Way between Shattuck Avenue and Oxford Street, and along Durant Avenue between Milvia Street and Shattuck Avenue. Since these increases in noise levels are related to the closure of Center Street and the elimination of travel lanes on Shattuck Avenue assumed in the EIR, retaining existing travel lane configurations in the Downtown Area street network would reduce this impact to a level of less than significant. The DAP 2012 no longer includes reducing Shattuck to one through lane in each direction; however, it does include the potential closure of Center Street to most

traffic. At the time a proposed project for closing Center Street is developed, noise reduction methods could include the following:

- Installing traffic calming measures to slow traffic. Typically, each 5 mph reduction in travel speeds equates to 1 dBA of noise reduction.
- Affected residences could be provided building sound insulation such as sound-rated windows and doors on a case-by-case basis as a method of reducing noise levels in interior spaces.

As noted under Mitigation NOI-1, the project approval process will require site-specific analysis and project revisions as necessary to ensure that future development projects mitigate noise impacts. Consistent with CEQA Guidelines for Program EIRs, future development activities will be analyzed according to the MMRP's checklist to determine whether the environmental effects of such subsequent actions were covered in the Program EIR and mitigated.

Finding: The City Council hereby finds that further environmental review will be necessary at such time as full or partial closure of Center Street. At that time, additional findings will be needed to incorporate the above mitigations and make appropriate findings related to that closure recognizing that it may be infeasible to mitigate this impact to a less-than-significant level based on the facts described below. While compliance with the FEIR mitigations and the MMRP may lessen the impact, full mitigation in all areas cannot be ensured.

Facts in Support of Finding: DAP policy HC-2.2, Noise Mitigation, recognizes that the intensity of use in downtown can create noise impacts and recommends use of best-available technologies to minimize noise, increased monitoring, and enforcement. Mitigations NOI-1, NOI-2, NOI-3, and NOI-4 will help mitigate noise impacts from increased traffic. The Project would not reduce the number of lanes on Shattuck to one through-lane in each direction. Given the scope of the DAP and expected noise level increases resulting from DAP-related traffic, the cost to reduce DAP-related traffic noise at all affected receivers would likely be prohibitive. Regardless, compliance with the MMRP requirement for site-specific noise analysis and identification of feasible mitigations is a requirement of the C-DMU District performance standards (BMC Section 23E.68.065) and the Green Pathway (BMC Section 23.34.070E) Development Standards.

Potential Impact NOI-5: Construction Noise. Businesses and residences throughout the Downtown Area would be intermittently exposed to high levels of noise throughout the planning horizon. Construction would elevate noise levels at adjacent businesses and residences by 15 to 20 dBA or more, a significant impact.

Mitigation NOI-5: Develop Site-Specific Noise Reduction Programs and Implement Noise Abatement Measures during Construction. Prior to the issuance of building permits, 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 appropriate time limits for construction (7:00 AM to 7:00

PM on weekdays and between the hours of 9:00 AM and 8:00 PM on weekends or holidays) as well as technically and economically feasible controls to meet the requirements of the Berkeley Municipal Code. 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:

- Construction equipment should be well maintained and used judiciously to be as quiet as practical.
- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- 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.
- 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.
- Prohibit unnecessary idling of internal combustion engines. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
- 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.
- 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.
- Route construction related traffic along major roadways and away from sensitive receptors where feasible.
- Businesses, residences or other noise-sensitive land uses within 500 feet of construction sites should be notified of the construction schedule in writing prior to the beginning of construction. Designate a "construction liaison" that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the liaison at the construction site.

Finding: The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below. While compliance with the FEIR mitigations and the MMRP may lessen the impact, full mitigation in all areas cannot be ensured. Regardless, compliance with the MMRP requirement for implementation of a construction noise-reduction program is a requirement of the C-DMU District performance standards (BMC Section 23E.68.065) and the Green Pathway regulations (BMC Section 23B.34.070E).

Facts in Support of Finding: Because residences and business are located throughout the Downtown Area, it is not possible to ensure that construction noise can be mitigated to a level of insignificance in all cases.

Potential Impact NOI-6: Construction-Related Vibration. Residences, businesses, and historic structures, and other structures above and below the ground surface within or in the vicinity of the Downtown Area could be exposed to construction-related vibration during the excavation and foundation work of the buildings constructed under the Project, a significant impact.

Mitigation NOI-6: Avoidance of Pile-Driving/Site-Specific Vibration Studies/Monitoring/Contingency Planning. The following measures are recommended to reduce vibration from construction activities:

- Avoid impact pile-driving where possible. Drilled piles causes lower vibration levels where geological conditions permit their use.
- Avoid using vibratory rollers and tampers near sensitive areas.
- In areas where project construction is anticipated to include vibration-generating activities, such as pile-driving in close proximity to existing above ground and below ground structures, site-specific vibration studies should be conducted to determine the area of impact and to present appropriate mitigation measures that may include the following:
 - Identification of sites that would include vibration compaction activities such as pile-driving and that have the potential to generate ground borne vibration, and the sensitivity of nearby above ground and below ground structures to ground borne vibration.
 - Vibration limits should be applied to all vibration-sensitive structures located within 200 feet of the project. A qualified structural engineer should conduct this task.
 - Development of a vibration monitoring and construction contingency plan to identify above and below ground structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions.
 - Construction contingencies would be identified for when vibration levels approached the limits. At a minimum, vibration monitoring should be conducted during initial demolition activities and during pile driving activities. Monitoring results may indicate the need for more or less intensive measurements.
 - When vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures.
 - Conduct post-survey on above ground and below ground structures where either monitoring has indicated high levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.

Finding: The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below. While compliance with the FEIR mitigations and the MMRP may lessen the impact, full mitigation in all areas cannot be ensured.

Facts in Support of Finding: While Mitigation Measure NOI-6 seeks to avoid vibration impacts through limiting use of pile-driving equipment and vibratory rollers and tampers where possible and through site-specific analysis of construction proposals, it may not be possible to avoid all impact given that the Downtown Area is built-out. Regardless, compliance with the MMRP requirement to avoid pile-driving and provide mitigations is a requirement of the C-DMU District performance standards (BMC Section 23E.68.065) and the Green Pathway regulations (BMC Section 23B.34.070E).

Transportation

Potential Impact TRA-1: Unacceptable LOS during PM Peak Hour at Martin Luther King Jr. Way/Hearst Avenue Intersection. LOS F occurs in the Year 2030 Baseline condition, but delay increases from 200.6 seconds (s) to 261.1s in Year 2030 With Project condition. This impact results from the increase in vehicle traffic due to increased development anticipated under the Project, and would be aggravated by a redistribution of traffic due to reduction in the number of lanes on Shattuck Avenue to one through lane analyzed in the EIR. The existing geometry of this intersection is one through-right and one through-left lane for northbound and southbound directions, one through-left and one right-turn lane for eastbound direction and one lane permitting left, through and right movements in the westbound direction. Bicycle lanes are located on the east portion of Hearst Avenue on both sides of the avenue, and on the right side of the west portion of Hearst Avenue. In 2030 With Project condition (which would maintain the existing intersection geometry), the intersection of Martin Luther King Jr. Way and Hearst Avenue would operate at LOS F in the PM peak hour, a potentially significant impact.

Mitigation TRA-1: Modify Lane Configuration at Martin Luther King Jr. Way/Hearst Avenue Intersection. A lane should be added for left turns in the westbound direction, changing the right lane to through-right. Implementation of this mitigation would still result in LOS F in the PM peak hour, but delay would be reduced to 131.2s, eliminating the significant DAP-related impact. The implementation of this mitigation measure requires re-striping of Hearst Avenue east of Martin Luther King Jr. Way to accommodate the new lane, eliminating the bike lane in part of the block; or the acquisition of additional right-of-way on this segment of Hearst Avenue to accommodate the new lane and maintain the bike lane. This measure is not anticipated to cause significant impacts to pedestrian traffic.

Potential Impact TRA-2: Unacceptable LOS during PM Peak Hour at Martin Luther King Jr. Way/Allston Way Intersection. LOS changes from D in Year 2030 Baseline

condition to F in Year 2030 With Project condition. The likely cause of this impact is the increase in traffic volumes due to increased development anticipated under the Project. The existing geometry of this intersection is one through-right and one through-left lane for northbound and southbound directions, one through-left and one right-turn lane for eastbound and westbound directions. In 2030 With Project condition (which would maintain the existing geometry), the intersection of Martin Luther King Jr. Way and Allston Way would operate at LOS F in the PM peak hour, a potentially significant impact.

Mitigation TRA-2: Modify Lane Configuration at Martin Luther King Jr. Way/Allston Way Intersection. The eastbound lane configuration should be changed, turning the existing through-left lane to left turn only and the right lane to a through-right. A right turn lane to Martin Luther King Jr. Way in the southbound direction should be added, changing the through-right lane to through only. This mitigation measure would result in changing the LOS to D, with delay of 49.8s. The implementation of this mitigation measure requires re-striping of Allston Way west of Martin Luther King Jr. Way to accommodate the lane changes, and the acquisition of right-of-way north of Allston Way to accommodate the southbound right turn lane. This measure is not anticipated to cause significant impacts to pedestrian traffic.

Potential Impact TRA-3: Unacceptable LOS during AM and PM Peak Hours at Milvia Street/University Avenue Intersection. LOS changes from B in Year 2030 Baseline condition to F in Year 2030 With Project condition for the AM peak hour, and from LOS D to E in the PM peak hour. The likely cause of this impact was the proposed reconfiguration of the Downtown Area street network and the resulting redistribution of vehicle traffic. The existing geometry of this intersection is one through-right and one left lane for the northbound direction, one lane in the southbound direction, one through-left and one through-right lane for eastbound and westbound directions. Milvia Street is also a Bicycle Boulevard. In 2030 With Project condition (which would maintain the existing geometry), the intersection of Milvia Street and University Avenue would operate at LOS F in the AM peak hour and LOS E in the PM peak hour, a potentially significant impact.

Mitigation TRA-3: Modify Lane Configuration at Milvia Street/University Avenue Intersection. A right turn lane should be added to University Avenue to the eastbound direction and one left turn lane should be added to University Avenue in the westbound direction. In the eastbound direction, the configuration of lanes would be one through-left lane, one through and one right turn lane. In the westbound direction, the configuration of lanes would be one left turn lane, one through lane and one through-right lane. This mitigation measure would change LOS to B, with delay of 14.9s in the AM peak hour, and to LOS C with delay of 25.8s in the PM peak hour. The implementation of this mitigation measure requires the removal of the median east of the intersection in order to accommodate the extra lane, and the re-striping of University Avenue on both sides of Milvia Street. This measure is not anticipated to cause significant impacts to pedestrian traffic, but a right turn on green only with an advance stop bar can be implemented on University Avenue to avoid conflicts with pedestrians crossing Milvia Street. This measure would increase pedestrian safety and does not

change the LOS of the intersection. The implementation of a bicycle waiting area placed ahead of the cars waiting to turn right can reduce the conflicts through bicycle flows and right-turn vehicle movements on Milvia Street in the southbound direction. This measure requires re-striping of Milvia Street.

Potential Impact TRA-4: Unacceptable LOS during PM Peak Hour at Milvia Street/Center Street Intersection. LOS F occurs in the Year 2030 Baseline condition, but delay increases from 84s to 98.1s in Year 2030 With Project condition. The likely cause of this impact is the increase in traffic volumes due to increased development anticipated under the Project. The existing geometry of this intersection is one lane for northbound and southbound directions, one lane for eastbound direction and one through-left and one right lane for westbound direction. Milvia Street is also a Bicycle Boulevard. In 2030 With Project condition (which would maintain the existing geometry), the intersection of Milvia Street and Center Street would operate at LOS F in the PM peak hour, a potentially significant impact.

Mitigation TRA-4: Modify Lane Configuration at Milvia Street/Center Street Intersection. One left turn lane should be added to Milvia Street in the northbound and southbound directions, changing the lane configuration to one through-right and one left turn lane. This mitigation measure would result in change of LOS to C, with delay of 24.0s in the PM peak hour. The implementation of this mitigation measure requires the removal of on-street parking spaces in the northbound and southbound directions to accommodate the left turn, and the re-striping of Milvia Street on both sides of Center Street. This measure is not anticipated to cause significant impacts to pedestrian traffic. Milvia Street would remain a Bicycle Boulevard and sufficient traffic lane width would be provided for bicycles and vehicles to make through movements at this intersection. This improvement would result in the loss of about eight on-street parking spaces, but is not anticipated to generate significant impact with regard to parking.

Finding for TRA-1, TRA-2, TRA-3 and TRA-4 The City Council hereby finds that it is infeasible to mitigate these impacts to a less-than-significant level based on the facts described below. While compliance with the FEIR mitigations and the MMRP may lessen the impact, full mitigation in all areas cannot be ensured.

Facts in Support of Finding: TRA-1, TRA-2, TRA-3 and TRA-4 call for various lane reconfigurations to reduce traffic impacts. However, as noted on page 4-285 of the DEIR, "[b]aseline 2030 traffic conditions show an increase in auto traffic in the Downtown Area and deterioration in level of service at major roadway intersections in the Downtown Area, even in the absence of the DAP.....largely the result of regional traffic, rather than auto trips with origins and destinations inside the Downtown Area." Because a significant portion of Downtown traffic does not result from new development, even should a development project be required to provide some funding toward traffic improvements, funding may not be available to address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because

the City cannot assure at this time that the roadway modifications can occur prior to a significant impact the City Council finds that the impact is significant and unavoidable.

Potential Impact TRA-6: Unacceptable LOS during PM Peak Hour at Shattuck Avenue/Allston Way Intersection. LOS D occurs in Year 2030 Baseline condition, and deteriorates to F in Year 2030 With Project condition. This impact results from the combination of the increase in vehicle traffic due to increased development anticipated under the Project and the reconfiguration of the Downtown Area street network analyzed in the EIR. This impact is connected to the changes proposed on Shattuck Avenue analyzed in the EIR. With the existing geometry, in the northbound and southbound directions, the lane configuration is one left turn, one through and one through-right lane. In the eastbound and westbound directions, there is one lane that allows all movements. In 2030 With Project condition (with the existing intersection geometry changed to lose a through lane in the northbound and southbound directions, but maintained in the eastbound and westbound directions), the intersection of Shattuck Avenue and Allston Way would operate at LOS F in the PM peak hour, a potentially significant impact

Mitigation TRA-6: Modify Lane Configurations at Shattuck Avenue/Allston Way Intersection. The existing number of lanes in the northbound and southbound directions (i.e. three in each direction) shall be configured to have a minimum one left turn lane, one through lane, and one right turn lane, as is provided by the DAP under consideration for adoption. Furthermore, a right turn lane will be added in the westbound direction of Allston Way.

Finding: The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below. While compliance with the FEIR mitigations and the MMRP may lessen the impact, full mitigation in all areas cannot be ensured.

Facts in Support of Finding: The DAP 2012 no longer reduces Shattuck to one through lane in each direction, although it does call for some reconfiguration of Shattuck north of Allston Way to reduce the number of total lanes to two through lanes from the existing three in each direction (south of Allston, Shattuck has two lanes in each direction).

However, as noted on page 4-285 of the DEIR, "[b]aseline 2030 traffic conditions show an increase in auto traffic in the Downtown Area and deterioration in level of service at major roadway intersections in the Downtown Area, even in the absence of the DAP.....largely the result of regional traffic, rather than auto trips with origins and destinations inside the Downtown Area." Even should a development project provide funding toward Downtown traffic improvements, because a significant portion of Downtown traffic does not result from new development, that contribution may not address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because the City cannot assure at this time that the improvements

can be implemented prior to a potentially significant impact, the City Council finds that the impact is significant and unavoidable.

Impact TRA-9: Unacceptable LOS during AM and PM Peak Hours at Oxford Street/Hearst Avenue Intersection. LOS D occurs in the AM peak hour and LOS E occurs in the PM peak hour in Year 2030 Baseline condition, and both periods experience LOS F in Year 2030 With Project condition. This impact results from the increase in traffic due to increased development under the Project, and is aggravated by the proposed lane reductions on Hearst Avenue. The existing geometry at this intersection is one left turn, two through and one right turn lane in the northbound direction, one through-left and one through-right lane in the southbound direction. Eastbound lane configuration is one left turn, one through and one through-right lane, and westbound configuration is one left turn, one through-left and one through right lane. Planned City improvement will result in removal of northbound free right turn lane for the Year 2030 Baseline condition. LOS F is forecast in both the AM peak hour and the PM peak hour in the Year 2030 Baseline. Both time periods experience further deterioration in LOS F in Year 2030 With Project condition, a potentially significant impact.

Mitigation TRA-9: Maintain Existing Lane Geometry in the Westbound Direction. The DAP-proposed lane reduction on Hearst Avenue would be maintained to the west of the intersection, with the lane reduction occurring in a transition to the west of the intersection. Add one lane in southbound direction, changing lane configuration to one left-turn, one through and one through-right lane. Change the eastbound direction lane configuration to one through-left lane one through-right lane. Maintain split signal phasing for eastbound and westbound directions. Add a right turn only lane to the northbound direction and provide right turn overlap signal phasing for this movement. The right turn only lane would not be a free-right turn, but a striped, exclusive right turn lane adjacent to the northbound through lanes. Change northbound and southbound signal phasing to protected + permitted for left turns. This mitigation measure would change LOS to D in the AM peak hour (54.9 seconds delay). In the PM peak hour, the 2030-LOS is improved to LOS D, with delay reduced from 166.4 seconds With Project to 54.4 seconds. On Oxford Street, the implementation of this mitigation measure requires the removal of seven parking spaces in the southbound direction and the re-striping of the segment in the block north of Hearst Avenue. On Hearst Avenue, existing configuration should be maintained in both directions. This measure is not anticipated to cause significant impacts to pedestrian traffic. The loss of on-street parking spaces on Oxford is not anticipated to generate significant impacts.

Potential Impact TRA-10: Unacceptable LOS during AM Peak Hour at Oxford Street/University Avenue Intersection. LOS D occurs in the AM peak hour in Year 2030 Baseline, and experiences deterioration to LOS E in Year 2030 With Project condition. The primary cause of this impact is the increase in traffic volumes due to the land use development proposed by the Project. The existing geometry at this intersection is one left-turn, one through and one through-right lane in the northbound and southbound directions, one left-turn and one through-right in the eastbound direction. Westbound lane configuration is one lane only allowing all movements. In 2030 With Project

condition (with eastbound direction lane configuration changed to one left-turn and one through-right lane, and all other directions maintain existing geometry), the intersection of Oxford Street and University Avenue would operate at LOS E in the AM peak hour, a potentially significant impact.

Mitigation TRA-10: Modify Lane Configurations at Oxford Street/University Avenue Intersection. The existing eastbound lane configuration should be maintained. This mitigation measure will result in change of LOS to D in the AM peak hour, with delay of 40.2s. Proposed lane reduction on University could be maintained west of the intersection. The implementation of this mitigation measure requires the maintenance of the eastbound lane configuration. This measure is not anticipated to cause significant impacts to pedestrian traffic.

Potential Impact TRA-11: Unacceptable LOS during PM Peak Hour at Oxford Street/Allston Way Intersection. LOS E occurs in the PM peak hour in Year 2030 Baseline condition, and experiences deterioration to LOS F in Year 2030 With Project condition. The likely cause of this impact is the increase in vehicle trips due to increased development under the Project. Existing geometry at this intersection is one through-left and one through lane in the northbound direction, one through and one through-right lane in the southbound direction and eastbound configuration with one lane only allowing right and left turns only. In 2030 With Project condition (with the existing geometry), the intersection of Oxford Street and Allston Way would operate at LOS F in the PM peak hour, a potentially significant impact.

Mitigation TRA-11: Modify Lane Configurations at Oxford Street/Allston Way Intersection and Alter Signal Cycle Timing. One lane should be added in the southbound direction, changing the lane configuration to two through and one right turn lane. One lane should be added to the northbound direction, changing the configuration to one left turn and two through lanes. One lane should be added in the eastbound direction, changing the configuration to one left turn lane and one right turn lane. Cycle length should be increased to 25s and to provide a protected left turn signal phase in the northbound direction. This mitigation measure would result in change of LOS to C in the PM peak hour, with delay of 33.6s. On Oxford Street, the implementation of this mitigation measure would require the removal of 5 of the parking spaces in the southbound direction and the re-striping of the segment in the block north of Allston Way. In the northbound direction there is the need to use the median space, as well as re-stripe the roadway. On Allston Way, the addition of the extra lane would require the loss of 4 on-street parking spaces on the south side of the street, as well as re-striping. This measure is not anticipated to cause significant impacts to pedestrian traffic. The loss of on-street parking spaces on Oxford Street and Allston Way is not anticipated to generate significant impacts.

Finding for TRA-9, TRA-10, and TRA-11: The City Council hereby finds that it infeasible to mitigate these impacts to a less-than-significant level based on the facts described below. While compliance with the FEIR mitigations and the MMRP may lessen the impact, full mitigation in all areas cannot be ensured.

Facts in Support of Finding: TRA-9, TRA-10, TRA-11 call for various lane reconfigurations to reduce traffic impacts. However, as noted on page 4-285 of the DEIR, "[b]aseline 2030 traffic conditions show an increase in auto traffic in the Downtown Area and deterioration in level of service at major roadway intersections in the Downtown Area, even in the absence of the DAP.....largely the result of regional traffic, rather than auto trips with origins and destinations inside the Downtown Area." Because a significant portion of Downtown traffic does not result from new development, even should a development project be required to provide some funding toward traffic improvements, funding may not be available to address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because the City cannot assure at this time that the roadway modifications can occur prior to a significant impact the City Council finds that the impact is significant and unavoidable.

Potential Impact TRA-14: Increased Traffic along Milvia Street Adversely Affecting Bicycle Boulevard Operations. As a result of Project-related traffic increases in traffic volumes along Milvia Street, cyclists would experience deteriorated operations along the Milvia Street Bicycle Boulevard, a potentially significant impact.

Mitigation TRA-14A: Install Class 2 Bike Lanes on Milvia Street between University Avenue and Allston Way. This mitigation measure may result in the loss of on-street parking stalls along Milvia Street in order to accommodate the bike lanes. Up to 35 on-street parking stalls could be impacted by this mitigation measure. As noted in the parking demand discussion, sufficient public parking capacity is anticipated in the Year 2030 With Project condition, so the loss of these parking stalls would not be anticipated to cause a significant impact. This mitigation measure would also not preclude the implementation of the traffic mitigation measures at the University Avenue/Milvia Street intersection and the Center Street/Milvia Street intersection.

Mitigation 14B: Install Traffic Calming Devices. Traffic calming devices should be installed on Milvia Street either between University Avenue and Allston Way, or immediately north and south of this segment to discourage through vehicle traffic from traveling on this section of the roadway. Traffic calming devices could include speed humps, turn restrictions/prohibitions or other measures determined by the City of Berkeley.

Finding: The City Council hereby finds that it is infeasible to mitigate this impact to a less-than-significant level based on the facts described below. While compliance with the FEIR mitigations and the MMRP may lessen the impact, full mitigation in all areas cannot be ensured.

Facts in Support of Finding: DAP policy AC-5.1, Bike Network Improvements, call for City actions to make bicycling safer and more convenient. However, as noted on page 4-285 of the DEIR, "[b]aseline 2030 traffic conditions show an increase in auto traffic in the Downtown Area and deterioration in level of service at major roadway intersections in the Downtown Area, even in the absence of the DAP....largely the result of regional

traffic, rather than auto trips with origins and destinations inside the Downtown Area." Even should a development project contribute toward implementing the mitigation, because a significant portion of Downtown traffic does not result from new development, that contribution may not address the full cost of the improvements. Providing full funding is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because the City cannot assure at this time that all improvements can be implemented prior to a potentially significant impact, the City Council finds that the impact is significant and unavoidable.

III. EVALUATION OF ALTERNATIVES

Pursuant to CEQA Guidelines Section 15091(a)(3), regarding alternatives to the project that would reduce or avoid significant effects identified in the EIR, the City Council finds as follows.

Overview of EIR Alternatives: The Planning Commission identified the parameters for the "Project" evaluated in the EIR during its deliberations on preparing a recommended DAP in 2008. The EIR evaluated two Alternatives in addition to the EIR-Project defined by the Planning Commission. These Alternatives are: a "No Project Alternative" and the "DAPAC Alternative." The DAPAC alternative was prepared by the Downtown Area Plan Advisory Committee and completed in 2007.

The EIR identified the "No Project" Alternative, which assumed that further development would occur under existing rules, as the environmentally superior alternative. Under this alternative, maximum building heights would be lower than those anticipated under the Project or the DAPAC Alternative; however, aesthetic impacts could remain significant and unavoidable. With less development, the localized air impacts and the traffic impacts would be less than under the Project or the DAPAC Alternative.

CEQA Guidelines require that, where the "no project" alternative is the "environmentally superior" alternative, another alternative which would be "environmentally superior" in the absence of the "no project" alternative must be identified.

The "DAPAC Alternative" (i.e. the draft Downtown Area Plan recommended by the Downtown Area Plan Advisory Committee) was identified as the "environmentally superior" alternative in the absence of the "no project" alternative. The DAPAC Alternative generally limits building heights and the number of residential units to a greater extent than described in the Project as analyzed in the EIR.

Overview of the EIR Project and Subsequent DAPs: The DAP 2012 is somewhat different than the "Project" evaluated in the EIR as summarized below:

- The EIR-Project included a larger number of taller buildings, a greater intensity of development, and more changes to the circulation network (such as narrowing Shattuck Avenue) than were included in the approved 2009 DAP.

- Following rescission of the 2009 DAP and EIR certification, the Council directed modifications to further clarify requirements on development, further reduce the number of taller buildings, and encourage a "Green Pathway" for projects that provide extraordinary benefits to the community. The Council then certified the 2009 EIR for purposes of placement of a ballot measure that summarized key policies from the DAP recommended by the Planning Commission to the City Council on June 29, 2010. The Ballot Measure was approved.

The current Project builds on the previous DAP revisions, including the approved ballot measure. The Project includes revisions to the DAP for conformance with the Ballot Measure, General Plan amendments to reflect DAP 2012, zoning regulations to implement DAP 2012 policies, and rezoning of properties consistent with DAP 2012.

The DAP 2012, including implementing regulations, is the environmentally superior project

Consistent with Resolution No. 65,005-N.S., which certified the 2009 EIR for the Ballot Measure and which identified the Ballot Measure Project as the environmentally superior alternative, the current Project builds on the Ballot Measure and is environmentally superior to the alternatives analyzed in the EIR.

The following discussion and tables compare the current Project with the Project evaluated in the EIR ("EIR Project), the "DAPAC Alternative", and the 2009 DAP. Although the FEIR identified the DAPAC Alternative as "environmentally superior", the following discussion establishes that the DAP 2012, including implementing regulations, is the environmentally superior project.

Aesthetics The FEIR determined that Significant and Unavoidable Impacts include views of the Berkeley Hills along the east-west streets where taller buildings may be permitted, and shadow impacts on "The Crescent," a public open space owned by the University of California.

The FEIR concluded that impacts on identified significant views would be similar under both the DAPAC Alternative and the EIR-Project. While the DAP 2012 and implementing regulations may have similar impacts, DAP policies, zoning standards, and compliance with the MMRP will reduce the impacts. In particular, the proposed zoning ordinance standards require stepping back upper portions of buildings and require site-specific project analysis. Both view and shadow impacts for the DAPAC Alternative were found to be less than under the EIR-Project because of lower maximum building heights for the tallest buildings. The DAP 2012 and implementing regulations reduce building heights further, as compared in the table below.

Building Height Comparison

EIR Project	DAPAC Project Alternative	2009 DAP	Ballot Measure and DAP 2012
-----	4 buildings up to.	2 buildings up to 100	-----

EIR Project	DAPAC Project Alternative	2009 DAP	Ballot Measure and DAP 2012
	100 ft.	ft.	
6 buildings up to 120 ft. (two reserved for UCB)	4 buildings up to 120 ft.	6 buildings up to 120 ft. (two reserved for UCB)	4 buildings up to 120 ft. (two reserved for UCB)
4 buildings up to 180 ft.		2 buildings up to 180 ft.	3 buildings up to 180 ft.
2 buildings up to 225 ft	2 buildings up to 225 ft.	2 buildings up to 225 ft.	none
Total = 12	Total = 10	Total = 12	Total = 7

The DAP 2012 and implementing regulations would allow fewer buildings that are 100 feet or taller than any of the other alternatives. Overall, the view and shadowing impacts should be less under the DAP 2012 and implementing regulations due to the fewer number of tall buildings and the proposed zoning requirements.

Air Quality & Greenhouse Gas Generation (GHG) As discussed below, the determination of which alternative is "environmentally superior" regarding air quality varies depending on the criteria used.

With respect to air quality, CEQA and the Bay Area Quality Management District (BAAQMD) Clean Air Plan require consideration of local impacts from development, without regard to citywide or regional impacts. Based on local impacts only, the greater the amount of development, the greater the potential impact on air quality as each individual, no matter how small a contribution each makes, adds some level of localized air quality impact. The total number of residential units proposed under the three EIR Alternatives and the DAP 2012 and implementing regulations are summarized below and show that, based on local impacts only, the "No Project" Alternative is the environmentally superior alternative because it allows the least amount of residential development, followed by the DAP 2012, with all other alternatives allowing more residential development.

Dwelling Unit Comparison

Alternative	Downtown Residential Dwelling Units	Additional "Offsite Units" Needed to Make a Fair Comparison of GHG Generation (i.e. by assuming a total of 3,100 units in all alternatives)
EIR Project	3,100	0
DAPAC Project	2,700	400

Alternative	Downtown Residential Dwelling Units	Additional "Offsite Units" Needed to Make a Fair Comparison of GHG Generation (i.e. by assuming a total of 3,100 units in all alternatives)
Alternative		
2009 DAP	2,900	200
Ballot Measure and DAP 2012 & Implementing Regulations	2,500	600
No Project	1,800	1,300

However, the regional impacts of increased development on air quality and greenhouse gas production are the opposite of the above analysis when development is proposed in an urban environment with good public transit. As described in the 2009 DEIR, a lower percentage of people who live Downtown drive alone to work, as compared to people who work Downtown, but live elsewhere (DEIR page 4-240). The DEIR also documents that increasing residential density in the Downtown will reduce driving rates even more because of the additional transit service and walk-to conveniences additional density will support (DEIR page 4-81 and Figures 4.20 and 4.21). So while additional growth in the Downtown Area will correspond with less driving and reduced vehicular pollutant emissions within the Bay Area region (which grows at a rate independent from local land use decisions), BAAQMD air quality measures consider increased growth to be a negative impact (see "Impact AIR-1: Conflict with Clean Air Plan (CAP)" above for further discussion).

As with vehicle emissions, greenhouse gas generation is directly related to driving rates (i.e. the vehicle-miles traveled per household). When comparing alternatives, an equal number of dwelling units need to be considered. If dwelling units are not accommodated in the Downtown Area (because of lower building heights and capacity), then those units should be assumed be developed elsewhere in the region. A estimate of transportation-based greenhouse gas generation based on the growth capacity of Alternatives, indicates that the EIR Project's capacity (3,100 dwellings) would generate approximately 35 million fewer pounds of greenhouse gas per year than the No Project Alternative (1,800 dwellings). By prorating dwelling units and transportation-related greenhouse gas generation estimates, "build out" for each Alternative translates into the following greenhouse gas emissions:

Greenhouse Gas Comparison

Alternative	Residential Units	Yearly Greenhouse Gas
EIR Project	3,100	16.1 million pounds
DAPAC Alternative	2,700 with 400 offsite	27.1 million pounds
2009 DAP	2,900 with 200 offsite	21.6 million pounds

Alternative	Residential Units	Yearly Greenhouse Gas
Ballot Measure and DAP 2012 & Implementing Regulations	2,500 with 600 offsite	32.6 million pounds
No Project	1,800 with 1300 offsite	51.8 million pounds

Based on this regional analysis for both air quality and greenhouse gas generation, the EIR project is environmentally preferred because it allows the highest amount of development, followed by the 2009 DAP, the DAPAC Alternative and then DAP 2012 and implementing regulations.

Another important perspective regarding air quality is whether development is required to meet standards for "green construction". The DAP 2012 and implementing regulations require buildings to meet a certain standard for "green" construction, and provide incentives for buildings that exceed those standards. These standards include requirements for projects to participate in Transportation Demand Management programs, such as providing local bus passes to employees and residential occupants. In respect to the sustainability of a specific development, the DAP 2012 and implementing regulations Project is superior, although no significant impacts are specifically identified in regard to this issue in the EIR.

The Air Quality analysis in the EIR found two significant unavoidable impacts: conflict with the Clean Air Plan (CAP) and exposure of sensitive receptors to toxic air contaminants and odor emissions. All of the proposed alternatives are inconsistent with the CAP until it is updated, at which time whichever option is adopted by the Council will become the basis for the new CAP. The other impact is largely related to the exposure of residents to odors in a high density mixed-use environment. This impact can be mitigated on a case-by-case basis. The number of residents exposed to such odors is directly related to the number of units permitted; so in that regard, alternatives with fewer residential units ("No Project", followed by the DAP 2012, with all other alternatives allowing more residential development) are superior.

Cultural Resources The DAPAC Alternative and the EIR-Project have near identical language pertaining to the protection of historic resources and for avoiding impacts that might adversely affect the character and benefits of a potential future historic district. The DAP 2012 and implementing regulations have similar protective policy language for historic resources, and provide specific historic protections by ensuring that mitigations in the MMRP are implemented on a case-by-case basis. The Project's Green Pathway places time limits on the Landmarks Preservation Commission's review of historic resources, but the requirement for an historic assessment and the Green Pathway's stipulation that projects that affect an historic resource may not use the streamlined process should provide equivalent protection to potential historic resources. Although all alternatives may have similar potentially significant impacts on historic resources, the proposed implementing regulations provide specificity that was not previously available.

Noise The EIR found a significant, unavoidable increase in traffic noise, "related to the closure of Center Street and the elimination of travel lanes on Shattuck Avenue" (DEIR, page 4-198). The modification of these streets also contributed to a cumulative increase in Downtown Area noise levels (page 4-200). The DAPAC alternative and the EIR-Project are similar in regard to this impact. The DAP 2012 would have less impact because while it retains closure of Center Street to through traffic, it would not include reducing the number of travel lanes on Shattuck to one through lane (while allowing some reduction to two through lanes from three north of Allston). Construction related noise and vibration would be similar under any of the alternatives as these impacts relate more to the number of development projects and not necessarily the height or amount of development per project.

Traffic/Transportation The extent of growth in the Downtown Area contributes little to the overall amount of traffic in the Downtown Area. Trips that originate and end outside of the Downtown Area (i.e. "regional" and "University" trips) are projected to be the largest source of increased traffic in the Downtown under all Alternatives. Under the No Project Alternative (with 1800 new residential units), trips with Downtown origins or destinations are expected to comprise only 12% of all trips. Under the EIR-Project (with 3100 additional residential units), trips with Downtown origins or destinations grows only one percent to 13% -- a small fractional increase of all vehicle trips (IBI Group, Future Conditions Transportation Briefing, October 1, 2008). Therefore, the difference in how much development is expected to occur under the various alternatives does not significantly affect the FEIR conclusions.

The DAPAC alternative includes reduction in through lane capacity on portions of both Oxford Street and Shattuck Avenue. Initial transportation alternatives analysis for the EIR determined that "reducing lanes on both Oxford Street and Shattuck Avenue would lead to significant displacement of traffic through several north/south corridors" (Draft EIR, page 5-27). Therefore, the EIR evaluated the DAPAC recommended alternative with the exception that it did not include reduction of lane capacity on Oxford Street, only on Shattuck Avenue. The traffic impacts analysis in the EIR found that a number of significant environmental impacts resulted from the Shattuck lane closure to one through lane, without considering the additional impacts that would have resulted from reducing the capacity of Oxford, as recommended in the DAPAC Alternative. The EIR-Project is therefore superior to the DAPAC Alternative in regard to some traffic impacts. The 2012 DAP would reduce several significant and unavoidable transportation related impacts to less than significant levels by not reducing Shattuck to one lane in each direction.

One of the principle reasons that the EIR cited the DAPAC Alternative as the "environmentally superior" is because of DAPAC language that emphasizes reduced use of the automobile more than the EIR-Project. However, it should be noted that the DAP 2012 provides strong language encouraging transit and discouraging automobile use. In addition, the implementing ordinances provide specific zoning language requiring Transportation Demand Management techniques, which will be more effective than policies alone. Because the DAP 2012 does not explicitly call for modifications to Shattuck and the DAP 2012 and implementing regulations explicitly call for transit-

friendly development and other policies and regulations to reduce traffic, it is the environmentally preferred alternative in regard to traffic impacts.

Utilities & Service Systems Demand for public services and utilities are partly a function of the amount of development. As a consequence, the EIR found that the DAPAC Alternative with 2,700 dwelling units to have the potential for less impact than the EIR-Project with 3,100 dwelling units. The DAP 2012 with 2500 units would have less impact than either of the other two alternatives. However, none of the project alternatives were considered to have a significant impact, and the extent to which additional growth may trigger the need for systemwide improvements may be overstated. The EIR also states that:

Much of the sewer system in Downtown and throughout the City was originally designed to handle combined wastewater and storm water flows, and therefore is over-sized for wastewater flows. There are a limited number of anomalous chokepoints in some basins, which are being addressed over time as part of an established program of systemwide improvements (Draft EIR, page 4-330, emphasis added).

For project-specific requirements, impacts and mitigations are equivalent among all Alternatives.

Current City practice requires development projects to evaluate the capacity of the local conveyance line to meet the immediate needs of a project and to replace it if inadequate. All new development is also required to pay a per fixture fee to help defray the maintenance costs and the cost of upgrading anomalous chokepoints that serve the larger system (Draft EIR, page 4-330).

Conclusion In conclusion, each of the alternatives is environmentally superior in regard to some impact areas, and less so with regard to other areas. The DAP 2012 and implementing regulations would have less impact on shadowing, local air quality and local greenhouse gas (GHG) emissions, and less adverse noise impacts than the DAPAC Alternative. Similarly, with somewhat less development potential, the Project would also be environmentally superior in regard to those environmental impacts sensitive to the number of people to be located in Downtown, such as localized air impacts, and localized exposure to odors. The EIR Alternative is superior in regard to regional GHG and air quality benefits, but has more adverse impacts in regard to transportation, air quality and noise. On balance, the Council finds that the DAP 2012 and implementing regulations Project is the environmentally superior project.

Feasibility of Alternatives

Because the No Project Alternative is cited as the environmentally superior alternative by the FEIR, the Council is required to consider whether it is feasible, as set forth in CEQA Guidelines. The Council determines that the No Project Alternative is not feasible, because it would not meet the vision and goals established for the approved Ballot Measure. It would not result in any of the proposed "green space" additions or social/economic benefits that may be associated with implementation of the DAP 2012

and implementing regulations. In addition, the No Project Alternative would not provide for greater levels of infill development, would not improve the jobs-to-housing balance, and would not add civic amenities and open space beyond current requirements. Therefore, the Council finds that the "No Project" alternative is not feasible.

Although the EIR concluded that after the No Project Alternative, the DAPAC Alternative is the environmentally superior alternative, the Council finds as described above that the DAP 2012 and implementing regulations Project is environmentally superior to the DAPAC Alternative. However, even if the DAP 2012 Project were not environmentally superior, the Council finds that the DAPAC Alternative is infeasible. The City prepared an economic feasibility study to evaluate the proposed land use alternatives, including the development envelopes proposed by under the DAPAC Alternative (Downtown Development Feasibility Study, July 23, 2008). Meeting the goals and objectives of the DAP is dependent on development occurring consistent with the Plan. Most of the economic and environmental benefits of infill development in Downtown are dependent on the economic feasibility of residential development. The feasibility study found that under normal economic conditions (not including the current major recession), the tall building (over 85 feet) development envelopes proposed in the DAPAC alternative were infeasible. Additional explicit requirements in the DAPAC Plan for taller buildings in regard to Floor Area Ratios, required open space, increased affordable housing and other requirements would further reduce the feasibility of development occurring under the DAPAC Alternative.

While the DAP 2012 and implementing regulations also call for additional requirements on development - and especially on taller buildings - the September 27, 2011 Development Feasibility Study prepared by AECOM concluded that financial feasibility is primarily contingent on the type of development proposed, site configuration, height, and parking. The analysis showed that the most feasible development is a 180-foot rental residential project on a 20,000 sq. ft. site, which could generate a substantial amount for public benefits, even with the proposed zoning regulations.

IV. Statement of Overriding Considerations

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines sections 15091 et. seq. the City Council of the City of Berkeley adopts and makes the following statement of overriding considerations regarding the remaining unavoidable impacts of the Project (2011 DAP and implementing regulations) and the anticipated economic, social, and other benefits of the Project.

After extensive review of the entire administrative record, including the Draft and Final EIR, the staff reports, and the oral and written testimony, and the evidence provided, the Council concludes that the potential environmental impacts of the Project have been avoided or substantially lessened to the extent feasible, and the remaining unavoidable impact is acceptable in light of the following benefits of the Project.

Based on the evidence before it, the City Council finds that the benefits of the Project, as set forth below, outweigh the Project's significant adverse environmental impacts and constitute an overriding consideration warranting approval of the Project. The Council

further finds that each of the overriding considerations set forth below constitutes a separate and independent ground for this finding. The overriding benefits of the Project are as follows:

Community Benefits Associated with Development and Growth

Higher levels of development in the Downtown Area, particularly residential development, would result in the following direct and indirect benefits:

- reduced per capita automobile use and reduced generation of per capita greenhouse gases;
- increased support for retail uses and availability of walk-to conveniences, which also improves the walkability of districts by bringing more destinations and amenities close by;
- increased transit patronage and transit service (transit funding is generally dependent upon land use densities that are sufficient to reduce the need for transit subsidies) and thereby justify public investments;
- increased public revenues for public improvements including ecologically beneficial features, through development fees and increased economic activity;
- increased open space for the enjoyment of the public along streets, on other public lands, and on private land;
- increased housing for all income levels, including provision of affordable units through incentives;
- increased homeownership opportunities through the production of condominiums;
- increased availability of "car-free" living opportunities, which are ideally suited to senior citizens and persons with limited mobility who benefit from centrally located housing;
- increased support for culture and the arts by increasing the local patron base;
- increased job opportunities;
- increased opportunities for business and intellectual synergies by increasing businesses in proximity to the University of California Berkeley;
- increased opportunities to demonstrate environmental leadership and engage in environmental innovation by encouraging sustainable development and attracting interested organizations and businesses, and improving the feasibility of green buildings;
- reductions in the length of commuting to jobs within and outside of Berkeley and associated traffic congestion by improving Berkeley's housing balance, through the

construction of more workforce housing and the creation of jobs that complement the job skills of Berkeley residents; and

- increased destinations Downtown and resources for a cleaner and safer Downtown.

In addition, the DAP 2012 and implementing regulations specifically require inclusion of transportation demand management techniques (see BMC Section 23E.68.08, Parking) and new green standards for development (see Environmental Sustainability Chapter of DAP and BMC Section 23E.68.085, Green Building Provisions). For development exceeding 75 feet in height, provision of additional community benefits is required DAP Land Use Policy LU-2.2 and the following required findings in the C-DMU district:

- Zoning Ordinance Section 23E.68.090E Findings

In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070.B, the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City. These may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities.

For projects requesting streamlined processing through the Green Pathway, provision of additional community benefits is required by DAP Land Use Policy LU-2.3 and the following requirements

- Zoning Ordinance Section 23B.34.050 Requirements Applicable to all Green Pathway Projects (summary)

All projects subject to the Green Pathway shall be subject to the following requirements:

A. At least twenty percent (20%) of the total units in any proposed multi-unit rental development shall be rented to very low income households whose annual income does not exceed 50 percent (50%) of the annual median income for Alameda County adjusted for household size based upon income levels published by the U.S. Department of Housing and Urban Development. Rents for these units shall be set at prices affordable to very low income households, as defined by Section 50053, of the California Health and Safety Code for the life of the project. As an alternative, an applicant may pay an in lieu fee to the Housing Trust Fund as established by Council.

C. The applicant shall sign an agreement that no less than thirty percent (30%) of a project's construction workers shall be Berkeley residents.

- 23B.34.060 Additional Green Pathway Requirements Applicable to Large Buildings and Hotels

In addition to the requirements of Section 23E.34.040, any Green Pathway project that includes either a hotel, a building over 75 feet in height, or a building with more than 100 units of housing, shall be subject to the following requirements:

- A. All construction workers shall be paid state prevailing wage as established by the California Department of Industrial Relations.
- B. To the extent that a sufficient number of qualified apprentices are reasonably available, no less than 16% of the construction workers shall be apprentices from a State Certified Apprenticeship program with a record of graduating apprentices.
- C. Employees in hotels with a height over 75 feet shall be paid prevailing wages as established by the Department of Industrial Relations for hotel employees. If the Department of Industrial Relations does not establish prevailing wages for hotel employees, such employees shall be paid wages consistent with area mean wages per occupational category.
- D. As a condition of approval for any Green Pathway subject to the requirements of this Section, the owner shall enter into a written agreement that shall be binding on all successors in interest.

Overriding Considerations High-density development is critical to attaining the wide variety of community benefits noted above, and the building heights and other features allowed by the DAP 2012 policies and implementing regulations are essential for high-density development under typical conditions. Therefore, the City Council finds that, based on the overriding considerations described above, the benefits of the DAP 2012 and implementing regulations outweigh the environmental impacts identified under any of the alternatives analyzed in the FEIR.

EXHIBIT B

MITIGATION MONITORING AND REPORTING PROGRAM
 Project Name: All (*) Responsibility: CoB (City of Berkeley)

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
<i>Aesthetics & Visual Quality</i>			
DAP MM AES-1: Conduct Site-Specific Visual Analysis for Buildings Proposed between Shattuck Avenue and Oxford Street. In order to reduce development-related impacts on existing views of the Berkeley Hills for observers traveling east along east-west streets in the Downtown Area, the City should require site-specific visual analysis for proposed buildings that have the potential to affect existing view corridors to determine the extent to which such structures may interfere with existing views of the Berkeley Hills, and should consider whether stepping back such buildings is feasible and would result in a substantial reduction in impact. <i>(Significant Unavoidable Impact¹)</i>	a) Has the project conducted site-specific visual analysis for buildings proposed between Shattuck Avenue and Oxford Street as required by the zoning and green pathway regulations, as applicable, in order to reduce development-related impacts on existing views of the Berkeley Hills? b) Has the project considered whether stepping back such buildings is feasible and would result in a substantial reduction in impact; have the plans been modified to reduce the impact to the satisfaction of the City?	CoB	P
DAP MM AES-2: Evaluate Shadow Effects for Proposed Structures near the Eastern Edge of the Downtown Area. The extent of the impact on the Crescent will depend on the location, height and bulk of structures to the southwest. While the impact may be significant, it is not possible to determine with any certainty the level of impact. Accordingly, all structures with a proposed height of 85 feet or more to be located within an area bounded by Addison Street on the north, Oxford Street on the east, Allston Way on the south, and Shattuck Avenue/Shattuck Square on the west shall be evaluated in a site-specific basis to determine the extent to which such buildings may cast shadows within the Crescent. Modifications to building heights, bulk or location should be considered as a way to reduce such shadowing. <i>(Significant Unavoidable Impact)</i>	a) Has the proposed structure with a proposed height of 85 feet or more located within an area bounded by Addison Street on the north, Oxford Street on the east, Allston Way on the south, and Shattuck Avenue/Shattuck Square on the west been evaluated in a site-specific basis to determine the extent to which it may cast shadows within the Crescent? b) Have modifications to building heights, bulk or location been considered as a way to reduce such shadowing; have the plans been modified to reduce the impact to the satisfaction of the City?	CoB	P

¹ When the Checklist indicates that Significant and Unavoidable Impacts shall be reduced or appropriately mitigated to the satisfaction of the City, it is recognized that while the impact may still be Significant and Unavoidable, the project meets the standards of the zoning ordinance and is otherwise acceptable.

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Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
Air Quality			
DAP MM AIR-1: None listed in draft DAP (<i>Significant Unavoidable Impact</i>) <u>Impact AIR-1:</u> Conflict with Clean Air Plan (CAP). Development anticipated under the Downtown Area Plan would increase population and employment at a greater rate than assumed when preparing the latest update to the CAP. This could lead to greater regional emissions of nonattainment air pollutants (or their precursors) than assumed in the CAP.	N/A		
DAP MM AIR-2: Buffer Toxics Air Contaminants (TAC) and Odor Emission Sources and Sensitive Land Uses. Consider potential air pollution and odor impacts from future development that may emit pollution and/or odors when locating (a) air pollution sources, and (b) residential and other pollution-sensitive land-uses in the vicinity of air pollution sources (which may include areas where buses idle, diesel generators, parking garage vents, restaurants, and other similar uses). Buffer sensitive residential and other pollution-sensitive receptors from TACs whenever possible, and if buffering is not feasible, apply appropriate mitigation to reduce impacts, such as air filtration systems or other technologies. (<i>Significant Unavoidable Impact</i>)	<p>a) Have the potential impacts on surrounding uses been considered when a project that may emit pollution and/or odors, including but not limited to restaurants, parking garage vents and diesel generators, is proposed?</p> <p>b) Has the project taken into consideration potential air pollution and odor impacts, including but not limited to restaurants, parking garage vents and diesel generators, when locating residential and other pollution-sensitive land users in the vicinity of air pollution sources?</p> <p>c) If buffering is not feasible, have appropriate mitigation measures been incorporated into the project to reduce the impact on sensitive receptors?</p>	CoB	P
DAP MM AIR-3: Implement BAAQMD Recommended Measures to Control PM10 Emissions during Construction. Measures to reduce diesel particulate matter and PM10 from construction are recommended to ensure that short-term health impacts to nearby sensitive receptors are avoided. <u>Dust (PM10) Control Measures:</u> <ul style="list-style-type: none"> Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times. Cover all hauling trucks or maintain at least two feet of freeboard. Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more). Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles. Limit traffic speeds on any unpaved roads to 15 mph. Replant vegetation in disturbed areas as quickly as possible. Suspend construction activities that cause visible dust plumes to extend beyond the construction site. 	Do conditions of approval, if applicable, and construction plans or related agreements require that the specified BAAQMD recommended measures to control particulate matter PM (10) and diesel emissions during construction will be implemented?	CoB	P W C

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Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
Measures to Reduce Diesel Particulate Matter and PM2.5			
<ul style="list-style-type: none"> Clear signage at all construction sites will be posted indicating that diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite or adjacent to the construction site. Opacity is an indicator of exhaust particulate emissions from off-road diesel powered equipment. The project shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately. The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g. compressors). Properly tune and maintain equipment for low emissions. 			
<i>(Impact Avoided or Mitigated to a Less Than Significant Level)</i>			
Cultural & Historic Resources			
DAP MM CUL-1: None listed in draft DAP (<i>Significant Unavoidable Impact</i>)	N/A		
<p><u>Impact CUL-1:</u> Demolition of Historic Resources. Despite the substantial protections in place in City policy, it is possible that development anticipated under the Project could result in the demolition of historic resources located within the Downtown Area. Were demolition of historic resources to occur, this would represent a significant and unavoidable impact associated with the Project.</p>			
DAP MM CUL-2: Establish Parameters for Compatible Infill Development in the Downtown Area within Updated Design Guidelines. Using the Secretary of the Interior's "Standards" as a starting point (in compliance with DAP Policy HD-1-1a), the Design Guidelines for future development in the Downtown Area should be updated to ensure that new construction respects the authentic character, significance and integrity of the existing building stock in areas that may have the potential for designation as historic districts. Specific guidelines that could be added for this purpose include, but are not limited to, the following:	<p>a) Do the approved Downtown Design Guidelines address the suggested issues to ensure that new construction respects the authentic character, significance and integrity of the existing building stock in areas that may have the potential for designation as historic districts?</p> <p>b) Is the proposed project consistent with the Guidelines and mitigation?</p>	CoB	P
<ul style="list-style-type: none"> Consider the difference in character of individual blocks. The scale of buildings change within the potential historic district(s) and new construction should reflect the appropriate scale per block. Priorities for new construction and additions include: build-to-the-street, particularly at corners; construct infill buildings at vacant or underutilized sites along major streets; and modify non-historic buildings so that they contribute visual interest and quality. Construct new buildings, of compatible design with the surrounding neighborhood. 			

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Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
<ul style="list-style-type: none"> ● Encourage creative and innovative contemporary designs for new buildings in the downtown. ● Streetscape plays an important role in drawing individuals to a particular area of the city. Use signage, lighting, and paving to improve the pedestrian experience. ● Build consistently with the street wall, particularly at corner sites. Continue dominant rhythms for structural bays, bay windows, large pilasters, and other repeating vertical elements. Also, continue dominant cornice lines, such as between ground floors and upper stories, and at the top of facades that meet a street. ● Design new buildings to respond to the existing building context within a block, and provide continuity to the overall streetscape. Frequently, a new building will be inserted on a site between two existing buildings of disparate scale and design. ● Set back upper floors where taller buildings are permitted, so that dominant roof and cornice lines remain generally consistent in the Downtown, as seen from the street. ● Explore options for multi-use buildings, combining residential, commercial, and other compatible uses where appropriate. ● Provide multi-tenant retail space and other active publicly-accessible uses at the street level. These should be accessible directly from the sidewalk, rather than through common interior lobbies. ● Provide easy-to-locate building entrances on all street-facing facades. Where a building extends through an entire block or is located at a corner, connect its entrances with signage and lighting to distinguish them from storefronts ● Use vertically proportioned windows. Group such windows in sets where a horizontally proportioned window opening is desired, especially for the expression of structural bays. <p><i>(Impact Avoided or Mitigated to a Less Than Significant Level)</i></p>	<p>a) Do conditions of approval, if applicable, and construction plans or related agreements require conformance with the mitigation measure?</p> <p>b) Have archaeological resources been uncovered during construction activities? If yes:</p> <ul style="list-style-type: none"> - Has all work within 50 feet of the discovery been redirected until a qualified archaeologist could be contacted to evaluate the situation, determine if the deposit qualifies as an archaeological resource, and provide recommendations? - If the deposit does qualify as an archaeological resource, have impacts to the deposit been avoided or mitigated by project activities? - Was the archaeologist's assessment or report documenting the methods, findings and recommendations been prepared and submitted to the City, the project proponent and NWIC? 	CoB	W C

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Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
<p>DAP MM CUL-4: Halt Work/Paleontological Evaluation/Site-Specific Mitigation. Should paleontological resources be encountered during construction or site preparation activities, such works shall be halted in the vicinity of the find. A qualified paleontologist shall be contacted to evaluate the nature of the find and determine if mitigation is necessary. All feasible recommendations of the paleontologist shall be implemented. Mitigation may include, but is not limited to, in-field documentation and recovery of specimen(s), laboratory analysis, the preparation of a report detailing the methods and findings of the investigation, and curation at an appropriate paleontological collection facility.</p> <p><i>(Impact Avoided or Mitigated to a Less Than Significant Level)</i></p>	<p>a) Do conditions of approval, if applicable, and construction plans or related agreements require conformance with mitigation measures?</p> <p>b) Was work halted if paleontological resources were discovered during construction? If yes:</p> <ul style="list-style-type: none"> - was a qualified paleontologist contacted to evaluate the find and determine if further mitigation is necessary? - If mitigations were deemed necessary by the paleontologist, were all feasible measures implemented? 	CoB	W C
<p>DAP MM CUL-5: Halt Work/Coroner's Evaluation/Native American Heritage Consultation/Compliance with Most Likely Descendent Recommendations. If human remains are encountered during construction activities, all work within 50 feet of the remains should be redirected and the County Coroner notified immediately. At the same time, an archaeologist shall be contacted to assess the situation. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and any associated grave goods. The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion of the archaeologist's assessment, a report should be prepared documenting methods and results, as well as recommendations regarding the treatment of the human remains and any associated archaeological materials. The report should be submitted to the City, the project proponent and the NWIC.</p> <p><i>(Impact Avoided or Mitigated to a Less Than Significant Level)</i></p>	<p>a) Do conditions of approval, if applicable, and construction plans or related agreements require conformance with mitigation measures?</p> <p>b) Was work halted if any human remains were found at the construction site? If yes:</p> <ul style="list-style-type: none"> - was the county coroner notified immediately and an archaeologist contacted to assess the situation? - If the human remains were of Native American origin, was an archaeologist's report prepared and submitted to the City, the Project Proponent and the NWIC? 	CoB	W C

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MITIGATION MONITORING AND REPORTING PROGRAM

Project Name: All (*) Responsibility: CoB (City of Berkeley)

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
Noise			
<p>DAP MM NOI-1: Site-Specific Noise Studies, Site Planning, Noise Control Treatments. Future residential units proposed under the DAP would be exposed to outdoor noise levels in excess of 60 L_{dn} and indoor levels in excess of 45 L_{dn}, which would exceed the City's and state's established land use compatibility thresholds. In areas where residential development would be exposed to an L_{dn} of greater than 60 dBA, site-specific noise studies should be conducted to determine the area of impact and to present appropriate mitigation measures, which may include the following:</p> <ul style="list-style-type: none"> Utilize site planning to minimize noise in shared residential outdoor activity areas by locating these areas behind the buildings, in courtyards, or orienting the terraces to alleyways rather than streets, whenever possible. The California Building Code and the City of Berkeley require project-specific acoustical analyses to achieve interior noise levels of 45 dBA L_{dn} or lower in residential units exposed to exterior noise levels greater than 60 dBA L_{dn}. Building sound insulation requirements would need to include the provision of forced-air mechanical ventilation in noise environments exceeding 70 dBA L_{dn} so that windows could be kept closed at the occupant's discretion to control noise. Special building construction techniques (e.g., sound-rated windows and building facade treatments) may be required where exterior noise levels exceed 65 dBA L_{dn}. These treatments include, but are not limited to, sound rated windows and doors, sound rated exterior wall assemblies, acoustical caulking, etc. The specific determination of what treatments are necessary will be conducted on a unit-by-unit basis during project design. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City along with the building plans and approved prior to issuance of a building permit. <p>Feasible construction techniques such as these would adequately reduce interior noise levels to 45 dBA L_{dn} or lower. <i>(Significant Unavoidable Impact)</i></p>	<p>In areas where residential development would be exposed to L_{dn} exceeding 60 dBA, were site specific noise studies conducted to determine the area of impact and to present mitigation measures, and were appropriate mitigation measures incorporated into the proposed project to reduce noise levels?</p>	CoB	P W
<p>DAP MM NOI-2: Site-Specific Noise Studies, Activities Scheduling. The following measures should be implemented to reduce noise exposure of Downtown Area residents to noise associated with nearby commercial activities:</p> <ul style="list-style-type: none"> Noise levels at residential property lines from commercial development should be maintained not in excess of the Berkeley Municipal Code Limits. The approvals of the commercial development should require a noise study demonstrating how the business (including loading docks, refuse areas, and ventilation systems) would meet, and be consistent with, the City's noise standards. Ensure that noise-generating activities, such as maintenance activities and loading and unloading activities are limited to the hours of 7:00 AM to 9:00 PM. <p><i>(Impact Avoided or Mitigated to a Less Than Significant Level)</i></p>	<p>a) As needed, have proposed commercial projects provided a noise study demonstrating how the business (including loading docks, refuse areas, and ventilation systems) would meet the City's noise standards?</p> <p>b) Are noise levels at residential property lines from commercial development maintained so as not to exceed Berkeley Municipal Code limits?</p> <p>c) Have noise generating activities, such as maintenance, refuse collection and loading dock functions been limited to the hours of 7:00 AM to 9:00 PM?</p>	CoB	P O

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Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
<p>DAP MM NOI-3: Site-Specific Noise Analysis, Noise Barriers, Pavement Modifications, Traffic Calming, Sound Insulation. Where anticipated noise levels would exceed City of Berkeley standards for interior noise, methods available to mitigate Project-related noise level increases would need to be studied on a case-by-case basis as individual development projects are proposed at receivers that would be considered noise impacted along Shattuck Avenue between University Avenue and Allston Way, and along Allston Way between Shattuck Avenue and Oxford Street. Since these increases in noise levels are related to the closure of Center Street and the elimination of travel lanes on Shattuck Avenue assumed under the DAP, retaining existing travel lane configurations in the Downtown Area street network would reduce this impact to a level of less than significant. The Project no longer includes reduction of lanes on Shattuck to one through lane in each direction.</p> <p>However, closure of Center Street is included in the DAP 2012 (see Figure AC-3). If the proposed Center Street modification takes place, additional noise reduction methods could include the following:</p> <ul style="list-style-type: none"> • Installing traffic calming measures to slow traffic. Typically, each 5 mph reduction in travel speeds equates to 1 dBA of noise reduction. • Affected residences could be provided building sound insulation such as sound-rated windows and doors on a case-by-case basis as a method of reducing noise levels in interior spaces. <p><i>(Significant Unavoidable Impact)</i></p>	<p>If Center Street is closed and noise levels along Shattuck Avenue between University Avenue and Allston Way, and along Allston Way between Shattuck Avenue and Oxford Street are expected to exceed COB standards for interior noise, have impacts been studied and mitigations provided to reduce noise levels?</p>	CoB	P W C
<p>DAP MM NOI-4: Site-Specific Noise Analysis, Noise Barriers, Pavement Modifications, Traffic Calming, Sound Insulation. Where anticipated noise levels would exceed City of Berkeley standards for interior noise, methods available to mitigate Project-related noise level increases would need to be studied on a case-by-case basis as individual development projects are proposed at receivers that would be considered noise impacted along Shattuck Avenue between University Avenue and Allston Way, along Allston Way between Shattuck Avenue and Oxford Street, and along Durant Avenue between Milvia Street and Shattuck Avenue. Since these increases in noise levels are related to the closure of Center Street and the elimination of travel lanes on Shattuck Avenue assumed in the EIR, retaining existing travel lane configurations in the Downtown Area street network would reduce this impact to a level of less than significant. The DAP 2012 no longer includes reducing Shattuck to one through lane in each direction; however, it does include the potential closure of Center Street to most traffic. At the time a proposed project for closing Center Street is developed, noise reduction methods could include the following:</p> <ul style="list-style-type: none"> • Installing traffic calming measures to slow traffic. Typically, each 5 mph reduction in travel speeds equates to 1 dBA of noise reduction. • Affected residences could be provided building sound insulation such as sound-rated windows and doors on a case-by-case basis as a method of reducing noise levels in interior spaces. <p><i>(Significant Unavoidable Impact)</i></p>	<p>If Center Street is closed and noise levels along Shattuck Avenue between University Avenue and Allston Way, along Allston Way between Shattuck Avenue and Oxford Street, and along Durant Avenue between Milvia Street and Shattuck Avenue are expected to exceed COB standards for interior noise, have impacts been studied and mitigations provided to reduce noise levels?</p>	CoB	P W C

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Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
<p>DAP MM NOI-5: Develop Site-Specific Noise Reduction Programs and Implement Noise Abatement Measures during Construction. Prior to the issuance of building permits, 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 appropriate times/limits for construction (7 AM to 7 PM on weekdays and between the hours of 9:00 AM and 8:00 PM on weekends or holidays) as well as technically and economically feasible controls to meet the requirements of the Berkeley Municipal Code. 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.</p> <ul style="list-style-type: none"> • Construction equipment should be well maintained and used judiciously to be as quiet as practical. • Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment. • 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. • 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. • Prohibit unnecessary idling of internal combustion engines. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile. • 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. • 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. • Route construction related traffic along major roadways and away from sensitive receptors where feasible. • Businesses, residences or other noise-sensitive land uses within 500 feet of construction sites should be notified of the construction schedule in writing prior to the beginning of construction. Designate a "construction liaison" that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the liaison at the construction site. <p><i>(Significant Unavoidable Impact)</i></p>	<p>a) Do conditions of approval, if applicable, and construction plans or related agreements require conformance with mitigation measures, including provision of a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts?</p> <p>b) Has a construction liaison been identified to address local complaints?</p>	CoB	W C

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Project Name: All (*) Responsibility: CoB (City of Berkeley)

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
<p>DAP MM NOI-6 Avoidance of Pile-Driving/Site-Specific Vibration Studies/Monitoring/Contingency Planning. The following measures are recommended to reduce vibration from construction activities:</p> <ul style="list-style-type: none"> Avoid impact pile-driving where possible. Drilled piles causes lower vibration levels where geological conditions permit their use. Avoid using vibratory rollers and tampers near sensitive areas. In areas where project construction is anticipated to include vibration-generating activities, such as pile-driving in close proximity to existing structures, site-specific vibration studies should be conducted to determine the area of impact and to present appropriate mitigation measures that may include the following: <ul style="list-style-type: none"> Identification of sites that would include vibration compaction activities such as pile-driving and that have the potential to generate groundborne vibration, and the sensitivity of nearby structures to groundborne vibration. Vibration limits should be applied to all vibration-sensitive structures located within 200 feet of the project. A qualified structural engineer should conduct this task. Development of a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies would be identified for when vibration levels approached the limits. At a minimum, vibration monitoring should be conducted during initial demolition activities and during pile driving activities. Monitoring results may indicate the need for more or less intensive measurements. When vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures. Conduct post-survey on structures where either monitoring has indicated high levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. <p><i>(Significant Unavoidable Impact)</i></p>	<p>a) Does the project avoid the use of pile driving?</p> <p>b) Does the project avoid the use of vibratory rollers and tampers near sensitive areas?</p> <p>c) In areas where vibration inducing activities cannot be avoided, has a site specific vibration study been conducted to present appropriate mitigation measures and have mitigations been provided to minimize impacts to the satisfaction of the City?</p>	CoB	W C

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EXHIBIT B

MITIGATION MONITORING AND REPORTING PROGRAM

Project Name: All (*) Responsibility: CoB (City of Berkeley)

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
Transportation & Traffic			
DAP MM TRA-1: Modify Lane Configuration at Martin Luther King Jr. Way/Hearst Avenue Intersection. A lane should be added for left turns in the westbound direction, changing the right lane to throughright. Implementation of this mitigation would still result in LOS F in the PM peak hour, but delay would be reduced to 131.2s, eliminating the significant DAP-related impact. The implementation of this mitigation measure requires re-striping of Hearst Avenue east of Martin Luther King Jr. Way to accommodate the new lane, eliminating the bike lane in part of the block; or the acquisition of additional right-of-way on this segment of Hearst Avenue to accommodate the new lane and maintain the bike lane. This measure is not anticipated to cause significant impacts to pedestrian traffic. <i>(Significant Unavoidable Impact)</i>	Has lane reconfiguration been implemented at MLK and Hearst Ave intersection? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City?	CoB	O
DAP MM TRA-10: Modify Lane Configurations at Oxford Street/University Avenue Intersection. The existing eastbound lane configuration should be maintained. This mitigation measure will result in change of LOS to D in the AM peak hour, with delay of 40.2s. Proposed lane reduction on University could be maintained west of the intersection. The implementation of this mitigation measure requires the maintenance of the eastbound lane configuration. This measure is not anticipated to cause significant impacts to pedestrian traffic. <i>(Significant Unavoidable Impact)</i>	Has lane reconfiguration been implemented at University Ave. and Oxford St. intersection? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City?	CoB	O
DAP MM TRA-11: Modify Lane Configurations at Oxford Street/Allston Way Intersection and Alter Signal Cycle Timing. One lane should be added in the southbound direction, changing the lane configuration to two through and one right turn lane. One lane should be added to the northbound direction, changing the configuration to one left turn and two through lanes. One lane should be added in the eastbound direction, changing the configuration to one left turn lane and one right turn lane. Cycle length should be increased to 25s and to provide a protected left turn signal phase in the northbound direction. This mitigation measure would result in change of LOS to C in the Pm peak hour, with delay of 33.6s. On Oxford Street, the implementation of this mitigation measure would require the removal of 5 of the parking spaces in the southbound direction and the restriping of the segment in the block north of Allston Way. In the northbound direction there is the need to use the median space, as well as re-stripe the roadway. On Allston Way, the addition of the extra lane would require the loss of 4 on-street parking spaces on the south side of the street, as well as re-striping. This measure is not anticipated to cause significant impacts to pedestrian traffic. The loss of onstreet parking spaces on Oxford Street and Allston Way is not anticipated to generate significant impacts. <i>(Significant Unavoidable Impact)</i>	a) Has lane reconfiguration been implemented at Oxford St. and Allston Way intersection? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City? b) Has signal cycle timing been altered to meet LOS level standards?	CoB	O

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EXHIBIT B

MITIGATION MONITORING AND REPORTING PROGRAM

Project Name: All (*) Responsibility: CoB (City of Berkeley)

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
DAP MM TRA-13: Incorporate Emergency Access Lane in Design for Center Street Pedestrian Corridor. In order to maintain adequate emergency access to buildings located along Center Street between Shattuck Avenue and Oxford Street, the design of the proposed Center Street pedestrian corridor shall be required to incorporate a clear area, a minimum of 20 feet in width, where permanent and temporary structures, landscaping, and other physical features are prohibited. This area shall be designated as an emergency access lane, and must be accessible from both Shattuck Avenue and Oxford Street. <i>(Impact Avoided or Mitigated to a Less Than Significant Level)</i>	Have emergency access lanes been incorporated in the design for the Center St. pedestrian corridor?	CoB	O
DAP MM TRA-14a: Install Class 2 Bike Lanes on Milvia Street between University Avenue and Allston Way. This mitigation measure may result in the loss of on-street parking stalls along Milvia Street in order to accommodate the bike lanes. Up to 35 on-street parking stalls could be impacted by this mitigation measure. As noted in the parking demand discussion, sufficient public parking capacity is anticipated in the Year 2030 With Project condition, so the loss of these parking stalls would not be anticipated to cause a significant impact. This mitigation measure would also not preclude the implementation of the traffic mitigation measures at the University Avenue/Milvia Street intersection and the Center Street/Milvia Street intersection. <i>(Significant Unavoidable Impact)</i>	Have Class 2 bike lanes been installed on Milvia St between University Ave. and Allston Way? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City?	CoB	O
DAP MM TRA-14b: Install Traffic Calming Devices. Traffic calming devices should be installed on Milvia Street either between University Avenue and Allston Way or immediately north and south of this segment to discourage through vehicle traffic from traveling on this section of the roadway. Traffic calming devices could include speed humps, turn restrictions/prohibitions, or other measures determined by the City of Berkeley. <i>(Significant Unavoidable Impact)</i>	Have traffic calming devices been installed on Milvia St. between University Ave and Allston Way to discourage through traffic? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City?	CoB	O
DAP MM TRA-2: Modify Lane Configuration at Martin Luther King Jr. Way/Allston Way Intersection. The eastbound lane configuration should be changed, turning the existing through-left lane to left turn only and the right lane to a throughright. A right turn lane to Martin Luther King Jr. Way in the southbound direction should be added, changing the through-right lane to through only. This mitigation measure would result in changing the LOS to D, with delay of 49.8s. The implementation of this mitigation measure requires re-striping of Allston Way west of Martin Luther King Jr. Way to accommodate the lane changes, and the acquisition of right-of-way north of Allston Way to accommodate the southbound right turn lane. This measure is not anticipated to cause significant impacts to pedestrian traffic. <i>(Significant Unavoidable Impact)</i>	Has lane reconfiguration been implemented at MLK and Allston Way Intersection? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City?	CoB	O

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EXHIBIT B

MITIGATION MONITORING AND REPORTING PROGRAM

Project Name: All (*) Responsibility: CoB (City of Berkeley)

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
DAP MM TRA-3: Modify Lane Configuration at Milvia Street/University Avenue Intersection. A right turn lane should be added to University Avenue to the eastbound direction and one left turn lane should be added to University Avenue in the westbound direction. In the eastbound direction, the configuration of lanes would be one through-left lane, one through and one right turn lane. In the westbound direction, the configuration of lanes would be one left turn lane, one through lane and one through-right lane. This mitigation measure would change LOS to B, with delay of 14.9s in the AM peak hour, and to LOS C with delay of 25.8s in the PM peak hour. The implementation of this mitigation measure requires the removal of the median east of the intersection in order to accommodate the extra lane, and the restriping of University Avenue on both sides of Milvia Street. This measure is not anticipated to cause significant impacts to pedestrian traffic, but a right turn on green only with an advance stop bar can be implemented on University Avenue to avoid conflicts with pedestrians crossing Milvia Street. This measure would increase pedestrian safety and does not change the LOS of the intersection. The implementation of a bicycle waiting area placed ahead of the cars waiting to turn right can reduce the conflicts through bicycle flows and right-turn vehicle movements on Milvia Street in the southbound direction. This measure requires restriping of Milvia Street. <i>(Significant Unavoidable Impact)</i>	Has lane reconfiguration been implemented at Milvia St. and University Ave. intersection? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City?	CoB	O
DAP MM TRA-4: Modify Lane Configuration at Milvia Street/Center Street Intersection. One left turn lane should be added to Milvia Street in the northbound and southbound directions, changing the lane configuration to one through-right and one left turn lane. This mitigation measure would result in change of LOS to C, with delay of 24.0s in the PM peak hour. The implementation of this mitigation measure requires the removal of onstreet parking spaces in the northbound and southbound directions to accommodate the left turn, and the re-striping of Milvia Street on both sides of Center Street. This measure is not anticipated to cause significant impacts to pedestrian traffic. Milvia Street would remain a Bicycle Boulevard and sufficient traffic lane width would be provided for bicycles and vehicles to make through movements at this intersection. This improvement would result in the loss of about eight on-street parking spaces, but is not anticipated to generate significant impact with regard to parking. <i>(Significant Unavoidable Impact)</i>	Has lane reconfiguration been implemented at Milvia St. and Center St. intersection? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City?	CoB	O

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EXHIBIT B

MITIGATION MONITORING AND REPORTING PROGRAM

Project Name: All (*) Responsibility: CoB (City of Berkeley)

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
DAP MM TRA-5: Modify Lane Configuration at Shattuck Avenue/Center Street. The significant impact at this intersection can only be mitigated by restoring Shattuck Avenue to provide two traffic lanes in the northbound direction. The proposed mitigation measure would add one lane to Shattuck Avenue in the northbound direction, changing lane configuration to one left turn lane and two through lanes. This mitigation measure would result in change of LOS to D, with delay of 42.6s in the PM peak hour. The implementation of this mitigation measure would require the removal of the parking spaces in the northbound direction of Shattuck Avenue, the reconfiguration of the southeast sidewalk, and the re-striping of Shattuck Avenue in the block south of Center Street. This improvement would result in the loss of about eight on-street parking spaces, but is not anticipated to generate significant impact with regard to parking. <i>(Impact Avoided or Mitigated to a Less Than Significant Level)</i>	Has lane reconfiguration been implemented at Shattuck Ave. and Center St. intersection? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City?	CoB	O
DAP MM TRA-6: Modify Lane Configurations at Shattuck Avenue/Allston Way Intersection. The existing number of lanes (three) in the northbound and southbound directions should be maintained, changing lane configurations to one left turn lane, one through lane and one right turn lane. One right turn lane should be added to the westbound direction, changing the existing lane to a through-left only. This mitigation measure would change the forecast LOS to D, with delay of 37.6s in the PM peak hour. The proposed mitigation measure would maintain the single through lane concept of the Shattuck Boulevard plan, but would widen the street cross section by providing a right turn lane in the northbound and southbound directions. On Allston Way, the implementation of the proposed mitigation measure requires the removal of on-street parking to accommodate the new lane configuration. This measure is not anticipated to cause significant impacts to pedestrian traffic. The anticipated loss of six on-street parking spaces on Alston Way and none spaces on Shattuck Avenue is not expected to generate significant impacts. <i>(Significant Unavoidable Impact)</i>	Has lane reconfiguration been implemented at Shattuck Ave and Allston Way intersection? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City?	CoB	O
DAP MM TRA-7: Modify Lane Configurations at Shattuck Avenue/ Bancroft Way Intersection. The existing number of lanes in the southbound direction should be maintained, changing lane configuration to one through lane and one through-right lane. This mitigation measure would result in change of LOS to D, with delay of 37.6s in the PM peak hour. The proposed mitigation measure would not maintain the single through concept of the Shattuck Boulevard plan. On Shattuck Avenue, the implementation of this mitigation measure would require the reconfiguration of the parking spaces and sidewalk in the southbound direction and the restriping of the segment of the block north of Bancroft Way. This measure is not anticipated to cause significant impacts to pedestrian traffic. <i>(Impact Avoided or Mitigated to a Less Than Significant Level)</i>	Has lane reconfiguration been implemented at Shattuck Ave and Bancroft Way intersection? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City?	CoB	O

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EXHIBIT B

MITIGATION MONITORING AND REPORTING PROGRAM

Project Name: All (*) Responsibility: CoB (City of Berkeley)

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
DAP MM TRA-8: Modify Lane Configurations at Shattuck Avenue/Durant Avenue Intersection. The existing number of lanes in the northbound direction should be maintained, changing the lane configuration to one left turn lane, one through and one right turn lane. This mitigation measure will result in change of LOS to B in the AM peak hour (17.8s delay). LOS C is achieved in the PM peak hour (21.6s delay) applying the mitigation measures described above plus a20s increase in cycle time. On Shattuck Avenue, the implementation of this mitigation measure would require the reconfiguration of the parking spaces and sidewalk in the northbound direction and the re-striping of the segment in the block south of Durant Avenue. This measure is not anticipated to cause significant impacts to pedestrian traffic. <i>(Impact Avoided or Mitigated to a Less Than Significant Level)</i>	Has lane reconfiguration been implemented at Shattuck Ave. and Durant Ave intersection? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City?	CoB	O
DAP MM TRA-9: Maintain Existing Lane Geometry in the Westbound Direction. The DAP-proposed lane reduction on Hearst Avenue would be maintained to the west of the intersection, with the lane reduction occurring in a transition to the west of the intersection. Add one lane in southbound direction, changing lane configuration to one left-turn, one through and one through-right lane. Change the eastbound direction lane configuration to one through-left lane one through-right lane. Maintain split signal phasing for eastbound and westbound directions. Add a right turn only lane to the northbound direction and provide right turn overlap signal phasing for this movement. The right turn only lane would not be a free-right turn, but a striped, exclusive right turn lane adjacent to the northbound through lanes. Change northbound and southbound signal phasing to protected + permitted for left turns. This mitigation measure would change LOS to D in the AM peak hour (54.9 seconds delay). In the PM peak hour, the 2030 LOS is improved to LOS D, with delay reduced from 166.4 seconds With Project to 54.4 seconds. On Oxford Street, the implementation of this mitigation measure requires the removal of seven parking spaces in the southbound direction and the re-striping of the segment in the block north of Hearst Avenue. On Hearst Avenue, existing configuration should be maintained in both directions. This measure is not anticipated to cause significant impacts to pedestrian traffic. The loss of on-street parking spaces on Oxford is not anticipated to generate significant impacts. <i>(Significant Unavoidable Impact)</i>	<p>a) Has lane reconfiguration been implemented at Oxford St. and Hearst Ave. intersection? If not, has the project proponent contributed to such improvement and/or have other measures been taken to mitigate the traffic impact to the satisfaction of the City?</p> <p>b) Has signal cycle timing been adjusted to meet LOS AM and PM peak hour targets?</p>	CoB	O

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EXHIBIT B

MITIGATION MONITORING AND REPORTING PROGRAM

Project Name: All (*) Responsibility: CoB (City of Berkeley)

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
<i>Utilities & Service Systems</i>			
DAP MM USS-1: Site-Specific Analysis of Project-Related Effects on the Sanitary Sewer conveyance System/Project-Related Contribution to Necessary Capacity Expansion. As individual development projects are proposed in the Downtown Area, each project will be subject to site-specific analysis by the City of Berkeley to determine whether the development proposed would exceed the capacity of the sanitary sewer conveyance system that directly serves the project. In the event that existing sanitary sewer modeling demonstrates that sanitary sewer conveyance system capacity would be exceeded by the proposed project, then the project proponents and the City shall enter into negotiations to determine the financial contribution required from the project proponents to enable the City to expand sanitary sewer conveyance capacity as necessary to accommodate the project as proposed. <i>(Impact Avoided or Mitigated to a Less Than Significant Level)</i>	a) Has a project/site specific analysis been conducted to determine whether the project would exceed the sanitary sewer system capacity that directly serves the project?	CoB	P W
	b) If modeling demonstrates that sewer capacity will be exceeded, have negotiations between the project proponents and City been held to determine the financial contribution necessary to expand the sewer system to accommodate the project, and have fair-share contributions been provided by the proponent?		

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2037 DURANT AVE

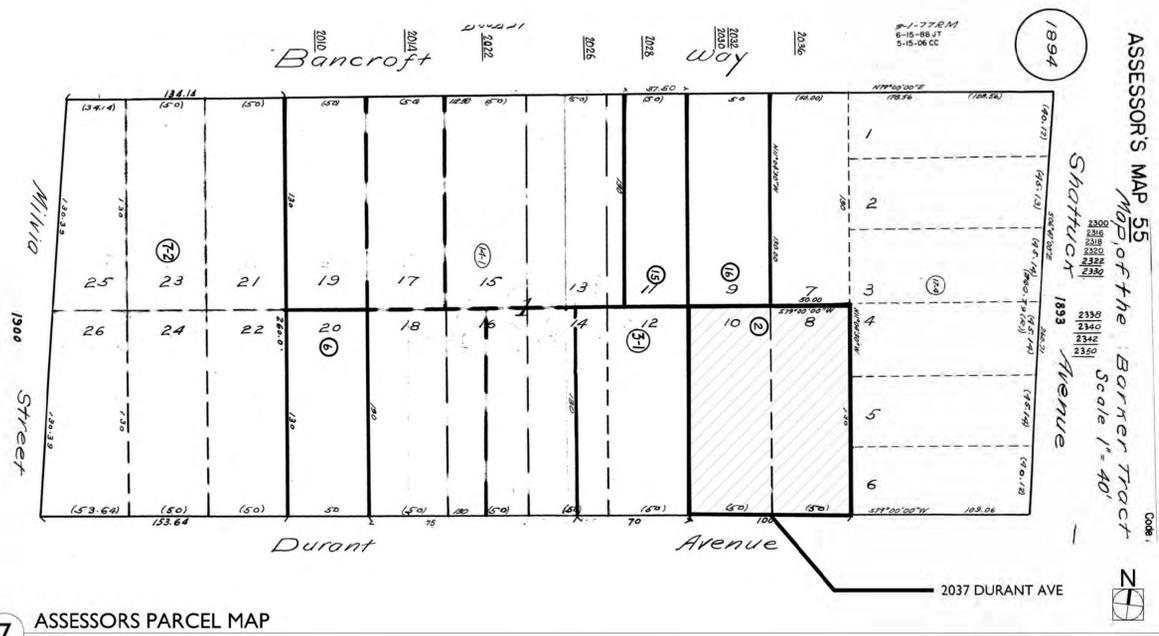
BERKELEY, CALIFORNIA 94704



NEW MULTI-FAMILY MIXED-USE AT 2037 DURANT AVE, BERKELEY, CA 94704



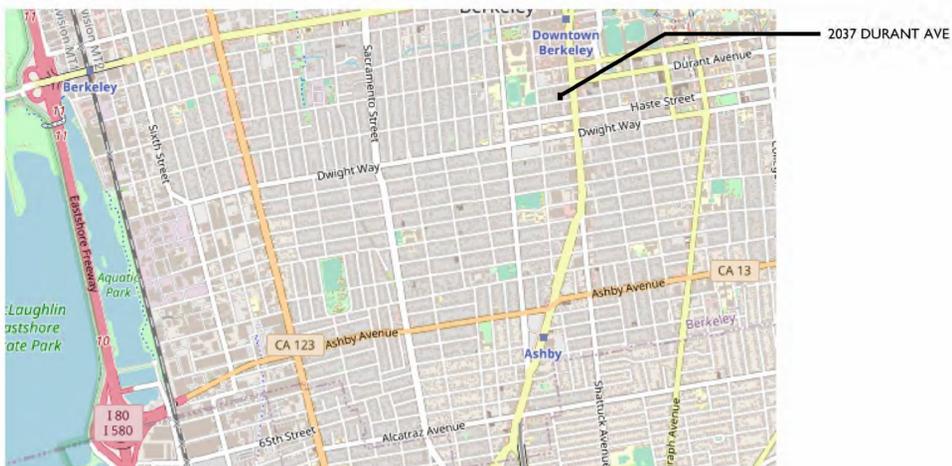
THE SITE'S REDEVELOPMENT WILL INCLUDE THE DEMOLITION OF THE EXISTING HUSTEAD'S AUTO BODY SHOP, A 1 STORY 13,000 SF COMMERCIAL BUILDING TO ALLOW DEVELOPMENT OF A NEW 8 STORY, 75,373 SF MULTI-FAMILY MIXED-USE BUILDING. WE PROPOSE A ±1,552 SF RETAIL SPACE AT THE GROUND FLOOR WITH 74 UNITS OF MULTI-FAMILY STUDENT RENTAL HOUSING. THE GROUND FLOOR WILL INCLUDE COMMERCIAL SPACE AS WELL AS A GENEROUS RESIDENTIAL LOBBY, 4 RENTAL UNITS, INTERIOR BIKE STORAGE, AND UTILITY SPACES ACCESSED FROM DURANT AVENUE. THE 74 RESIDENTIAL UNITS ARE A MIX OF 2 AND 3 BEDROOM UNITS WITH GENEROUS KITCHEN/DINING/LIVING ROOM AREAS. IN ADDITION, THERE IS A COMMON USABLE OPEN SPACE PATIO AREA AT GRADE, A COMMON OUTDOOR DECK AT THE 4TH FLOOR AND COMMON OUTDOOR BALCONIES AT THE 5TH THROUGH 8TH FLOORS.



7 ASSESSORS PARCEL MAP
N.T.S.



6 LOCATION MAP
N.T.S.



5 VICINITY MAP
N.T.S.

4 PROJECT DESCRIPTION

OWNERS:
JANICE YI LEE
janiceyilee@gmail.com
JONATHAN YI
jonathan@husteads.com

1624 CAMPESINO CT.
ALAMO, CA 94507
TEL: (510) 209-4738

HISTORIC REPORT:
LEFT COAST
ARCHITECTURAL HISTORY
P.O. BOX 70415
RICHMOND, CA 94807

TEL: (415) 745-1906
CAITLIN HIBMA
caitlin@leftcoastarchitecturalhistory.com

LANDSCAPE:
GARDEN ARCHITECTURE
931 PARDEE ST.
BERKELEY, CA 94710

TEL: (510) 525-9517
TERESA KENNEDY
teresa@gardenarchitecture.org

CIVIL/TOPO:
GREENWOOD & MOORE, INC.
3111 CASTRO VALLEY BLVD
SUITE 200
CASTRO VALLEY, CA 94546

TEL: (510) 581-2772
BRIAN DORWARD
bdoward@greenwoodmoore.com

ARCHITECT:
STUDIO KDA
1810 6TH ST.
BERKELEY, CA 94710

TEL: (510) 841-3555
FAX: (510) 841-1225
KIM FISHER
kim@studiokda.com

CHARLES KAHN
charles@studiokda.com

BRETT SPENCER
brett@studiokda.com

3 PROJECT TEAM

APPLICABLE BUILDING CODE REGULATIONS:

- 2022 CALIFORNIA BUILDING CODE (CBC)
- 2022 CALIFORNIA FIRE CODE (CFC)
- 2022 CALIFORNIA MECHANICAL CODE (CMC)
- 2022 CALIFORNIA ELECTRICAL CODE (CEC)
- 2022 CALIFORNIA PLUMBING CODE (CPC)
- 2022 CALIFORNIA ENERGY CODE (CBEES)
- 2022 CALGREEN

WHEN APPLICABLE FOR DEFERRED SUBMITTALS:
SPRINKLER SYSTEM: NFPA 13
FIRE ALARM SYSTEM: NFPA 72

2 BUILDING CODE INFORMATION

SHEET NUMBER	SHEET TITLE	01/20/23 SB330 APP.	05/01/23 ENTITLEMENT APP.	09/18/23 REV 01	10/31/23 REV 02
GENERAL SHEETS					
G000	TITLE SHEET	•	•	•	•
G001	ZONING CODE INFORMATION	•	•	•	•
G002	STREET CONTEXT PHOTOS	•	•	•	•
G003	STREET ELEVATION RENDERINGS	•	•	•	•
G011	PERSPECTIVE CONTEXT RENDERINGS	•	•	•	•
G020	SHADOW STUDIES - JUNE 21ST	•	•	•	•
G021	SHADOW STUDIES - MAY 1ST	•	•	•	•
G022	SHADOW STUDIES - DECEMBER 21ST	•	•	•	•
G030	OPEN SPACE CALCULATIONS	•	•	•	•
G031	GREEN POINT HOME CHECKLIST	•	•	•	•
G050	DENSITY BONUS CALCULATIONS & DIAGRAMS	•	•	•	•
CIVIL DRAWINGS					
I of I	TOPOGRAPHIC SURVEY	•	•	•	•
C0.0	COVER SHEET	•	•	•	•
C1.0	DEMOLITION PLAN	•	•	•	•
C2.0	SITE PLAN	•	•	•	•
C3.0	GRADING PLAN	•	•	•	•
C3.1	SECTIONS	•	•	•	•
C3.2	SECTIONS	•	•	•	•
C4.0	UTILITY PLAN	•	•	•	•
C5.0	STORM WATER CONTROL PLAN	•	•	•	•
LANDSCAPE DRAWINGS					
L1.0	LANDSCAPE PLAN GROUND	•	•	•	•
L1.1	LANDSCAPE PLAN ROOF DECK	•	•	•	•
L1.2	LANDSCAPE DETAILS	•	•	•	•
L1.3	PLANTING NOTES AND DETAILS	•	•	•	•
L1.4	PLANTING NOTES AND DETAILS	•	•	•	•
L1.5	MWELO CHECKLIST CALCS	•	•	•	•
ARCHITECTURAL DRAWINGS					
A100	SITE PLANS - PROPOSED AND EXISTING	•	•	•	•
A101	PROPOSED GROUND FLOOR PLAN	•	•	•	•
A102	PROPOSED SECOND & THIRD FLOOR PLANS	•	•	•	•
A103	PROPOSED FOURTH FLOOR PLAN	•	•	•	•
A104	PROPOSED FIFTH - SEVENTH FLOOR PLANS	•	•	•	•
A105	PROPOSED EIGHTH FLOOR PLAN	•	•	•	•
A106	PROPOSED ROOF PLAN	•	•	•	•
A200	EXTERIOR ELEVATIONS - MATERIALS & COLORS	•	•	•	•
A201	EXTERIOR ELEVATIONS - MATERIALS & COLORS	•	•	•	•
A300	BUILDING SECTIONS	•	•	•	•
A301	BUILDING SECTIONS	•	•	•	•
A400	PERSPECTIVE VIEWS	•	•	•	•
A401	PERSPECTIVE VIEWS	•	•	•	•
A402	PERSPECTIVE VIEWS	•	•	•	•
A403	PERSPECTIVE VIEWS	•	•	•	•

1 SHEET INDEX

PROJECT ISSUE RECORD:

CITY PERMIT RECORD:
1/20/2023 SB330 APPLICATION
05/01/2023 ENTITLEMENT APP.
09/18/2023 ENTITLEMENT RESP 1
10/31/2023 ENTITLEMENT RESP 2

PROJECT:

JY'01

TITLE:

TITLE SHEET

SHEET:

G000



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2037 DURANT AVE

BERKELEY, CALIFORNIA 94704



Zoning Code Information				
Site Information				
Address	2037 Durant Ave, Berkeley, CA, 94704			
APN	55-1894-2			
Zoning District	C-DMU Buffer			
Overlay/Special District	N/A			
Seismic Safety				
Eearthquake Fault Rupture Zone	No	Landslide Zone	No	
Liquefaction Zone	No	Unreinforced Masonry Building Inventory	No	
Historic Zone				
Landmark/Structure of Merit	Yes			
Environmental Safety				
Creek Buffer	No	Fire Zone	1	
Flood Zone	No			
Additional Parcel Info				
Redevelopment Area	No			
Building Data Per Planning Code				
	Existing	Proposed	Required/Allowed	Notes/Code
Parcel Conditions				
Occupancy Type (Per Planning)	B,S2	M, R2	B, M, R2, S2	
Lot Area	13,000	13,000	N/A	
Building Footprint	13,000	10,777		
Lot Coverage	1	82.9%		
Floor Area Ratio	1.00	5.9	N/A	
Year Constructed	1949			
Areas				
Commercial Floor Area	12,384	1,552		
Residential Floor Area	0	74,821		See Density Bonus
Residential Usable Open Space	0	2,098	80 S.F. / Unit = 5,920 S.F. Required	Density Bonus waiver requested
Privately Owned Public Open Space	0	191	1 S.F. / 50 S.F. Commercial = 32 S.F. Required	
Landscaped - Residential U.O.S.	0	562	40% of U.O.S. = 2,368 S.F. Required	Density Bonus waiver requested
Impervious Surface Area	13,000			Not req. for SB330 application
Gross Floor Area	12,384	76,373		See Density Bonus
Height				
Building Height - # of Stories	1	8	6 w/ UP	5 Stories without UP
Building Height - Feet	23'-0"	90'-0"	60'-0" w/ UP	50'-0" without UP
Setbacks				
Front Setback	0'-0"	0'-0"	0'-0" Min, 5'-0" Max.	
Side Setbacks < 65' from Frontage	0'-0"	5'-0" East; 7'-0" West	0'-0"	
Side Setbacks > 65' from Frontage	0'-0"	5'-0" East; 7'-0" West	5'-0" Min.	
Rear Setback	0'-0"	7'-0"	5'-0" Min.	
Parking				
Bike Parking (Short Term)	0	6	6 1 sp / 40 Bedrms + (1) Retail	
Bike Parking (Long Term)	0	66	66 1 space / 3 Bedrooms	
Retail Parking	0	0	0 Not required per SB 2097	

Bldg Unit Summary						
Unit Type/Name	Count	Sq. Ft	Bdrms	Full Baths	1/2 Baths	SF / Bdrm
A	14	812	3	1	0	271
A'	1	832	3	1	0	277
B	14	1037	3	2	0	346
B'	1	1,061	3	2	0	354
C	14	787	2	1	1	394
C'	1	784	2	1	0	392
D	14	820	3	1	1	273
D'	1	905	3	1	0	302
E	4	915	3	2	1	305
F	10	591	2	1	0	296
Total	74	61,536	197	93	29	312
Per Unit Average		832	2.7	1.3		

PROJECT ISSUE RECORD:

CITY PERMIT RECORD:
1/20/2023 SB330 APPLICATION
05/01/2023 ENTITLEMENT APP.
09/18/2023 ENTITLEMENT RESP 1
10/31/2023 ENTITLEMENT RESP 2
12/4/2023 ENTITLEMENT RESP 3

PROJECT:
JJY01

TITLE:

ZONING CODE INFORMATION

SHEET:

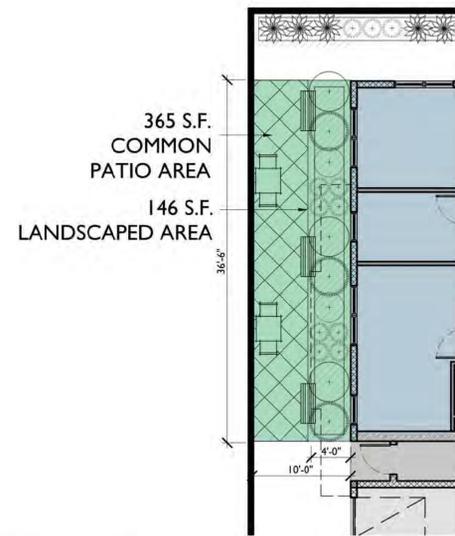
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2037 DURANT AVE

BERKELEY, CALIFORNIA 94704



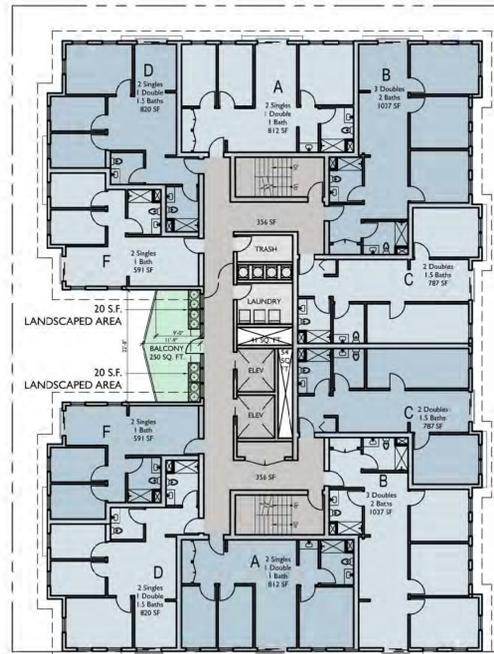
7 USABLE OPEN SPACE - ENLARGED PATIO PLAN
1/8" = 1'-0"



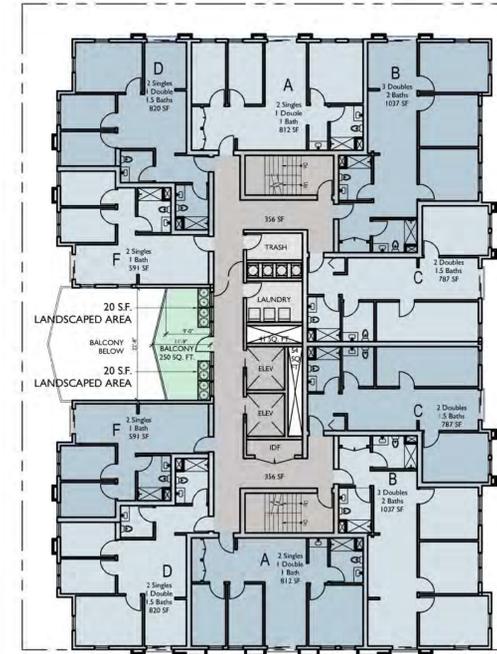
6 USABLE OPEN SPACE AREA LEGEND
N.T.S.

Usable Open Space Summary							Names/Locations
Floor	Sq. Ft.	% UOS provided	Sq. Ft. - Landscape	% Landscape	Sq. Ft. open to sky	% open to sky	
1	365	17%	146	40%	274	75%	Common Area Patio at Grade
2	0		0		0		N/A
3	0		0		0		N/A
4	733	35%	256	35%	483	66%	Common Area Balcony
5	250	12%	40	16%	0		Common Area Balcony
6	250	12%	40	16%	0		Common Area Balcony
7	250	12%	40	16%	0		Common Area Balcony
8	250	12%	40	16%	250	100%	Common Area Balcony
Totals	2,098		562		1,007		80 SF / Unit = 5,920 SF required for Residential
	UOS at Grade = 17% UOS Balconies = 83%		Balconies do not require 40% Landscape		Balconies are not required to be 75% open to the sky		
P.O.P.O.S.	191	597%	50	380%	0		1 SF / 50 SF Commercial = 32 SF Required 13 SF Landscape at 40%

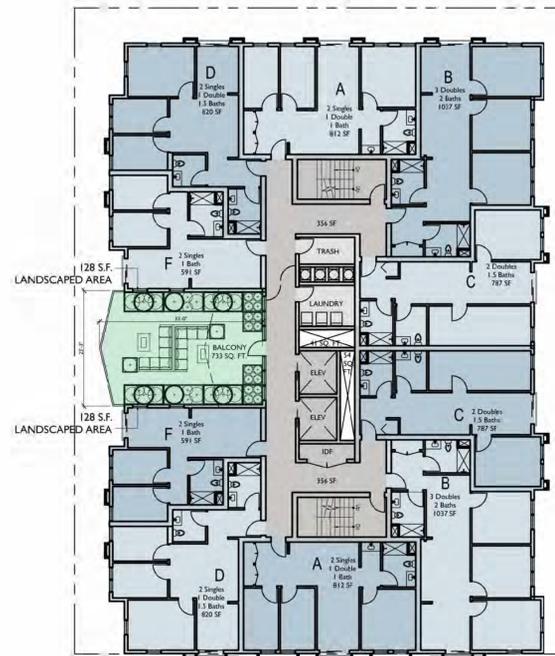
5 USABLE OPEN SPACE SUMMARY
N.T.S.



4 8TH FLOOR
1/16" = 1'-0"



3 TYPICAL RESIDENTIAL FLOOR PLAN: FLOORS 5-7
1/16" = 1'-0"



2 FOURTH FLOOR PLAN
1/16" = 1'-0"



1 GROUND FLOOR PLAN
1/16" = 1'-0"

PROJECT ISSUE RECORD:

CITY PERMIT RECORD:
1/20/2023 SB330 APPLICATION
05/01/2023 ENTITLEMENT APP.
09/18/2023 ENTITLEMENT RESP 1
10/31/2023 ENTITLEMENT RESP 2

PROJECT:

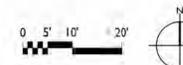
JY101

TITLE:

OPEN SPACE CALCULATIONS

SHEET:

G030





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2037 DURANT AVE
BERKELEY, CALIFORNIA 94704



2037 Durant	Pass/Fail	Points	Weight	Subtotal	Comments
2. BUILDING PERFORMANCE AND DESIGN					
Yes	1	1	1	1	2.1. Three-Party Verification of Quality of Insulation Installation
No	0	1	1	0	
Yes	1	1	1	1	2.2. Supply and Return Air Flow Testing
No	0	1	1	0	
Yes	1	1	1	1	2.3. Mechanical Ventilation Testing and Load Leaking
No	0	1	1	0	
Yes	1	1	1	1	2.4. All Electric or Combustion Appliance Safety Testing
No	0	1	1	0	
3. ENERGY PERFORMANCE					
Yes	1	1	1	1	3.1. ENERGY STAR® Dishwasher
No	0	1	1	0	
Yes	1	1	1	1	3.2. Efficient Clothes Washing and Drying
No	0	1	1	0	
Yes	1	1	1	1	3.3. LED Light Bulbs
No	0	1	1	0	
Yes	1	1	1	1	3.4. ENERGY STAR® Dryer
No	0	1	1	0	
Yes	1	1	1	1	3.5. Water Efficient Fixtures
No	0	1	1	0	
Yes	1	1	1	1	3.6. Low-E Windows
No	0	1	1	0	
Yes	1	1	1	1	3.7. ENERGY STAR® for Homes
No	0	1	1	0	
Yes	1	1	1	1	3.8. EPA Indoor airPlus Certification
No	0	1	1	0	
Yes	1	1	1	1	3.9. Smart Thermostat
No	0	1	1	0	
Yes	1	1	1	1	3.10. Commissioning/Quality of Units
No	0	1	1	0	
4. FINISHES					
Yes	1	1	1	1	4.1. Entrypoints Designed to Reduce Track-and-Contact Contaminants
No	0	1	1	0	
Yes	1	1	1	1	4.2. Entrypoints to Buildings
No	0	1	1	0	
Yes	1	1	1	1	4.3. Low-VOC Interior Wall and Ceiling Paints
No	0	1	1	0	
Yes	1	1	1	1	4.4. Low-VOC Ceiling and Adhesives
No	0	1	1	0	
Yes	1	1	1	1	4.5. Environmentally Preferable Materials for Interior Finish
No	0	1	1	0	
Yes	1	1	1	1	4.6. Low-Emitting Materials
No	0	1	1	0	
Yes	1	1	1	1	4.7. Low-Emitting Materials for Interior Finish
No	0	1	1	0	
Yes	1	1	1	1	4.8. Low-Emitting Materials for Interior Finish
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Yes	1	1	1	1	4.9. Low-Emitting Materials for Interior Finish
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Yes	1	1	1	1	4.11. Low-Emitting Materials for Interior Finish
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Yes	1	1	1	1	4.31. Low-Emitting Materials for Interior Finish
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Yes	1	1			

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AB	AGGREGATE BASE	PVC	POLY VINYL CHLORIDE
AC	ASPHALTIC CONCRETE	PVIC	POINT OF VERTICAL INTERSECTION
AD	AREA DRAIN	PL	PROPERTY LINE
AL	AREA LIGHT	R	RADIUS
ANC	ANCHOR	(R)	RADIAL LINE
ANG PT	ANGLE POINT	RCP	REINFORCED CONCRETE PIPE
AP	ANCHOR POLE	RIM	RIM ELEVATION
ARV	AIR RELIEF VALVE	RT	RIGHT
ASB	AGGREGATE SUB-BASE	ROW	RIGHT OF WAY
BC	BEGINNING OF CURVE	S	SLOPE
BOC	BACK OF CURB	SD	STORM DRAIN
BOW	BACK OF SIDEWALK	SDMH	STORM DRAIN MANHOLE
BM	BENCH MARK	SF	SQUARE FEET
BO	BLOWOFF	SHT	SHEET
BPD	BACKFLOW PREVENTION DEVICE	SL	STREET LIGHT
BVC	BEGINNING OF VERTICAL CURVE	SS	SANITARY SEWER
BW	BOTTOM OF WALL	SSCO	SANITARY SEWER CLEANOUT/RISER
CATV	CABLE TELEVISION	SSMH	SANITARY SEWER MANHOLE
C&G	CURB AND GUTTER	STA	STATION
CB	CATCH BASIN	STD	STANDARD
CIP	CAST IRON PIPE	SW	SIDEWALK
CL	CENTERLINE	T	TELEPHONE LINE
CMP	CORRUGATED METAL PIPE	TBO	TEMPORARY BLOWOFF
CO	CLEANOUT	TC	TOP OF CURB
CONF	CONFORM	TELE	TELEPHONE
CONC	CONCRETE	TS	TRAFFIC SIGNAL
COTG	CLEANOUT TO GRADE	TW	TOP OF WALL
DDCV	DOUBLE DETECTOR CHECK VALVE	TYP	TYPICAL
CY	CUBIC YARDS	UNO	UNLESS NOTED OTHERWISE
DI	DROP INLET	VAR	VARIES
DIP	DUCTILE IRON PIPE	VC	VERTICAL CURVE
DWG	DRAWING	VCP	VITRIFIED CLAY PIPE
DWY	DRIVEWAY	VERT	VERTICAL
(E)	EXISTING	W	WATER
EA	EACH	W/	WITH
EC	END OF CURVE	W/O	WITHOUT
EG	EXISTING GRADE	WM	WATER METER
ELEC	ELECTRIC	WV	WATER VALVE
ELECTRO	ELECTROLIER	YL	YARD LIGHT
ELEV	ELEVATION		
EP	EDGE OF PAVEMENT		
EVC	END OF VERTICAL CURVE		
FM	FIELD MEASUREMENT		
FC	FACE OF CURB		
FF	FINISH FLOOR		
FG	FINISH GRADE		
FH	FIRE HYDRANT		
FI	FIELD INLET		
FL	FLOW LINE		
G	GAS MAIN		
GAS V	GAS VALVE		
GM	GAS METER		
GB	GRADE BREAK		
GR	GRATE ELEVATION		
GV	GATE VALVE		
HC	HANDICAP		
HGL	HYDRAULIC GRADE/ LINE		
HOR	HORIZONTAL		
HP	HIGH POINT		
INT	INTERSECTION		
INV	INVERT ELEVATION		
JP	JOINT POLE		
LP	LOW POINT		
LS	LANDSCAPING		
LT	LEFT		
MAX	MAXIMUM		
MH	MANHOLE		
MIN	MINIMUM		
MON	MONUMENT		
(N)	NEW		
NTS	NOT TO SCALE		
OD	OUTSIDE DIAMETER		
P	PAVEMENT		
PCC	PORTLAND CONCRETE CEMENT		
PI	POINT OF INTERSECTION		
PIV	POST INDICATOR VALVE		
POC	POINT OF CURVE		
PRC	POINT OF REVERSE CURVATURE		
PUE	PUBLIC UTILITY EASEMENT		

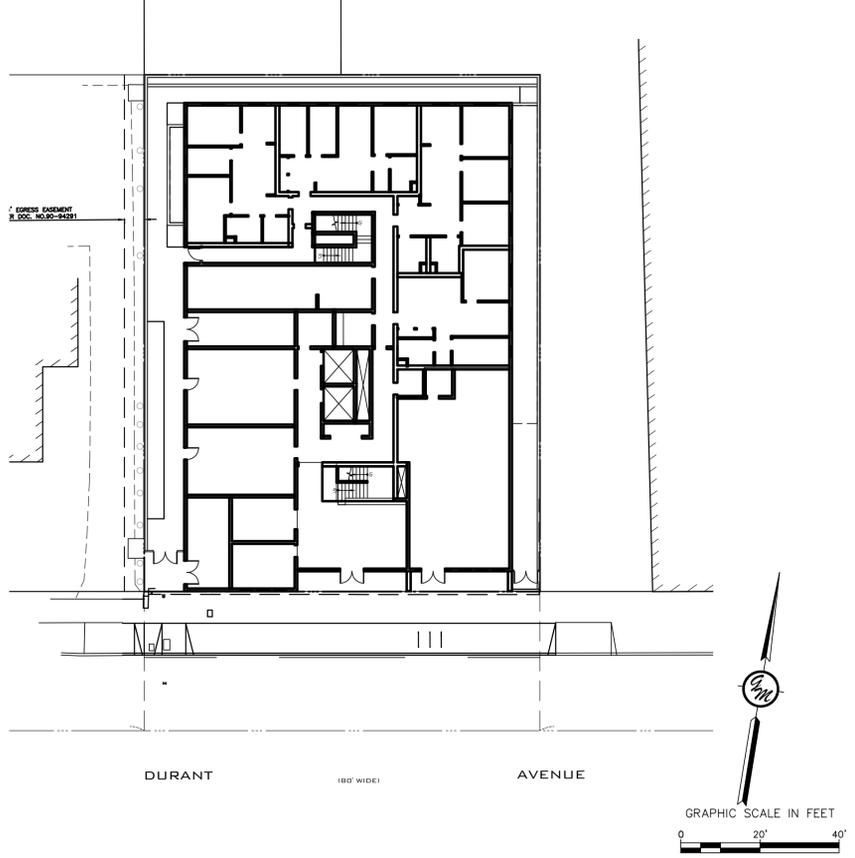


ABBREVIATIONS

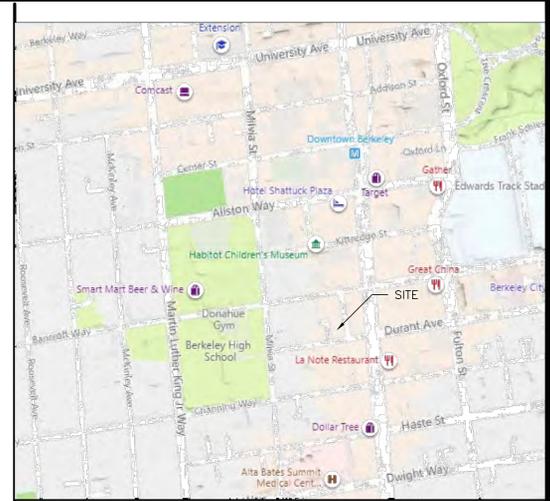
EXISTING	PROPOSED	DESCRIPTION
	AL	AREA LIGHT
BO	BO	BLOWOFF
	BL	BRUSH LINE
CTV	CTV	BUILDING CABLE TV LINE
	CB	CATCH BASIN
	CONC	CONCRETE
	C&G	CURB & GUTTER
	CUT/FILL	CUT/FILL LINE
DI	DI	DROP INLET
E	E	ELECTRIC LINE
	EL	ELECTROLIER
X	X	FENCE
	FH	FIRE HYDRANT
F	F	FIRE MAIN
	FP	FLAG POLE
G	G	GAS MAIN
	GV	GAS VALVE
GM	GM	GAS METER GUY ANCHOR
JT	JT	JOINT TRENCH
	MON	MONUMENT
	SSMH	SANITARY SEWER CLEANOUT
	SS	SANITARY SEWER LINE
SSMH	SSMH	SANITARY SEWER MANHOLE
	SIGN	SIGN
	SLOPE	SLOPE
	SD	STORM DRAIN LINE
	SDMH	STORM DRAIN MANHOLE
	T	TELEPHONE LINE
	TV	TELEPHONE VAULT
	TS	TRAFFIC SIGNAL
	TR	TRANSFORMER
	UP	UTILITY POLE
	VG	VALLEY GUTTER
	W	WATER MAIN
WM	WM	WATER METER
	WV	WATER VALVE

LEGEND

PRELIMINARY IMPROVEMENT PLANS 2037 DURANT AVENUE



SITE



VICINITY MAP

ENGINEER:
GREENWOOD & MOORE, INC.
3111 CASTRO VALLEY BLVD,
CASTRO VALLEY, CA 94546
CONTACT: JEFFREY R. MOORE
PHONE: (510) 581-2772

OWNER/APPLICANT:
JANICE LEE & JONATHAN YI
1901 VIA DI SALERNO
PLEASANTON CA, 94566

PROPERTY ADDRESS:
2037 DURANT AVE
BERKELEY, CA 94704

ASSESSOR'S PARCEL NO.:
55-1894-2

BASIS OF BEARINGS:
THE LINE IN DURANT STREET BETWEEN THE CITY MONUMENTS SHOWN FOUND AT MILVA STREET AND AT SHATTUCK AVENUE WAS TAKEN AS N 80°47'17" E, AS SHOWN PER PARCEL MAP 6889 FILED AS BK 223, PG. 70, ALAMEDA COUNTY RECORDS.

BENCHMARK:
3/8" DIA. BRASS PIN IN MONUMENT WELL LOCATED AT THE INTERSECTION OF SHATTUCK AVE. AND DURANT AVE., BEING CITY OF BERKELEY BM# B0403. ELEVATION = 171.96'

TITLE REPORT NOTE:
AS OF THE DATE OF THIS SURVEY A CURRENT TITLE REPORT FOR THE SUBJECT PROPERTY HAS NOT BEEN PROVIDED TO THE SURVEYOR FOR EXAMINATION. THEREFORE, THERE MAY BE EASEMENTS OR OTHER ENCUMBRANCES ON OR APPURTENANT TO THE SURVEYED PROPERTY THAT EXIST OF RECORD BUT ARE NOT DELINEATED HEREON.

UTILITIES NOTE:
INFORMATION SHOWN ON THIS SURVEY REGARDING EXISTING UTILITIES IS APPROXIMATE ONLY, IS BASED ON VISUAL OBSERVATIONS AND/OR UTILITY COMPANY RECORDS, AND HAS NOT BEEN VERIFIED AS BEING COMPLETE OR CORRECT. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF THE EXISTING UTILITY INFORMATION SHOWN HEREON, NOR FOR THE PRESENCE OF OTHER UTILITIES WHICH MAY EXIST BUT ARE NOT SHOWN ON THIS SURVEY.

PROJECT INFORMATION

SHEET NUMBER	SHEET TITLE
C0.0	COVER SHEET
C1.0	DEMOLITION PLAN
C2.0	SITE PLAN
C3.0	GRADING PLAN
C3.1	GRADING PLAN
C3.2	SECTIONS
C4.0	UTILITY PLAN
C5.0	STORM WATER CONTROL PLAN

SHEET INDEX

GREENWOOD & MOORE, INC.
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Land Surveyors • Planners
3111 Castro Valley Blvd., Ste. 200, Castro Valley, California, 94546
Tel: 510-581-2772 Fax: 510-581-8913 www.greenwoodmoore.com

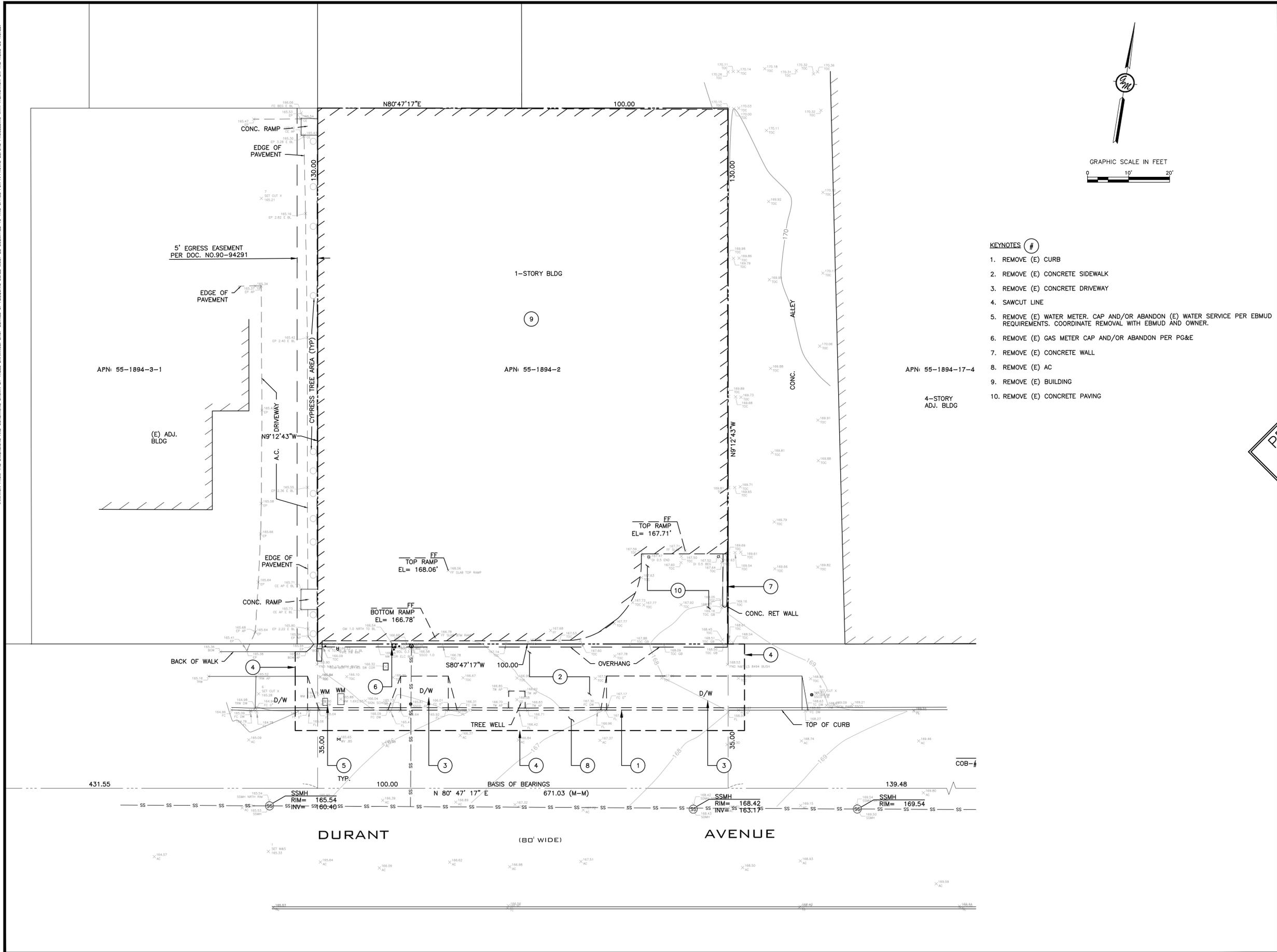
PRELIMINARY

2037 DURANT AVENUE
BERKELEY, CA 94704
APN: 55-1894-2

COVER SHEET

CHECKED BY: **BD**
DRAWN BY: **STAFF**
SCALE: **1"=20'**
DATE: **10/31/23**
PROJECT NO.: **2021.012**
PHASE NO.:
SHEET NO.: **C0.0**

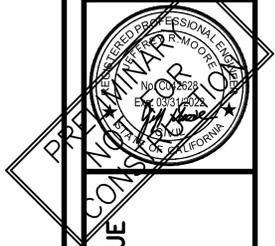
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- KEYNOTES #**
1. REMOVE (E) CURB
 2. REMOVE (E) CONCRETE SIDEWALK
 3. REMOVE (E) CONCRETE DRIVEWAY
 4. SAWCUT LINE
 5. REMOVE (E) WATER METER, CAP AND/OR ABANDON (E) WATER SERVICE PER EBMUD REQUIREMENTS. COORDINATE REMOVAL WITH EBMUD AND OWNER.
 6. REMOVE (E) GAS METER CAP AND/OR ABANDON PER PG&E
 7. REMOVE (E) CONCRETE WALL
 8. REMOVE (E) AC
 9. REMOVE (E) BUILDING
 10. REMOVE (E) CONCRETE PAVING

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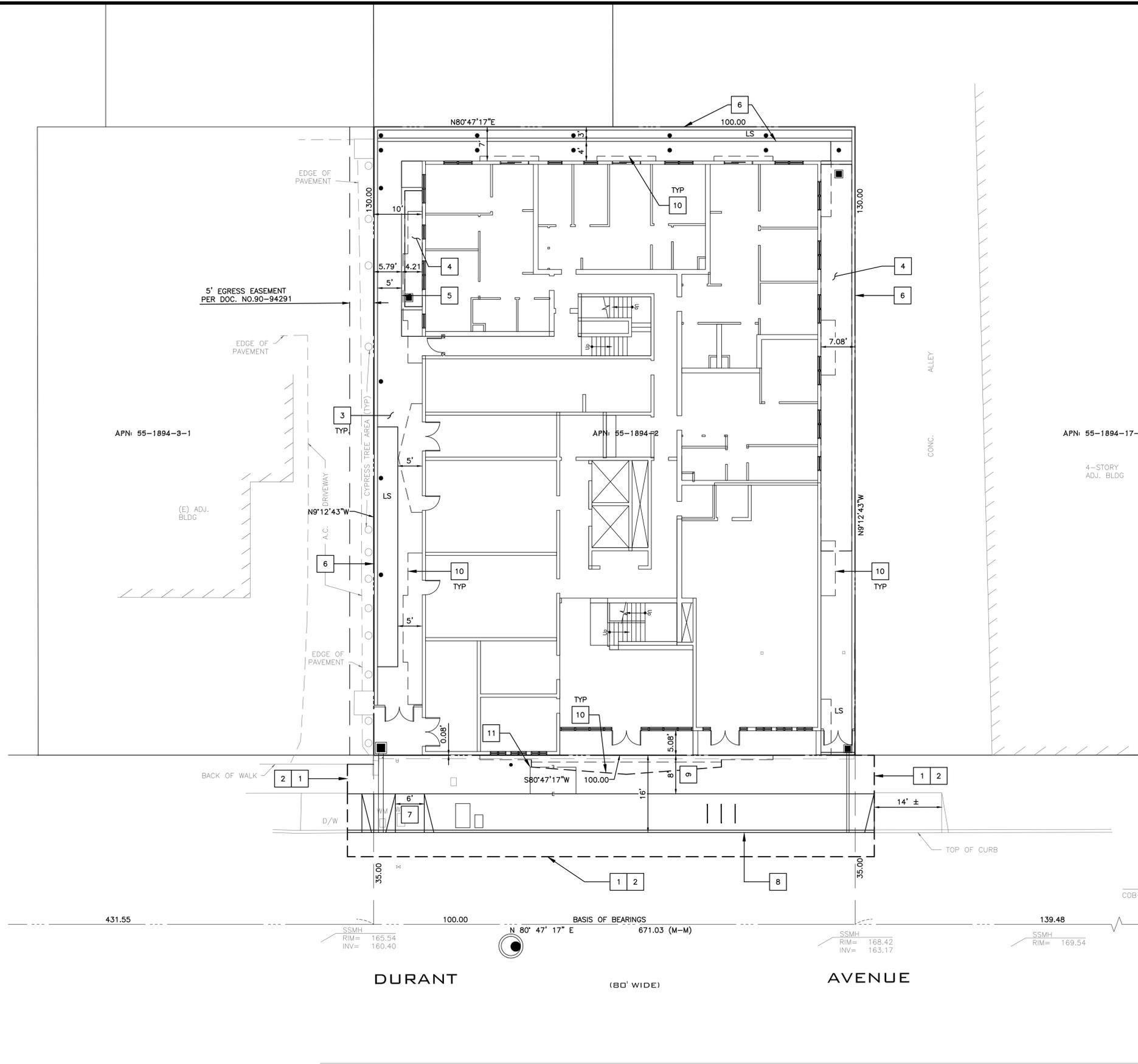


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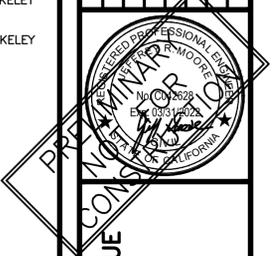
DEMOLITION PLAN

CHECKED BY:	BD
DRAWN BY:	STAFF
SCALE:	1"=10'
DATE:	10/31/23
PROJECT NO.:	2021.012
PHASE NO.:	
SHEET NO.:	C1.0

ALL DIMENSIONS, ARRANGEMENTS AND PLANS INDICATED BY THIS DRAWING ARE OWNED BY AND ARE THE PROPERTY OF THE OFFICE AND ARE TO BE USED ONLY FOR THE SPECIFIED PROJECT. ANY REUSE OF THIS DRAWING FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF THE OFFICE IS STRICTLY PROHIBITED. CONTRACTORS SHALL VERIFY AND BE RESPONSIBLE FOR ALL DIMENSIONS AND CONDITIONS ON THE JOB. THE OFFICE MUST BE NOTIFIED OF ANY VARIATION FROM THE DIMENSIONS AND CONDITIONS SHOWN BY THESE DRAWINGS. SHOP DETAILS OF ASSOCIATE SCALE MUST BE SUBMITTED TO THIS OFFICE FOR APPROVAL BEFORE PROCEEDING WITH FABRICATION ON THE ITEMS SO NOTED.



- KEYNOTES #**
1. CONFORM TO EXISTING
 2. SAWCUT LINE
 3. CONCRETE PAVING
 4. FLOW THROUGH PLANTER
 5. RETAINING WALL AT FLOWTHROUGH PLANTER
 6. RETAINING WALL
 7. 6' WIDE DRIVEWAY PER CITY STANDARD DETAIL 8151. DRIVEWAY APRON TO BE USED FOR TRASH BINS
 8. CONCRETE CURB PER CITY OF BERKELEY STANDARD DETAIL 8154.
 9. CONCRETE SIDEWALK PER CITY BERKELEY STANDARD PLAN 8153.
 10. BUILDING PROJECTION ABOVE
 11. TRANSFORMER



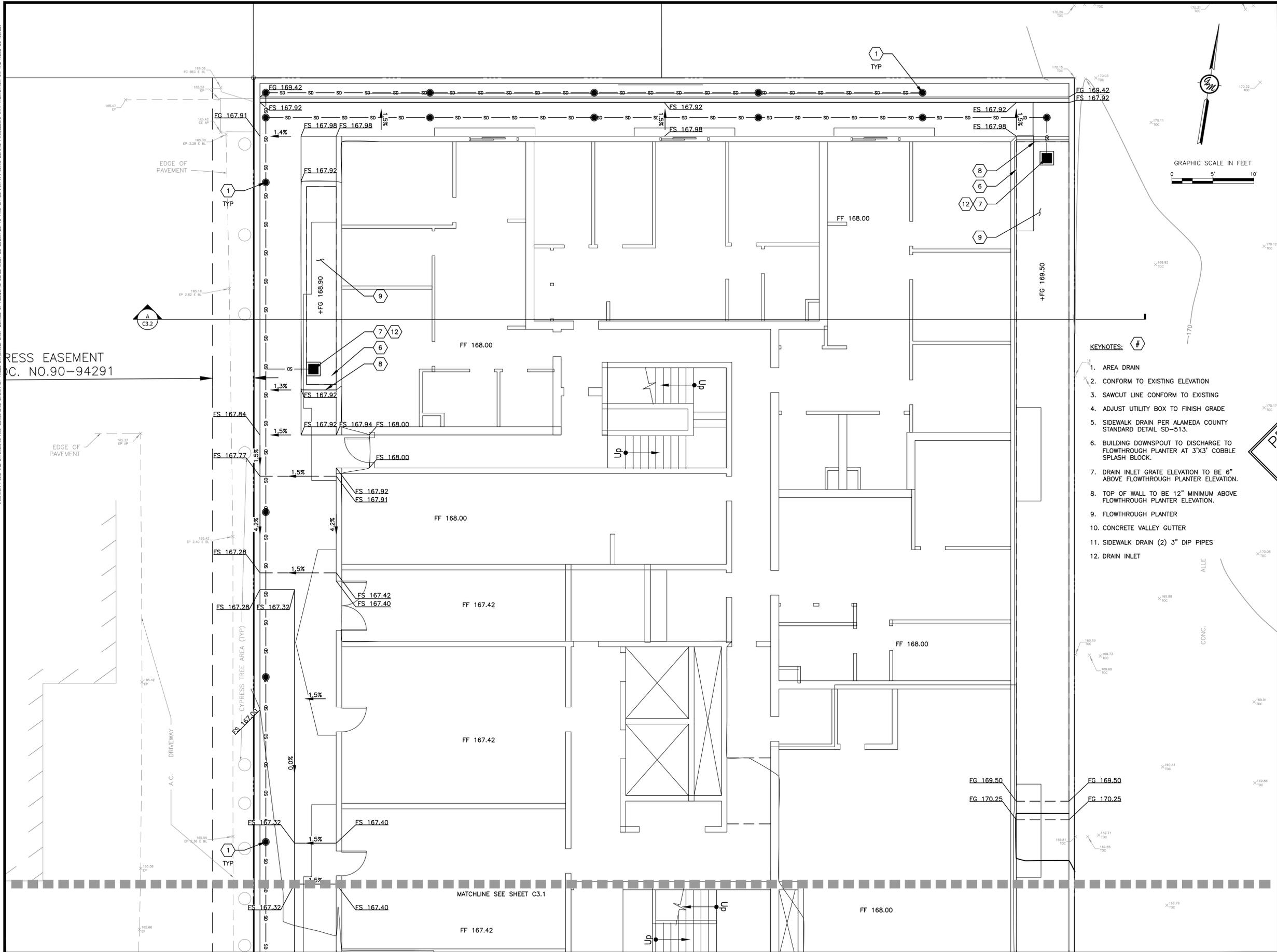
2037 DURANT AVENUE
 BERKELEY, CA 94704
 APN: 55-1894-2

SITE PLAN

CHECKED BY: BD
 DRAWN BY: STAFF
 SCALE: 1"=10'
 DATE: 10/31/23
 PROJECT NO.: 2021.012
 PHASE NO.:
 SHEET NO.:

C2.0

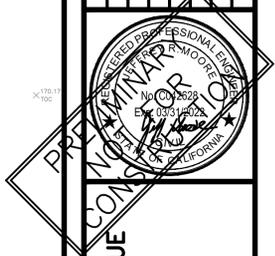
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STRESS EASEMENT
 C.C. NO.90-94291

- KEYNOTES:**
1. AREA DRAIN
 2. CONFORM TO EXISTING ELEVATION
 3. SAWCUT LINE CONFORM TO EXISTING
 4. ADJUST UTILITY BOX TO FINISH GRADE
 5. SIDEWALK DRAIN PER ALAMEDA COUNTY STANDARD DETAIL SD-513.
 6. BUILDING DOWNSPOUT TO DISCHARGE TO FLOWTHROUGH PLANTER AT 3'X3' COBBLE SPLASH BLOCK.
 7. DRAIN INLET GRATE ELEVATION TO BE 6" ABOVE FLOWTHROUGH PLANTER ELEVATION.
 8. TOP OF WALL TO BE 12" MINIMUM ABOVE FLOWTHROUGH PLANTER ELEVATION.
 9. FLOWTHROUGH PLANTER
 10. CONCRETE VALLEY GUTTER
 11. SIDEWALK DRAIN (2) 3" DIP PIPES
 12. DRAIN INLET

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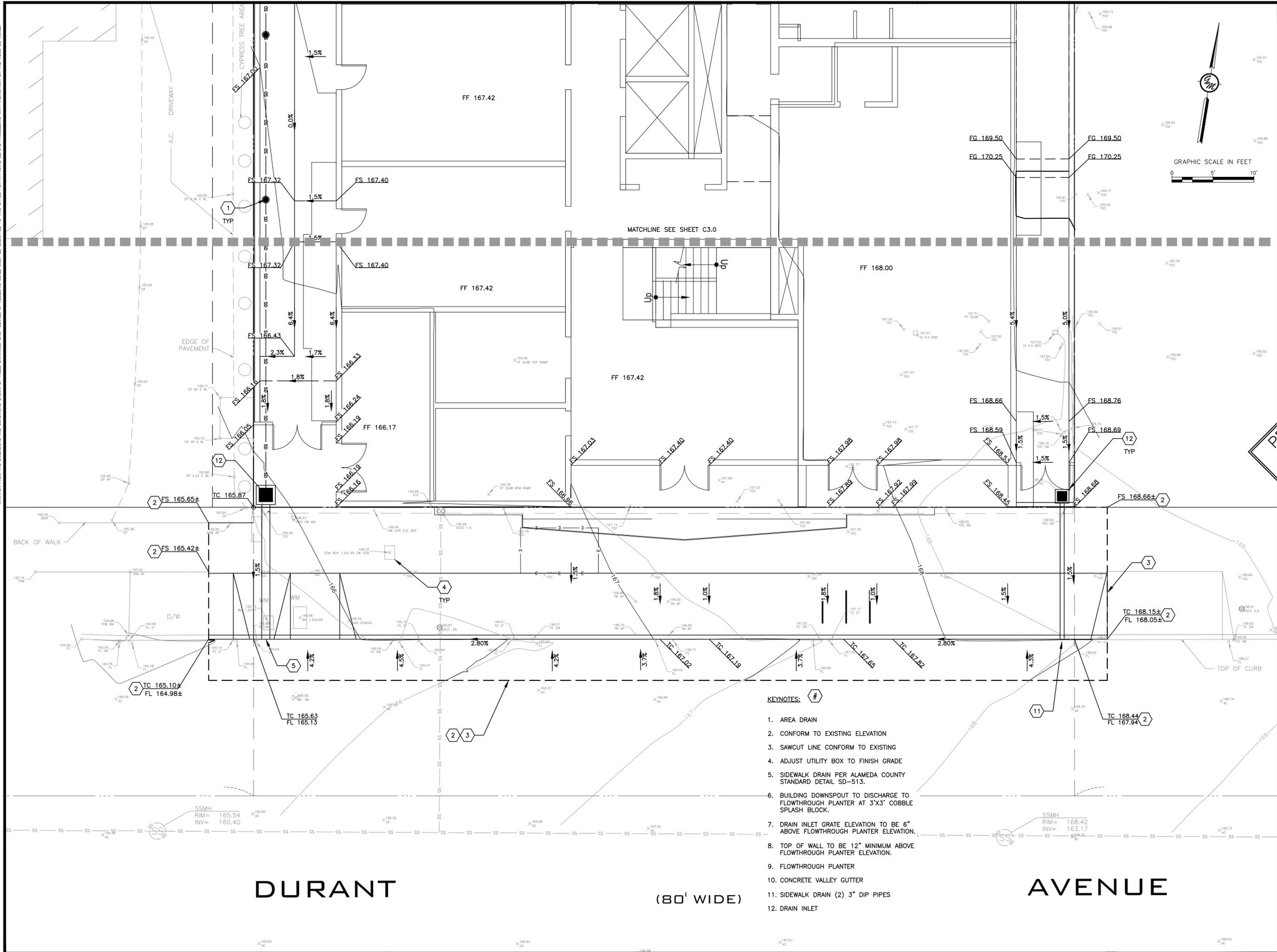


2037 DURANT AVENUE
 BERKELEY, CA 94704
 APN: 55-1894-2

GRADING PLAN

CHECKED BY:	BD
DRAWN BY:	STAFF
SCALE:	1"=5'
DATE:	10/31/23
PROJECT NO:	2021.012
PHASE NO:	
SHEET NO:	C3.0

ALL IDEAS, DESIGNS, ARRANGEMENTS AND PLANS INDICATED BY THIS DRAWING ARE OWNED BY AND THE PROPERTY OF THIS OFFICE AND WERE CREATED, DEVELOPED AND FOR USE ON, AND IN CONNECTION WITH THE SPECIFIED PROJECT. NONE OF SUCH IDEAS, DESIGNS, ARRANGEMENTS OR PLANS SHALL BE USED BY OR FOR CORPORATION FOR ANY PURPOSE WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF GREENWOOD & MOORE, INC. WRITTEN PERMISSION ON THESE DRAWINGS SHALL HAVE PRECEDENCE OVER SCALE DIMENSIONS. CONTRACTORS SHALL VERIFY AND BE RESPONSIBLE FOR ALL DIMENSIONS AND CONDITIONS ON THE JOB. THIS OFFICE MUST BE NOTIFIED OF ANY VARIATIONS FROM THE DIMENSIONS AND CONDITIONS SHOWN BY THESE DRAWINGS. SOME DETAILS OF ARRANGEMENTS SHOWN BY THESE DRAWINGS MAY BE SUBJECT TO CHANGE WITHOUT NOTICE.



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GRADING PLAN
 2037 DURANT AVENUE
 BERKELEY, CA 94704
 APN: 55-1894-2

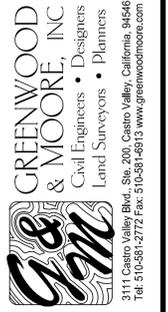
- KEYNOTES:**
1. AREA DRAIN
 2. CONFORM TO EXISTING ELEVATION
 3. SAWCUT LINE CONFORM TO EXISTING
 4. ADJUST UTILITY BOX TO FINISH GRADE
 5. SIDEWALK DRAIN PER ALAMEDA COUNTY STANDARD DETAIL SD-513.
 6. BUILDING DOWNSPOUT TO DISCHARGE TO FLOWTHROUGH PLANTER AT 3'X3' COBBLE SPLASH BLOCK.
 7. DRAIN INLET GRATE ELEVATION TO BE 6" ABOVE FLOWTHROUGH PLANTER ELEVATION.
 8. TOP OF WALL TO BE 12" MINIMUM ABOVE FLOWTHROUGH PLANTER ELEVATION.
 9. FLOWTHROUGH PLANTER
 10. CONCRETE VALLEY GUTTER
 11. SIDEWALK DRAIN (2) 3" DIP PIPES
 12. DRAIN INLET

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PROJECT NO:	2021.012
PHASE NO:	
SHEET NO:	C3.1

ALL IDEAS, DESIGNS, ARRANGEMENTS AND PLANS INDICATED BY THIS DRAWING ARE OWNED BY, AND THE PROPERTY OF, THE OFFICE AND WERE CREATED, DEVELOPED AND DEVELOPED FOR USE ON, AND IN CONNECTION WITH, THE SPECIFIED PROJECT. NONE OF SUCH IDEAS, DESIGNS, ARRANGEMENTS OR PLANS SHALL BE USED BY OR DISCLOSED TO ANY PERSON, FIRM OR CORPORATION FOR ANY PURPOSE WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF GREENWOOD & MOORE, INC. WRITTEN DIMENSIONS ON THESE DRAWINGS SHALL HAVE PRECEDENCE OVER SCALE DIMENSIONS. CONTRACTORS SHALL VERIFY AND BE RESPONSIBLE FOR ALL DIMENSIONS AND CONDITIONS ON THE JOB. THIS OFFICE MUST BE NOTIFIED OF ANY VARIATION FROM THE DIMENSIONS AND CONDITIONS SHOWN BY THESE DRAWINGS. SOME DETAILS OF ARRANGEMENTS SHOWN BY THESE DRAWINGS MAY BE SUBJECT TO CHANGE WITHOUT NOTICE ON THE DATE OF NOTICE.



SECTION A
 SCALE 1" = 5'



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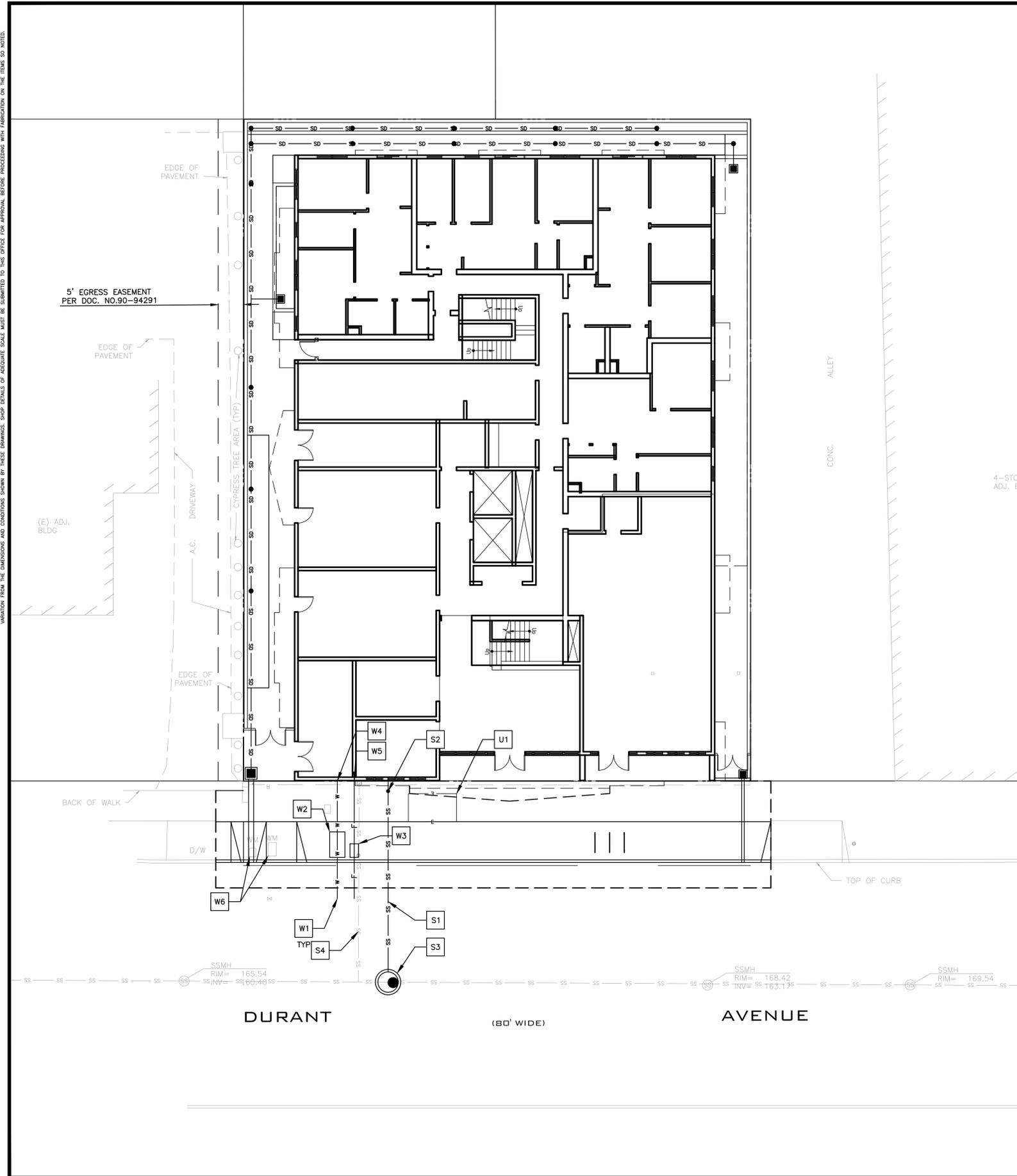
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SECTIONS

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DRAWN BY:	STAFF
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PHASE NO.	
SHEET NO.	

C3.2

ALL LOTS, EASMENTS, ARRANGEMENTS AND PLANS INDICATED BY THIS DRAWING ARE OWNED BY AND ARE THE PROPERTY OF THE OFFICE AND WERE CREATED, DEVELOPED AND DELIVERED FOR USE ON AND IN CONNECTION WITH THE SPECIFIED PROJECT. ALL INFORMATION IS TO BE USED AS A GUIDE ONLY. THE OFFICE AND ITS DESIGNERS SHALL NOT BE RESPONSIBLE FOR ANY DIMENSIONS AND CONDITIONS ON THE JOB. THE OFFICE MUST BE NOTICED OF ANY WRITTEN DIMENSIONS ON THESE DRAWINGS SHALL HAVE PRECEDENCE OVER SCALE DIMENSIONS. CONTRACTORS SHALL VERIFY AND BE RESPONSIBLE FOR ALL DIMENSIONS AND CONDITIONS ON THE JOB. THE OFFICE MUST BE NOTICED OF ANY VARIATION FROM THE DIMENSIONS AND CONDITIONS SHOWN BY THESE DRAWINGS. SHOP DETAILS OF ANCHORAGE SHALL BE SUBMITTED TO THIS OFFICE FOR APPROVAL BEFORE PROCEEDING WITH FABRICATION ON THE ITEMS SO NOTED.



SEWER KEYNOTES

- S1** 6" HDPE SDR 21
- S2** 2 WAY SEWER CLEANOUT WITH CAST IRON TRAFFIC RATED COVER. COORDINATE SEWER CONNECTION TO BUILDING LOCATION AND ELEVATION WITH PLUMBING PLANS.
- S3** SSMH PER CITY OF BERKELEY STANDARD DETAIL 7895. VERIFY EXISTING SEWER SIZE AND INVERT ELEVATION IN FIELD.
- S4** ABANDON (E) SEWER LATERAL. FOR BUILDING DEMOLITION AND LATERAL ABANDONMENT; WHEN A BUILDING IS TO BE DEMOLISHED AND THE EXISTING LATERAL IS NOT TO BE RE-USED, THE LATERAL SEWER SHALL BE DUG AND EXPOSED WHERE IT ENTERS THE MAIN.
 - A. IF THE LATERAL ENTERS THE MAIN BY MEANS OF A FACTORY MANUFACTURED WYE OR TEE BRANCH, AND IF THE MAIN AND WYE OR TEE BRANCH ARE ALL IN GOOD, UNDAMAGED CONDITION, THE LATERAL SHALL BE DISCONNECTED AND THE BRANCH SHALL BE PLUGGED WITH AN EXPANDABLE NEOPRENE RUBBER PLUG AT THE MAIN. THE BRANCH PLUG SHALL BE SHALL BE ENCLOSED WITH A MINIMUM THICKNESS OF 6 INCHES OF 6 SACK, 1/2" SIZE AGGREGATE PORTLAND CEMENT CONCRETE. THE WYE BRANCH WITH RUBBER PLUG MUST BE INSPECTED AND APPROVED BY AN ENGINEERING INSPECTOR PRIOR TO ENCLOSURE WITH CONCRETE AND BACKFILL OF THE TRENCH.
 - B. IF THE LATERAL ENTERS THE MAIN BY ANY METHOD OTHER THAN BY A FACTORY WYE OR TEE BRANCH, OR IF THE EXISTING MAIN, WYE OR TEE BRANCH IS DAMAGED IN ANY WAY, THE SECTION OF MAIN CONTAINING THE LATERAL ENTRY OPENING SHALL BE REMOVED AND REPLACED WITH A NEW SECTION OF PIPE OF THE SAME DIAMETER AS THE EXISTING MAIN. AN ENGINEERING INSPECTOR MUST INSPECT THE NEW MAIN SECTION BEFORE BACKFILL.
 - C. THE ABANDONED LATERAL PIPE SHALL BE FILLED WITH SAND AND JETTIED TO PREVENT THE PIPE FROM BECOMING A HOME FOR RODENTS OR OTHER DISEASE VECTORS.
 - D. REMOVE (E) CLEANOUT FRAME & COVER.

WATER KEYNOTES

- W1** CONNECT TO EXISTING WATER LINE PER EBMUD STANDARDS AND REQUIREMENTS
- W2** DOMESTIC WATER METER PER EBMUD STANDARDS AND REQUIREMENTS. VERIFY METER SIZE WITH EBMUD.
- W3** WATER METER AND CHECK VALVE FOR FIRE SERVICE PER EBMUD STANDARDS AND REQUIREMENTS.
- W4** WATER SERVICE TO BUILDING. VERIFY SIZE AND LOCATION WITH PLUMBING PLANS
- W5** FIRE SERVICE TO BUILDING. PROVIDE BACKFLOW PREVENTER PER EBMUD REQUIREMENTS, STANDARDS AND SPECIFICATIONS. SEE FIRE SERVICE PLANS BY OTHERS FOR MORE INFORMATION.
- W6** ABANDON (E) WATER SERVICE & FIRE SERVICE PER EBMUD STANDARDS AND REQUIREMENTS

UTILITY KEYNOTES

- U1** (N) ELECTRICAL TRANSFORMER. SEE JOINT TRENCH PLANS BY OTHERS FOR MORE INFORMATION.

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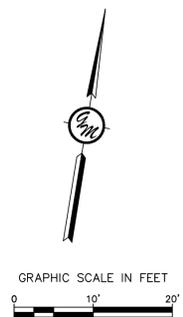
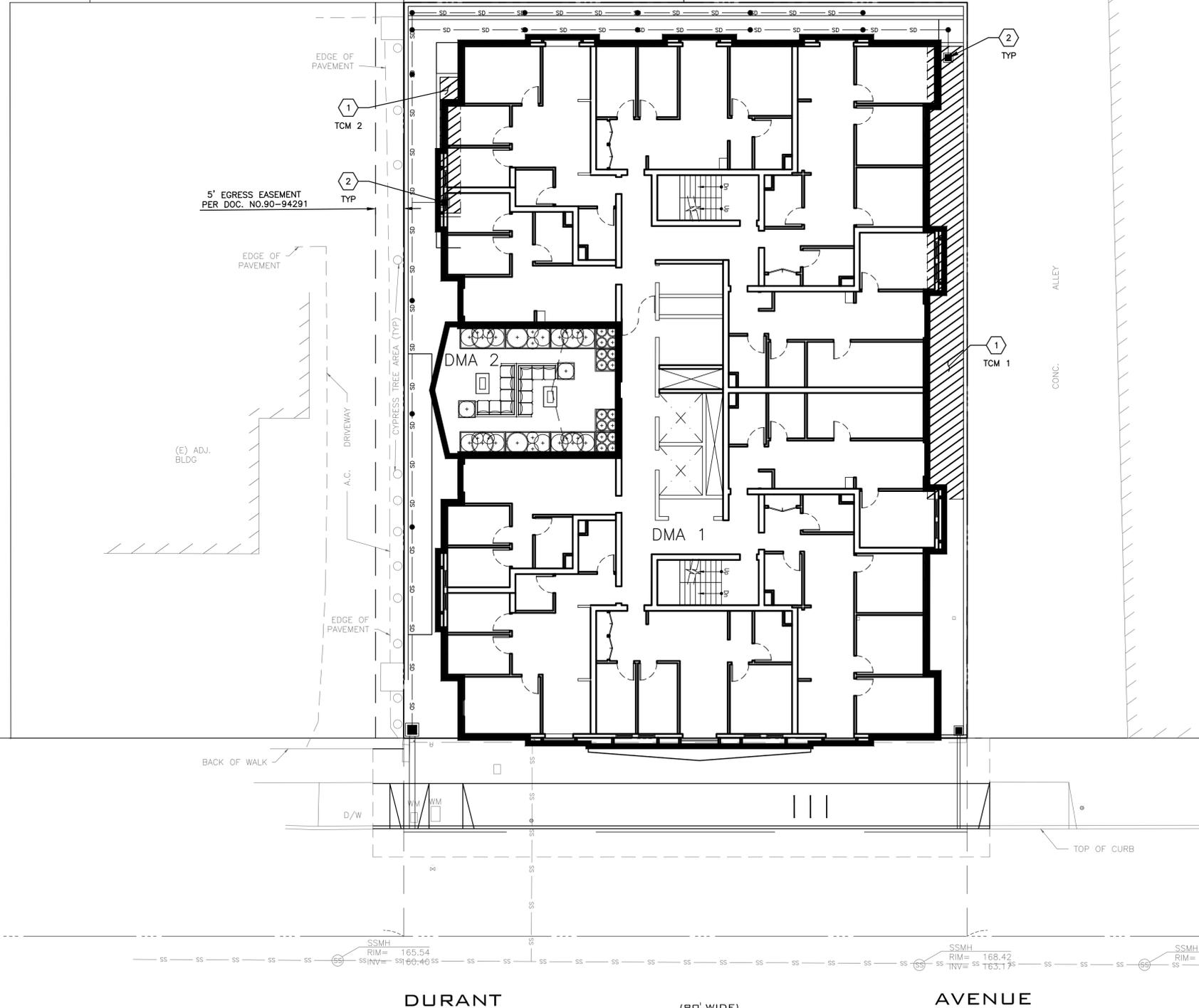
UTILITY PLAN

CHECKED BY:	BD
DRAWN BY:	STAFF
SCALE:	1"=10'
DATE	10/31/23
PROJECT NO.	2021.012
PHASE NO.	
SHEET NO.	C4.0

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100' WIDE (ON ANGLE)

ROUND MON
 1/2" - #0404
 1/8" BRASS PIN
 MON WELL



KEYNOTES

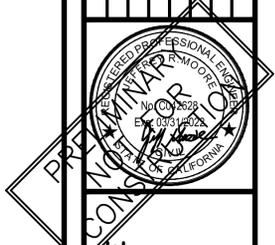
1. FLOWTHROUGH PLANTER
2. DRAIN INLET GRATE TO BE 6" MINIMUM ABOVE FLOWTHROUGH PLANTER ELEVATION.

	ROOF (SQ. FT)	IMPERVIOUS PAVEMENT/HARDSCAPE (SQ. FT)	IMPERVIOUS AREA (SQ. FT)	LANDSCAPE (SQ. FT)
EXISTING	12,373	627	13,000	0
PROPOSED	10,706	1,730	12,436	564

DRAINAGE MANAGEMENT AREA (DMA)	TREATMENT CONTROL MEASURES (TCM)	a	b	c	d	e	f	TREATMENT AREA REQUIRED(SF)	TREATMENT AREA PROVIDED (SF)	DEPTH OF PONDING (INCHES)	TREATMENT TYPE	SIZING METHOD
1	1	12,331	614	11,717	61	11,778	471	513	6	BIORETENTION	4% METHOD	
2	2	718	21	697	2	699	28	85	6	BIORETENTION	4% METHOD	

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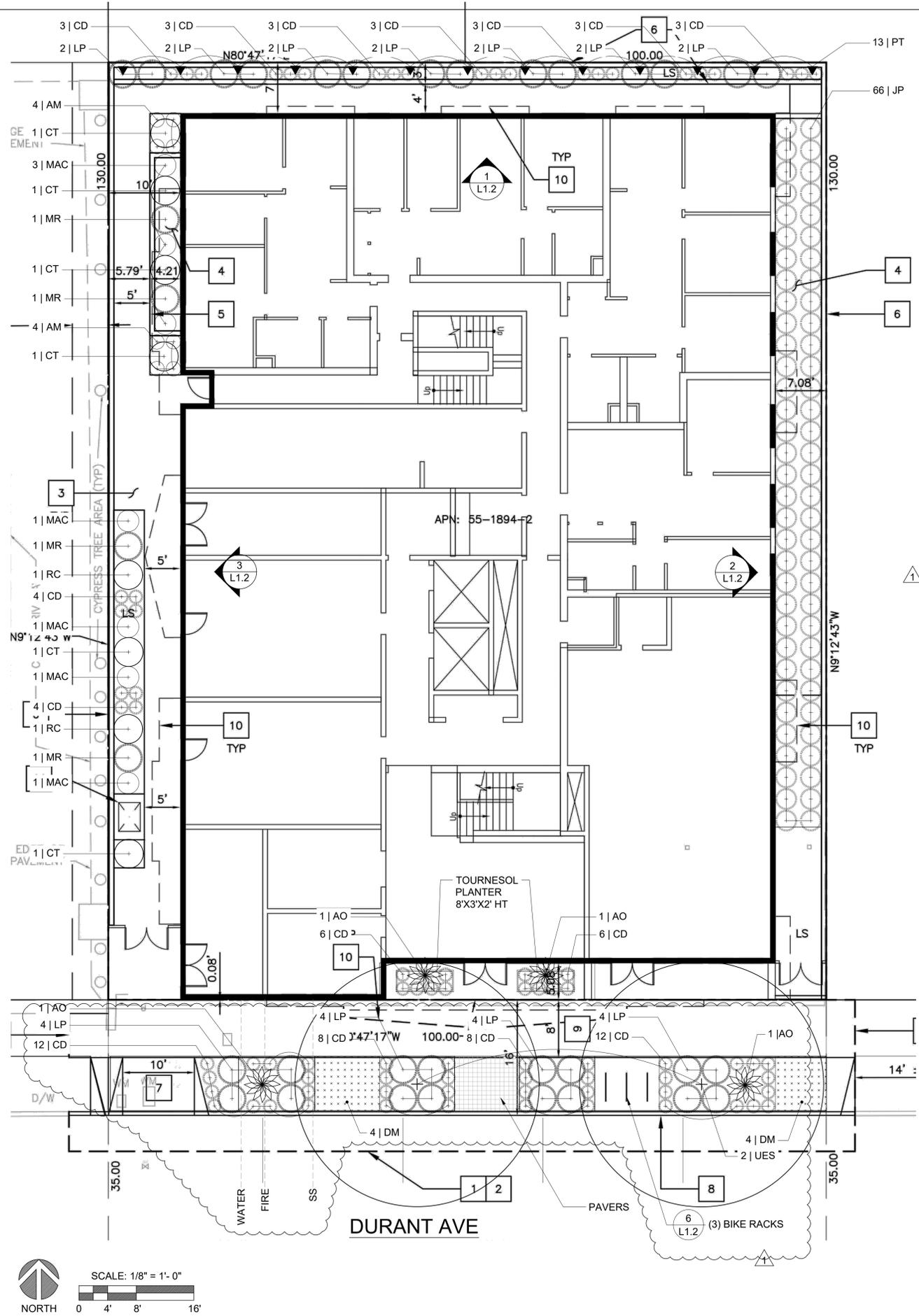


2037 DURANT AVENUE
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STORM WATER CONTROL PLAN

CHECKED BY: **BD**
 DRAWN BY: **STAFF**
 SCALE: **1"=10'**
 DATE: **10/31/23**
 PROJECT NO: **2021.012**
 PHASE NO.

SHEET NO.
C5.0

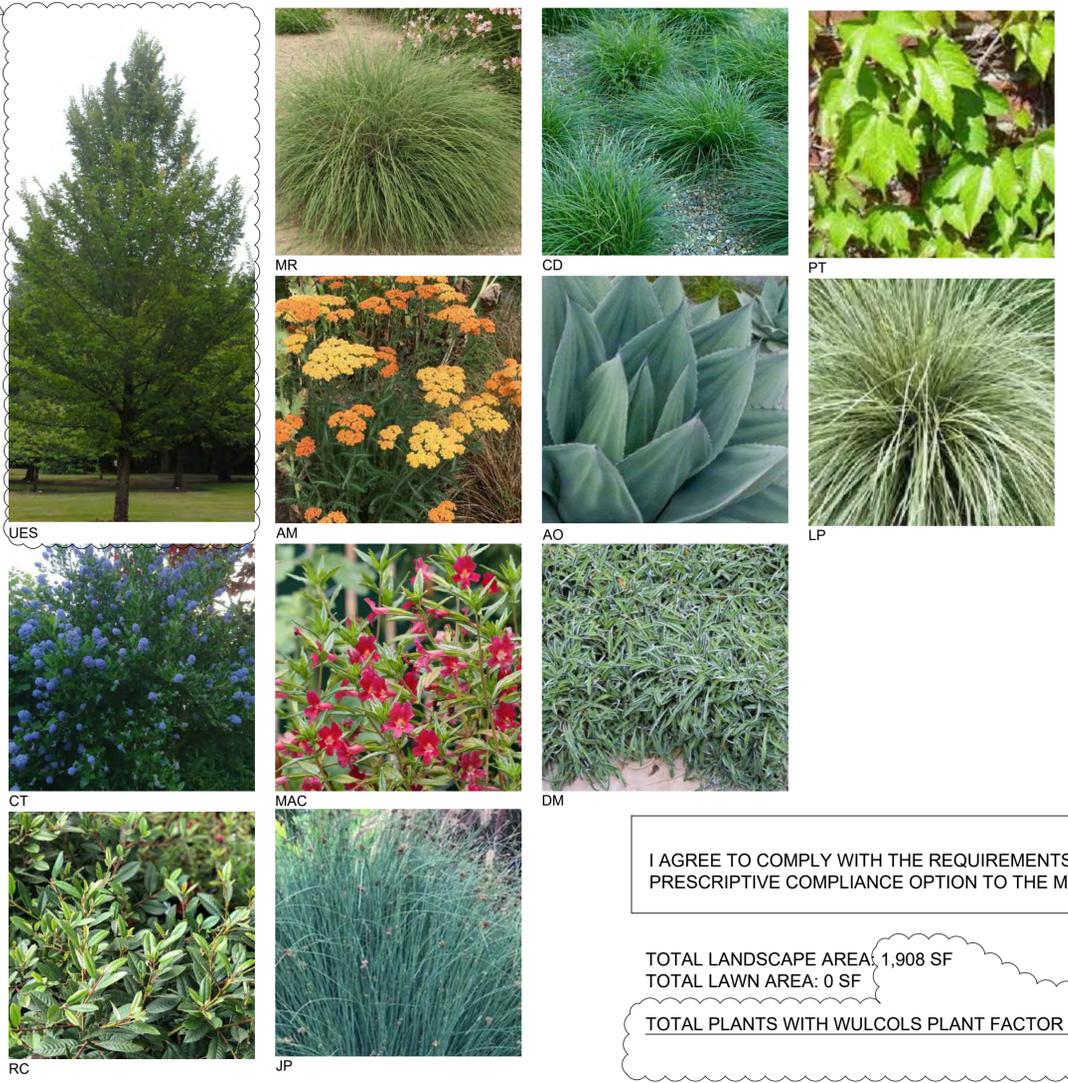


PLANT SCHEDULE

SYMBOL	BOTANICAL NAME	COMMON NAME	TYPE	QTY	SIZE	WATER USE	HT	W	NATIVE	%	POLLINATOR NOTES
UES	ULMUS 'EMERALD SUNSHINE' *	EMERALD SUNSHINE ELM TREE	TREE*	2	24" BOX*	L	35'	25'		0.8%	1
CT	CEANOTHUS THYRSIFLORUS 'SKYLARK'	BLUE MOUNTAIN LILAC	SHRUB	6	5 GAL	L	4'	4'	Y	2.5%	2
RC	RHAMNUS CALIFORNICA 'SAN BRUNO'	SAN BRUNO MOUND COFFEEBERRY	SHRUB	2	5 GAL	L	4'	4'	Y	0.8%	3
AM	ACHILLEA MILLEFOLIUM 'TERRACOTTA'	'TERRACOTTA' YARROW	PERENNIAL	8	1 GAL	L	2'	2'	Y	3.3%	4
AO	AGAVE OVATIFOLIA	WHALES TONGUE AGAVE	PERENNIAL	4	5 GAL	L	3'	5'		1.7%	
JP	JUNCUS PATENS	CALIFORNIA GREY RUSH	PERENNIAL	66	1 GAL	L	3'	3'	Y	27.6%	
MAC	MIMULUS AURANTICUS 'CHERRY'	STICKY MONKEY FLOWER	PERENNIAL	7	1 GAL	L	3'	3'	Y	2.9%	5
CD	CAREX DIVULSA	BERKELEY SEDGE	GRASS	89	1 GAL	L	2'	2'		37.2%	
LP	LOMANDRA 'PLATINUM BEAUTY'	'PLATINUM BEAUTY' LOMANDRA	GRASS	30	1 GAL	L	3'	3'		12.6%	
MR	MUHLENBERGIA RIGENS	DEER GRASS	GRASS	4	5 GAL	L	4'	4'	Y	1.7%	
DM	DYMONDIA MARGARIETAE**	SILVER CARPET	GROUNDCOVER	8	FLAT**	L	3"	12"+		3.3%	6
PT	PARTHENOCISUS TRICUSPIDATA	BOSTON IVY	VINE	13	1 GAL	L	10'	10'		5.4%	

* STREET TREE CALIPER TO BE A MINIMUM 2.5" DBH AND EXHIBIT TRUNK TAPER.
 * STREET TREE TO HAVE SINGLE, CENTRAL DOMINANT LEADER. HEADED TREES WILL BE REJECTED.
 ** LANDSCAPE FLAT TO BE CUT INTO 16 PIECES AND SPACED 12" OC.
 % = QTY / TOTAL # PLANTS PERCENTAGES ARE CALCULATED INDEPENDENTLY FOR GROUND LEVEL AND ROOF DECK PLANS.

- POLLINATOR NOTES:
1. ULMUS: THOUGH ELMS ARE WIND-POLLINATED, THE INCONSPICUOUS FLOWERS ARE STILL AN EARLY-SPRING POLLEN SOURCE FOR BEES.
 2. CEANOTHUS: NATIVE BEES, BUTTERFLIES AND OTHER POLLINATORS FREQUENT THE WINTER FLOWERS. SEVERAL BUTTERFLIES AND MOTHS USE CEANOTHUS AS A LARVAL FOOD SOURCE. BUSHTITS, MOCKINGBIRDS, QUAIL AND FINCHES EAT THE SEEDS.
 3. RHAMNUS: FLOWERS ARE LOVED BY POLLINATORS, ESPECIALLY BEES. A LARVAL FOOD SOURCE THE PALE SWALLOWTAIL BUTTERFLY. PROVIDES BLACK JUICY FRUIT IN THE FALL FOR THRUSHES, JAYS, MOCKINGBIRDS, ROBINS, AND PURPLE FINCH.
 4. ACHILLEA: BEES AND BUTTERFLIES LOVE YARROW.
 5. MIMULUS: LARVAL FOOD SOURCE FOR THE COMMON CHECKERSPOT AND BUCKEYE BUTTERFLIES. FLOWERS PROVIDE NECTAR FOR HUMMINGBIRDS.
 6. DYMONDIA: YELLOW, DAISY-LIKE FLOWERS ATTRACT BEES AND OTHER POLLINATORS, INCLUDING BEETLES AND BUTTERFLIES.
 7. SAMBUCUS: A STUNNING VARIETY OF HONEYBEES, BUMBLEBEES, GROUND BEES, BEETLES AND BIRDS WILL COVER THE UMBEL-SHAPED ELDERBERRY FLOWERS IN THE SPRINGTIME. SONGBIRDS ENJOY THE BEAUTIFUL FALL BERRIES.



I AGREE TO COMPLY WITH THE REQUIREMENTS OF THE PRESCRIPTIVE COMPLIANCE OPTION TO THE MWELC

TOTAL LANDSCAPE AREA: 1,908 SF
 TOTAL LAWN AREA: 0 SF
 TOTAL PLANTS WITH WULCOLS PLANT FACTOR <=0.3: (100%)

REVISION:	DATE:
1 COMMENT CORRECTIONS	09-15-23

THESE PLANS ARE CONSIDERED PRELIMINARY AND NOT FOR CONSTRUCTION UNLESS THEY BEAR THE ARCHITECT'S SEAL AND WET SIGNATURE ALONG WITH THE GOVERNING AGENCY'S REVIEW SEAL OF APPROVAL AND WET SIGNATURE. GARDEN ARCHITECTURE EXPRESSLY RESERVES COMMON LAW COPYRIGHT AND OTHER PROPRIETARY RIGHTS TO ALL DESIGN AND INFORMATION IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY, WITHOUT FIRST OBTAINING THE EXPRESS WRITTEN PERMISSION OF GARDEN ARCHITECTURE.

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2037 DURANT AVE
 BERKELEY, CA

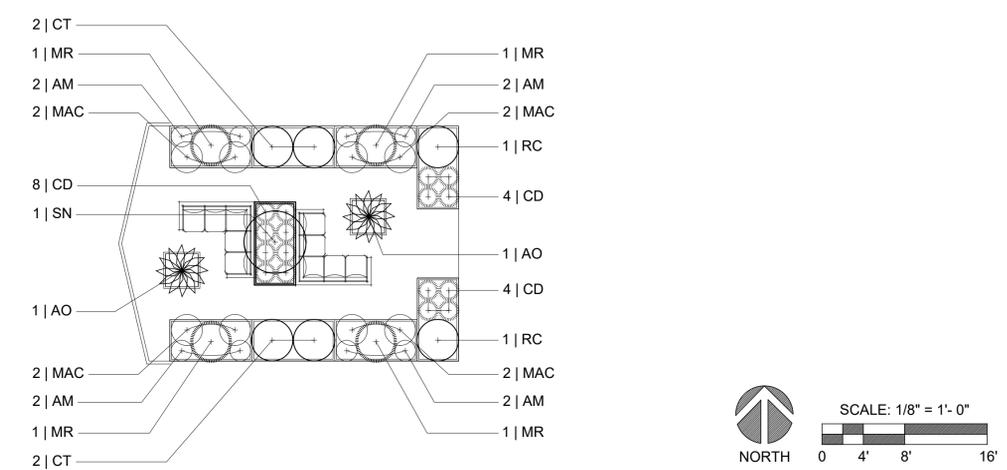
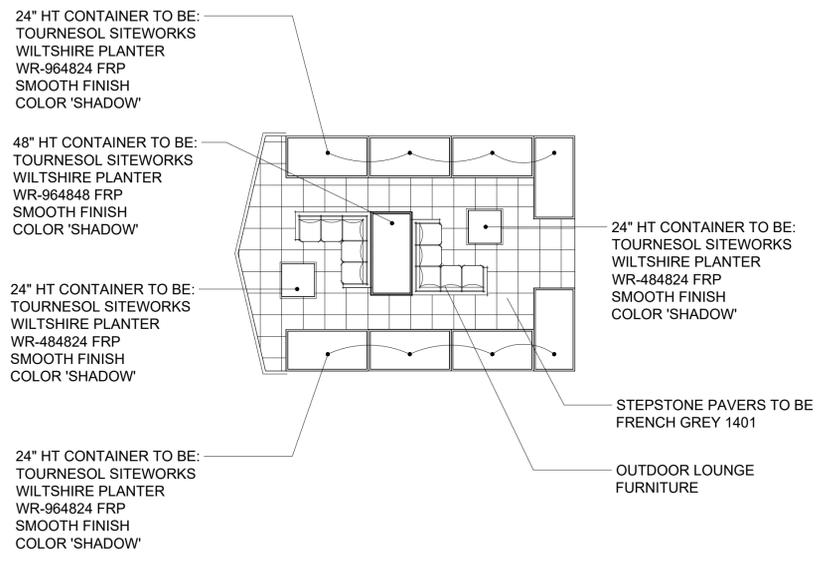
LANDSCAPE PLAN
 GROUND

SCALE: AS NOTED
 DRAWN BY: TK
 DATE: 03-23-23
 SHEET

L1.0
 © GARDEN ARCHITECTURE 2012

REVISION:	DATE:
1 COMMENT CORRECTIONS	09-15-23

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1 SITE PLAN
LANDSCAPE MATERIALS

2 PLANTING PLAN



Tournesol Wilshire Planters
See plan for model numbers
-Smooth finish
-Color to be shadow



OUTDOOR LOUNGE FURNITURE TBD

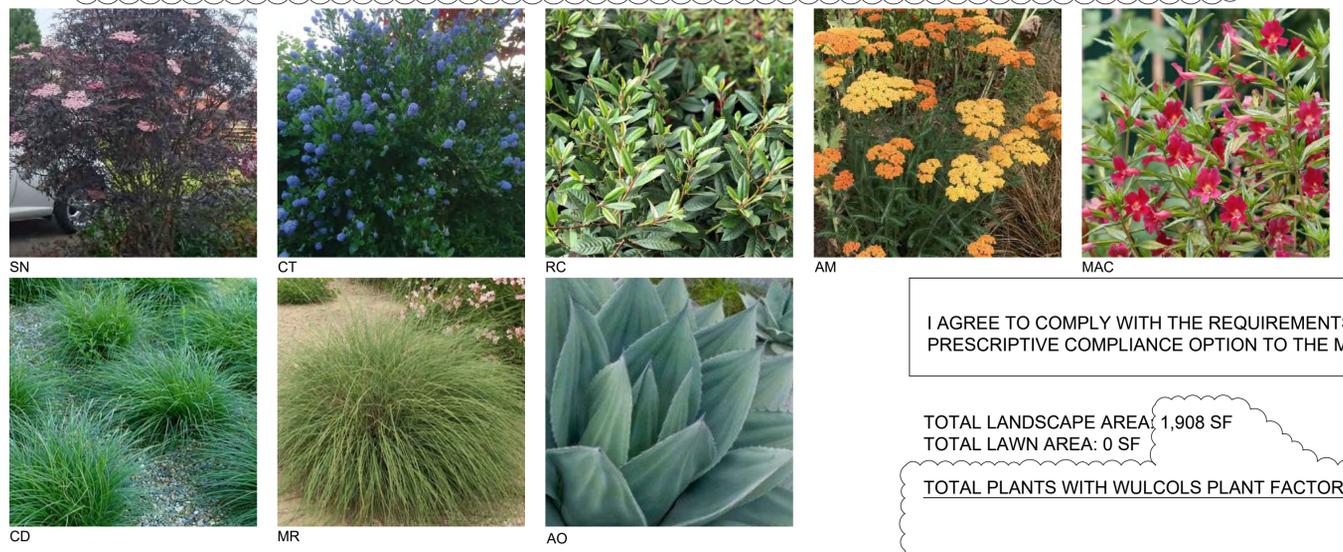
PLANT SCHEDULE

SYMBOL	BOTANICAL NAME	COMMON NAME	TYPE	QTY	SIZE	WATER USE	HT	W	NATIVE	%	POLLINATOR NOTES
SN	SAMBUCUS NIGRA 'BLACK LACE'	ELDERBERRY = MULTI-TRUNK	TREE	1	15 GAL	L	8'	8'		2.4 %	7
CT	CEANOTHUS THYRSIFLORUS 'SKYLARK'	BLUE MOUNTAIN LILAC	SHRUB	2	5 GAL	L	4'	4'	Y	4.8 %	2
RC	RHAMNUS CALIFORNICA 'SAN BRUNO'	SAN BRUNO MOUND COFFEEBERRY	SHRUB	1	5 GAL	L	4'	4'	Y	2.4 %	3
AO	AGAVE OVATIFOLIA	WHALES TONGUE AGAVE	PERENNIAL	2	5 GAL	L	3'	5'		19.0 %	
AM	ACHILLEA MILLEFOLIUM 'TERRACOTTA'	'TERRACOTTA' YARROW	PERENNIAL	8	1 GAL	L	2'	2'	Y	19.0 %	4
MAC	MIMULUS AURANTICUS 'CHERRY'	STICKY MONKEY FLOWER	PERENNIAL	8	1 GAL	L	3'	3'	Y	38.1 %	5
CD	CAREX DIVULSA	BERKELEY SEDGE	GRASS	16	1 GAL	L	2'	2'		9.5 %	
MR	MUHLENBERGIA RIGENS	DEER GRASS	GRASS	4	5 GAL	L	4'	4'	Y	4.8 %	

% = QTY / TOTAL # PLANTS. PERCENTAGES ARE CALCULATED INDEPENDENTLY FOR GROUND LEVEL AND ROOF DECK PLANS.

POLLINATOR NOTES:

1. ULMUS: THOUGH ELMS ARE WIND-POLLINATED, THE INCONSPICUOUS FLOWERS ARE STILL AN EARLY-SPRING POLLEN SOURCE FOR BEES.
2. CEANOTHUS: NATIVE BEES, BUTTERFLIES AND OTHER POLLINATORS FREQUENT THE WINTER FLOWERS. SEVERAL BUTTERFLIES AND MOTHS USE CEANOTHUS AS A LARVAL FOOD SOURCE. BUSHTITS, MOCKINGBIRDS, QUAIL AND FINCHES EAT THE SEEDS.
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I AGREE TO COMPLY WITH THE REQUIREMENTS OF THE PRESCRIPTIVE COMPLIANCE OPTION TO THE MWEL0

TOTAL LANDSCAPE AREA: 1,908 SF
TOTAL LAWN AREA: 0 SF
TOTAL PLANTS WITH WULCOLS PLANT FACTOR <=0.3: (100%) *



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931 Piedmont Street | Berkeley, CA 94710
510-525-3577 | www.gardenarchitecture.biz

2037 DURANT AVE
BERKELEY, CA

LANDSCAPE PLAN
ROOF DECK

SCALE: AS NOTED
DRAWN BY: TK
DATE: 03-23-23

SHEET
L1.1
© GARDEN ARCHITECTURE 2012

REVISION:	DATE:
1 COMMENT CORRECTIONS	09-15-23

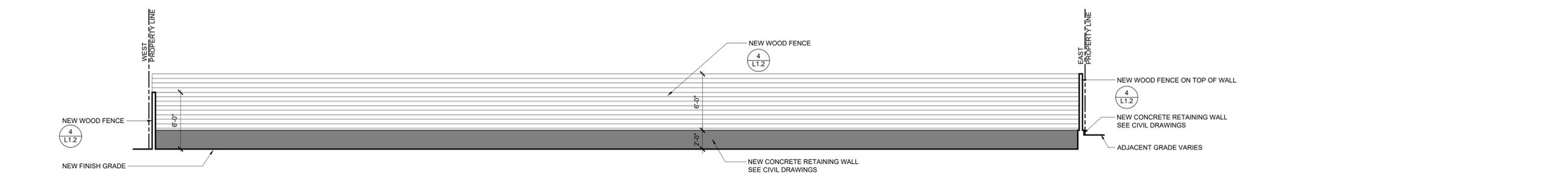
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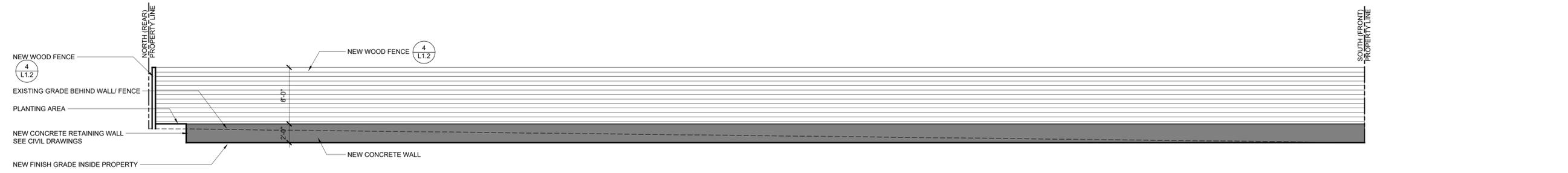
2037 DURANT AVE
 BERKELEY, CA

LANDSCAPE DETAILS
 SCALE: AS NOTED
 DRAWN BY: TK
 DATE: 03-23-23
 SHEET

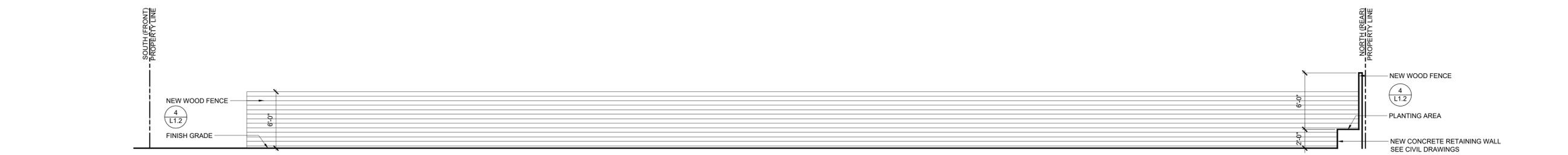
L1.2
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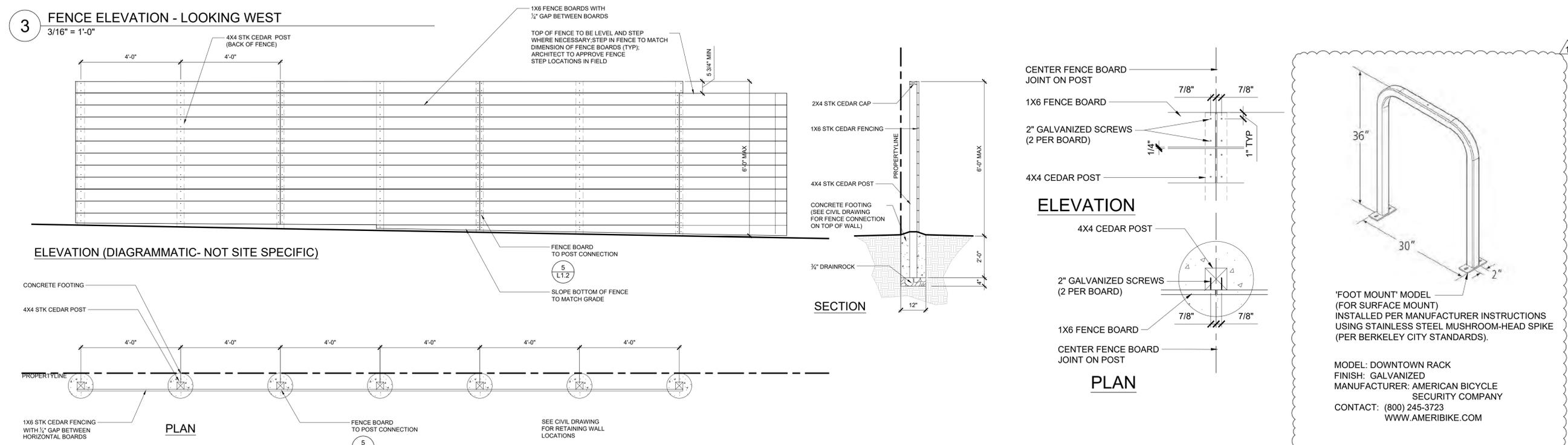
1 FENCE ELEVATION - LOOKING NORTH
 3/16" = 1'-0"



2 FENCE ELEVATION - LOOKING EAST
 3/16" = 1'-0"

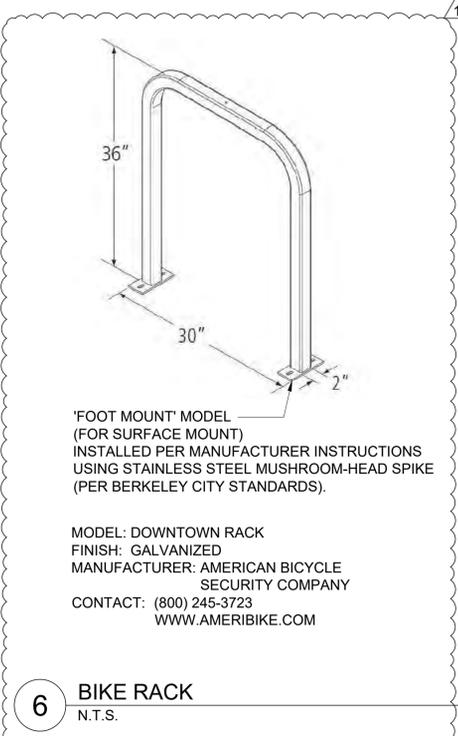


3 FENCE ELEVATION - LOOKING WEST
 3/16" = 1'-0"

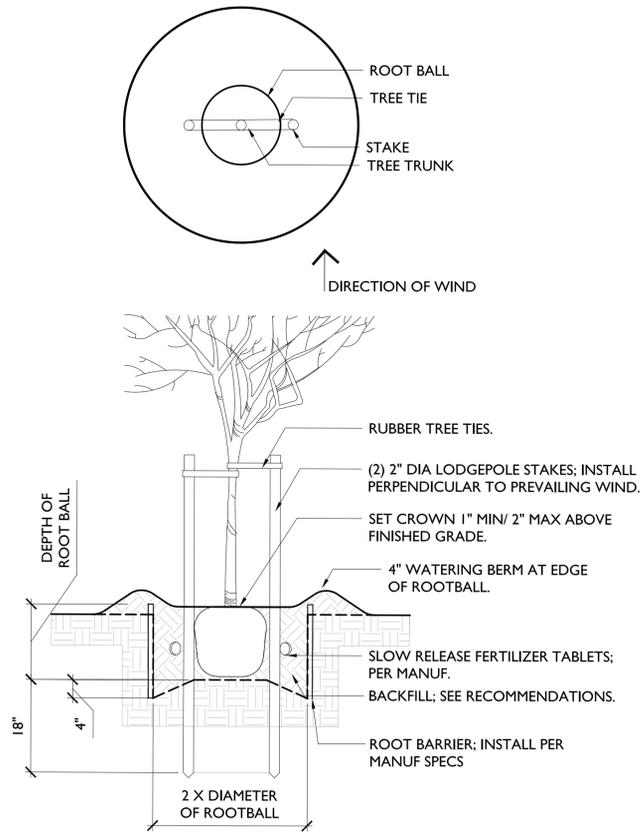


4 FENCE DETAILS
 1/2" = 1'-0"

5 FENCE BOARD TO POST CONNECTION
 1-1/2" = 1'-0"

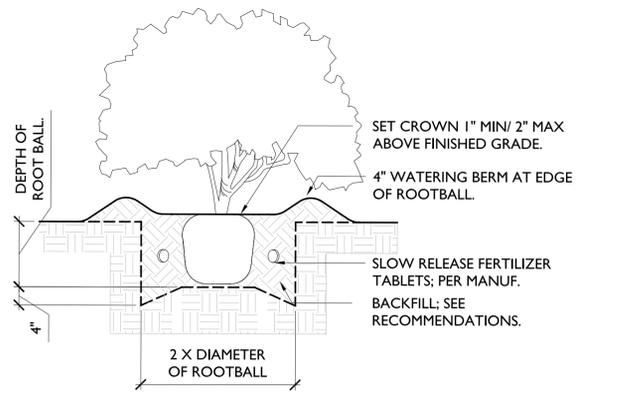


6 BIKE RACK
 N.T.S.



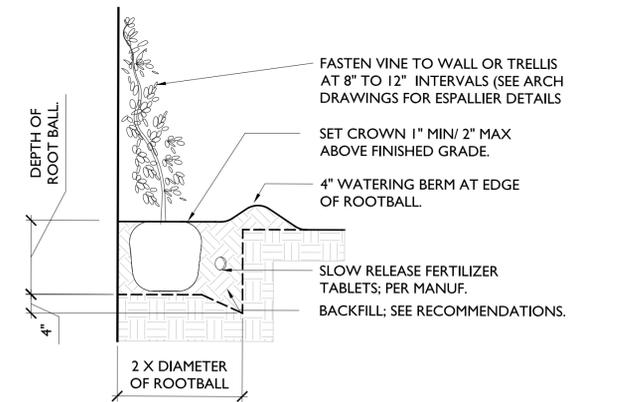
1

TREE PLANTING
 NO SCALE



2

SHRUB PLANTING
 NO SCALE



3

VINE PLANTING DETAIL
 NO SCALE

REVISION:	DATE:

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2037 DURRANT AVE
 BERKELEY, CA

PLANTING NOTES AND DETAILS

SCALE: AS NOTED
 DRAWN BY: TK
 DATE: 03-23-23

SHEET
L1.3



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**2037 DURANT
 AVE**

**BERKELEY,
 CALIFORNIA
 94704**



PROJECT ISSUE RECORD:

CITY PERMIT RECORD:
 1/20/2023 SB330 APPLICATION
 05/01/2023 ENTITLEMENT APP.
 09/18/2023 ENTITLEMENT RESP 1
 10/31/2023 ENTITLEMENT RESP 2

PROJECT:

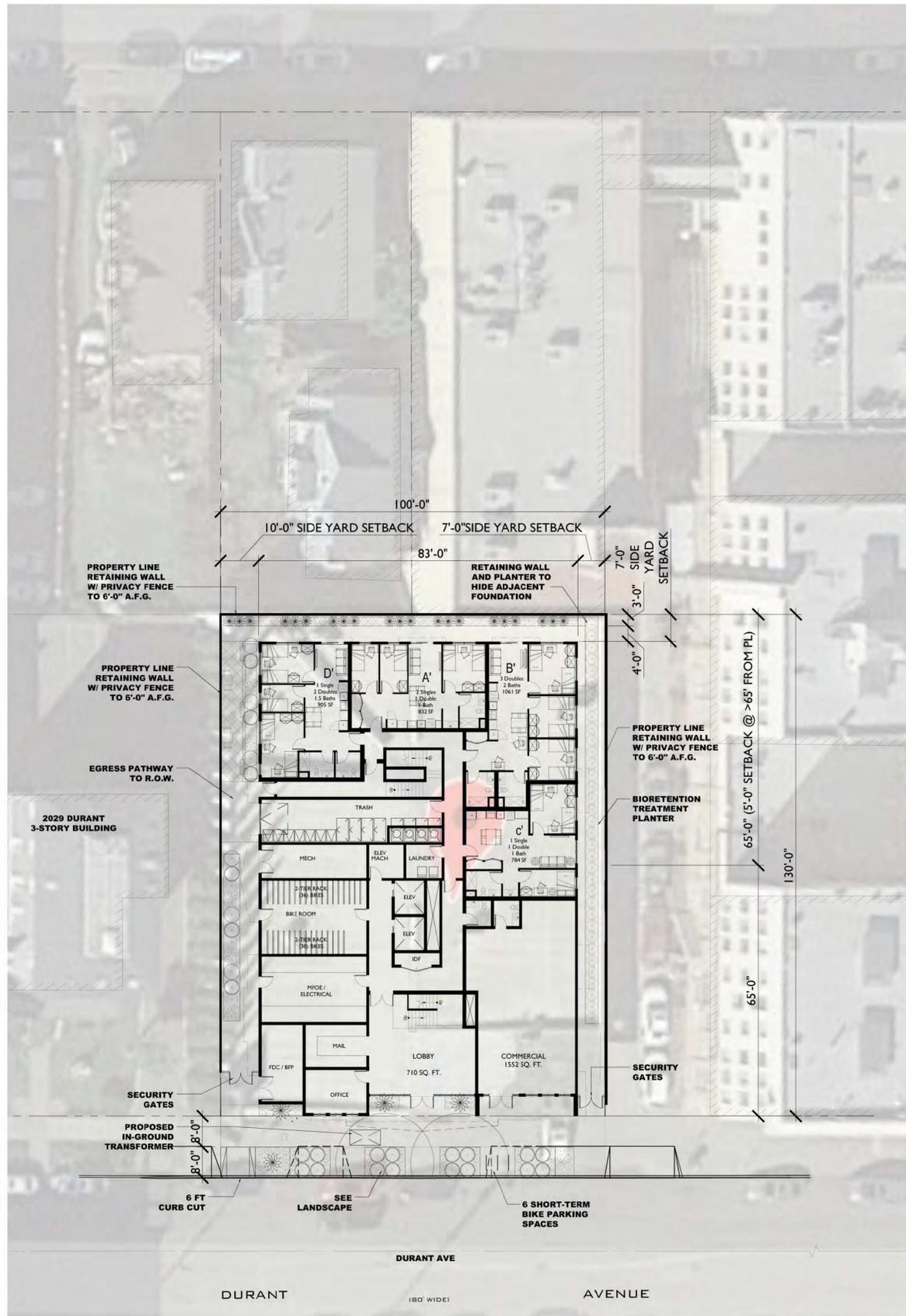
JY'01

TITLE:

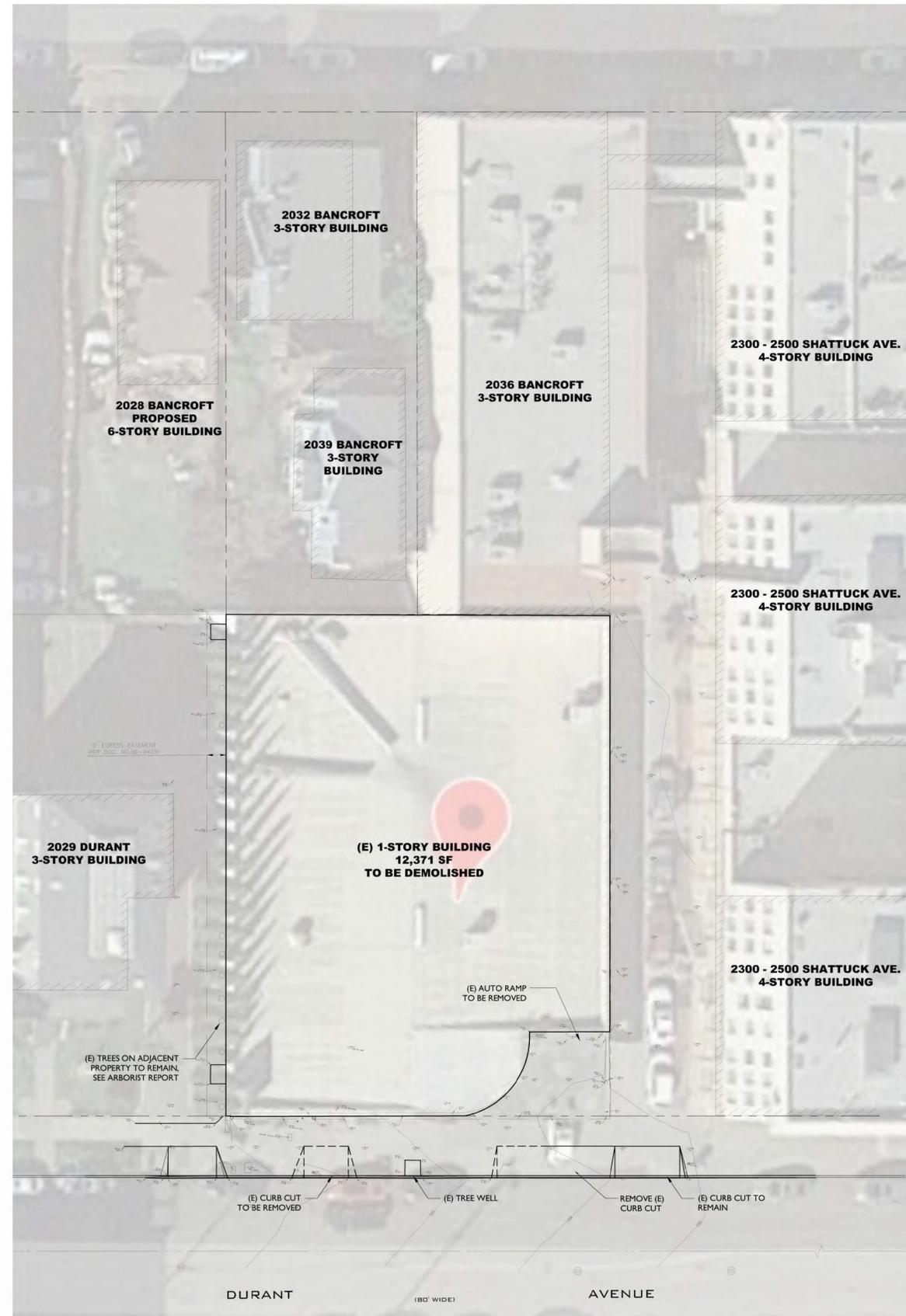
SITE PLANS -
 PROPOSED AND
 EXISTING

SHEET:

A100



2 PROPOSED SITE PLAN
 1/16" = 1' 0"



1 EXISTING SITE PLAN
 1/16" = 1' 0"





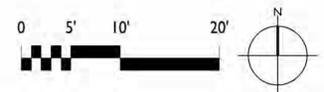
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2037 DURANT
 AVE

BERKELEY,
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 94704



GROUND FLOOR FOOTPRINT 10,140 SF
 AREA OF PROJECTIONS ABOVE 637 SF
 TOTAL FOOTPRINT AREA 10,777 SF



PROJECT ISSUE RECORD:

CITY PERMIT RECORD:
 1/20/2023 SB330 APPLICATION
 05/01/2023 ENTITLEMENT APP.
 09/18/2023 ENTITLEMENT RESP 1
 10/31/2023 ENTITLEMENT RESP 2

PROJECT:
 JJY01

TITLE:
 PROPOSED GROUND FLOOR PLAN
 SHEET:

A101

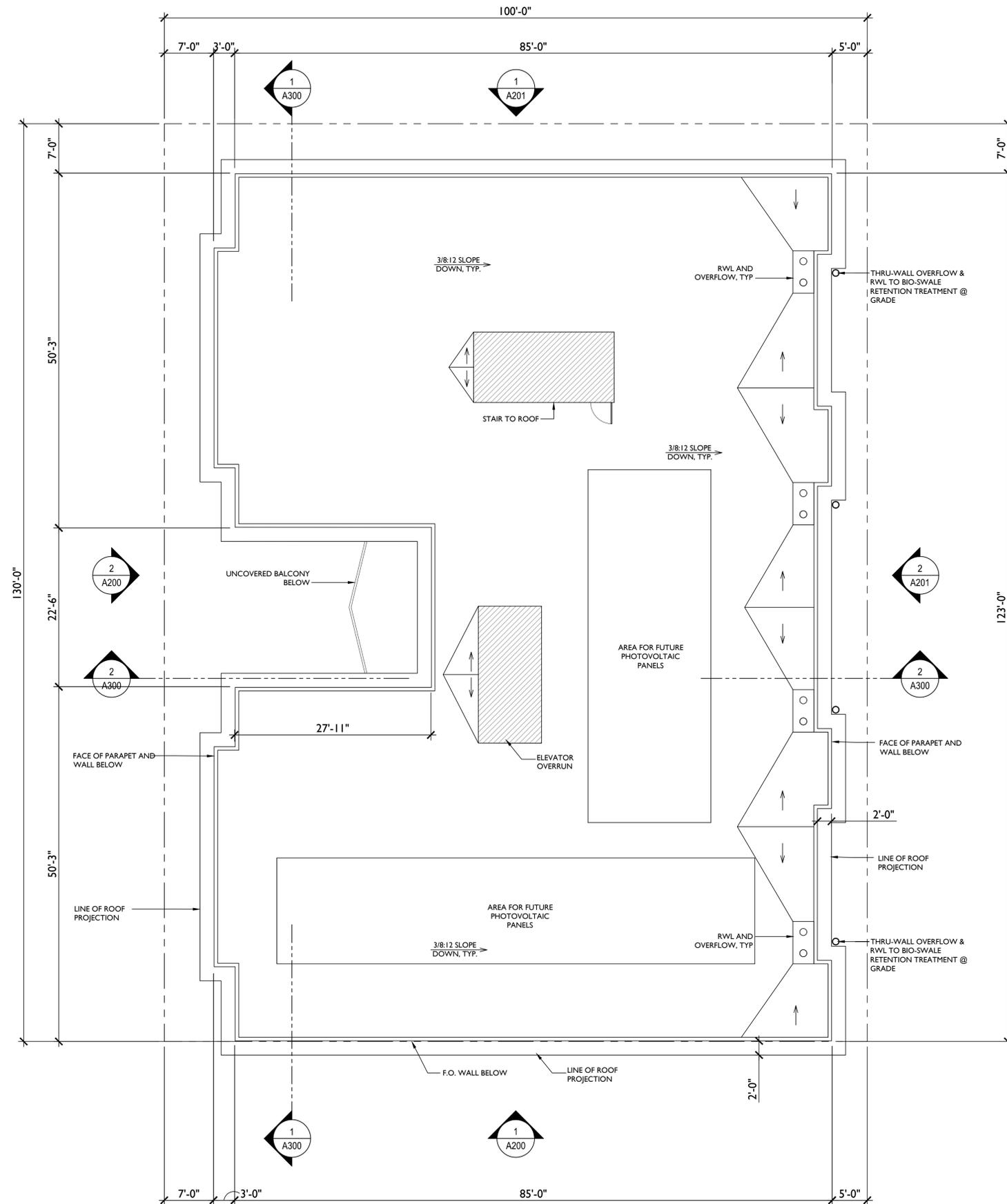
1 GROUND FLOOR PLAN
 1/8" = 1' 0"



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**BERKELEY,
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EIGHTH FLOOR FOOTPRINT	9,820 SF
AREA OF ROOF PROJECTIONS	1,006 SF
TOTAL FOOTPRINT AREA	10,826 SF
AVERAGE FLOOR AREA 10,108 SF	
1,006 SF ROOF PROJECTIONS = 9.3% < 15%	

PROJECT ISSUE RECORD:

CITY PERMIT RECORD:

1/20/2023	SB330 APPLICATION
05/01/2023	ENTITLEMENT APP.
09/18/2023	ENTITLEMENT RESP I

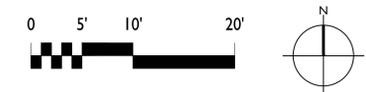
PROJECT: JJY01

TITLE:

PROPOSED ROOF PLAN

SHEET:

A106



1 PROPOSED ROOF PLAN
 1/8" = 1' 0"



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**2037 DURANT
 AVE**

**BERKELEY,
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 94704**



 6 BASE COLOR SHERWIN WILLIAMS SW 7019 GAUNTLET GRAY	 7 ACCENT COLOR BENJAMIN MOORE 2141-30 ARMY GREEN	 8 VINYL CASEMENT WINDOW	 9 ENTRANCE ACCENT TILE FIRECLAY PEABODY (V2)	 10 WINDOW MULLION ARCADIA / WILSON PARTITIONS AB-5 STD. MEDIUM BRONZE
 1 EXTERIOR CLADDING CERACLAD - 8 REVEAL DARK OLIVE	 2 GUARDRAIL PERFORATED METAL PANEL BRONZE	 3 EXTERIOR TRIM & GUARDRAIL ACCENT PRISMATIC POWDERS POLY GOLD PMB-4211	 4 COLOR A SHERWIN WILLIAMS SW 7531 - CANVAS TAN	 5 COLOR B SHERWIN WILLIAMS SW 6150 - UNIVERSAL KHAKI

4 MATERIAL KEY



2 WEST ELEVATION
 1/8" = 1'-0"

1 SOUTH ELEVATION - DURANT AVENUE
 1/8" = 1'-0"

PROJECT ISSUE RECORD:

CITY PERMIT RECORD:	
1/20/2023	SB330 APPLICATION
05/01/2023	ENTITLEMENT APP.
09/18/2023	ENTITLEMENT RESP 1
10/31/2023	ENTITLEMENT RESP 2

PROJECT: JJ101
 TITLE:
 EXTERIOR ELEVATIONS
 - MATERIALS &
 COLORS
 SHEET:

A200



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**2037 DURANT
AVE**

**BERKELEY,
CALIFORNIA
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6 DOOR 3



5 DOOR 1



3 WINDOW 3



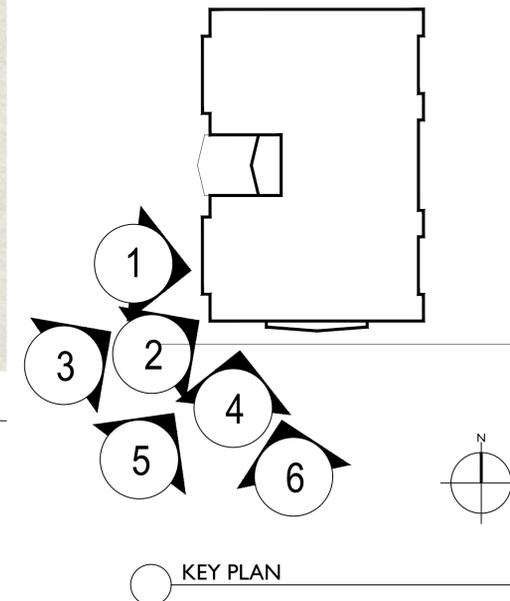
3 WINDOW 4



2 WINDOW 1



1 WINDOW 2



KEY PLAN

PROJECT ISSUE RECORD:

DATE	ISSUE	RESOLUTION

CITY PERMIT RECORD:

DATE	DESCRIPTION
1/20/2023	SB330 APPLICATION
05/01/2023	ENTITLEMENT APP.
09/18/2023	ENTITLEMENT RESP.

PROJECT: JJY01

TITLE: PERSPECTIVE VIEWS

SHEET: A402



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

2037 Durant Avenue

Use Permit #ZP2023-0064 for a Density Bonus Project that would demolish a one-story, 13,000 square-foot commercial building and construct an eight-story (90 feet), 76,373 square-foot mixed-use building with 74 dwelling units, including 4 Very Low-Income Density Bonus qualifying units, and 1,552 square feet of ground floor commercial space.

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

When: Thursday, May 9, 2024, 7:00 pm

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

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

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

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

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

A. Land Use Designations:

- General Plan: Downtown
- Zoning: Downtown Mixed Use – Buffer (C-DMU Buffer)

B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.326.070 to demolish a non-residential main building
- Use Permit pursuant to BMC Section 23.204.020 to construct a mixed-use residential development
- Use Permit pursuant to BMC Section 323.204.030(A)(1) to construct 10,000 square feet of more of gross floor area.
- Use Permit pursuant to BMC Section 23.204.130(E)(1) to increase the maximum allowed height to 60 feet
- Administrative Use Permit pursuant to BMC Section 23.304.050 to allow for rooftop equipment projections above the height limit
- Administrative Use Permit pursuant to BMC Section 23.304.080(A) to allow for a fence more than 6 ft in height and on a lot line (6-foot fence proposed, with 2 foot retaining below)

C. CEQA Recommendation: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines (“Infill Development Project”).

D. Parties Involved:

- Applicant Kim Fisher, Studio KDA, Berkeley
- Property Owner Janice Yi Lee and Jonathan Yi, Pleasanton CA

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, Lisa Gordon, at (805) 324-7207 or lgordon@rinconconsultants.com or Claudia Garcia, at (510) 981-7412 or cgarcia@berkeleyca.gov.

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

Communication Disclaimer:

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

Written Comments, Communications, and Reports:

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

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

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

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



Accessibility Information / ADA Disclaimer:

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

SB 343 Disclaimer:

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

Notice Concerning Your Legal Rights:

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

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within 14 days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than 90 days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that 90-day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes

a “taking” of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:

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

Subject: FW: [EXT] FW: Redlining/Durant, personal impacts

From: beneficialbug@sonic.net <beneficialbug@sonic.net>

Sent: Thursday, March 9, 2023 9:11 PM

To: Harrison, Kate <KHarrison@cityofberkeley.info>; Humbert, Mark <MHumbert@cityofberkeley.info>; Kesarwani, Rashi <RKesarwani@cityofberkeley.info>; Robinson, Rigel <RRobinson@cityofberkeley.info>; Hahn, Sophie <SHahn@cityofberkeley.info>; Wengraf, Susan <SWengraf@cityofberkeley.info>; Taplin, Terry <ttaplin@cityofberkeley.info>; mayor@ciberkeley.info <mayor@ciberkeley.info>; Planning Dept. Mailbox <planning@cityofberkeley.info>

Subject: Redlining/Durant, personal impacts

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I live at 2020 Bancroft.

The plan for 2037 Durant is horrendous in the neighborhood that is already overbuilt. Personal impacts which then one can extrapolate out to understand why this kind of crowding is so unhealthy for all:

This building would completely block the morning/midday sun for my unit in the building on Bancroft.
The effect it would have on me:

- The warmth I depend on from the sun would be mostly gone and result in my needing to use a heater when usually I do not for environmental reasons
- The sunlight I depend on for drying my clothes in my apartment for environmental reasons and to save money since rent is so outrageous largely would be gone in the warmest hours. One day of drying racks in my studio apt. would turn into two days, or more
- The light I depend on for mental health would be badly impacted
- Well, and the mental health aspects of so many behemoth buildings...I think most of us recognize that these create not only much shadowing and sometimes wind tunnels, but also acoustic tunnels. This is bad for all our mental health. Like we are not facing enough people with mental health imbalances around us already?

When we hear about Environmental Impact Reports and CEQA, this is what it's about.

UC largely holds the media in close and now the CA legislature, also. UC's shenanigans both around People's Park and also deforestation and pesticing in the hills is all wrapped up with UC trying to gut CEQA so that in CA we'd have no way to seriously weigh in on impacts, at least in a way that others, including lawyers, could use to describe real impacts.

Woe be to us all looking for air and light.

Sincerely,
Max Ventura

For another example I hope you all will witness, about the outrageous decisions of the Planning Dept., please look at the 2028 apt. construction which is backed up practically against the old I think 12-unit apt building to the east of it. They've cut off basically all the sunlight any time of day from the west side of the old apt. building. Please come look at it.

One might be tempted to think that, after all, there are row houses in old cities like SF and Boson,, New York, Philly, etc. But you must remember that those were built with long windows front and back, and often what does one call it? Like a vent so that units

have access to light between buildings with internal windows facing out to those vents. That's everywhere in old SF row houses. The Planning Dept. let 2029 Bancroft skate through early in the shelter-in-place when people were scared of, you know, dying. And who owns this? The Lakireddy family, in all their various name-shifting enterprises.

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Maxina Ventura
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