



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

JULY 11, 2024

2427 San Pablo Avenue

Use Permit #ZP2022-0115 to demolish two existing multifamily buildings and construct a 36,280 square foot, 5-story (70 feet, 8 inches), residential building containing 8 replacement apartment units and a Residential Hotel (Group Living Accommodation) with 70 single-occupancy rooms (3 Extremely Low-Income, 2 Very Low-Income units, and 3 Low-Income) for a total of 78 units, utilizing State Density Bonus. Fifteen off-street automobile parking spaces would be provided.

I. Background

A. Land Use Designations:

- General Plan: AC (Avenue Commercial)
- Zoning District: C-W (West Berkeley Commercial District)

B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.326.030(A)(2)(b), to demolish two buildings with two or more units constructed before June 1980
- Use Permit pursuant to BMC Section 23.204.020(A) to establish multi-family dwellings
- Use Permit pursuant to BMC Section 23.204.020(A) to establish a Residential Hotel
- Use Permit pursuant to BMC Section 23.204.030(A) for the creation of 5,000 square feet or more of gross floor area Administrative Use Permit pursuant to BMC Section

23.304.050(A) for rooftop projections above the height limit

C. Concessions and Waivers and Pursuant to State Density Bonus Law (CA Gov't. Code Section 65915):

- Waiver of BMC Section 23.204.140(E)(1) to exceed the maximum building height of 50 feet with a height of 70 feet, 8 inches
- Waiver of BMC Section 23.204.140(E)(1) to exceed four stories with five stories
- Waiver of BMC Section 23.204.140(E)(1) to exceed the floor area ratio (FAR) limit of 3 with an FAR of 3.5

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 CEQA Guidelines Section 15332 ("Infill Development Projects").

E. Parties Involved:

- Applicant: Jason Andre (Studio KDA), Berkeley, CA
- Property Owner: Aron Homes, LLC (Bobby Nilsen & Adam Oback), Los Gatos, CA

Figure 1: Vicinity and Zoning Districts Map



*Map not to scale.

Map Key

- C-W: West Berkeley Commercial
- R-1A: Limited Two-Family Residential
- R-2: Restricted Two-Family Residential
- MULI: Mixed Use Light Industrial

Figure 2: Site Plan



Figure 3: Proposed Elevations

Front (West) Elevation



Rear (Back) Elevation



Side (South) Elevation



Side (North) Elevation

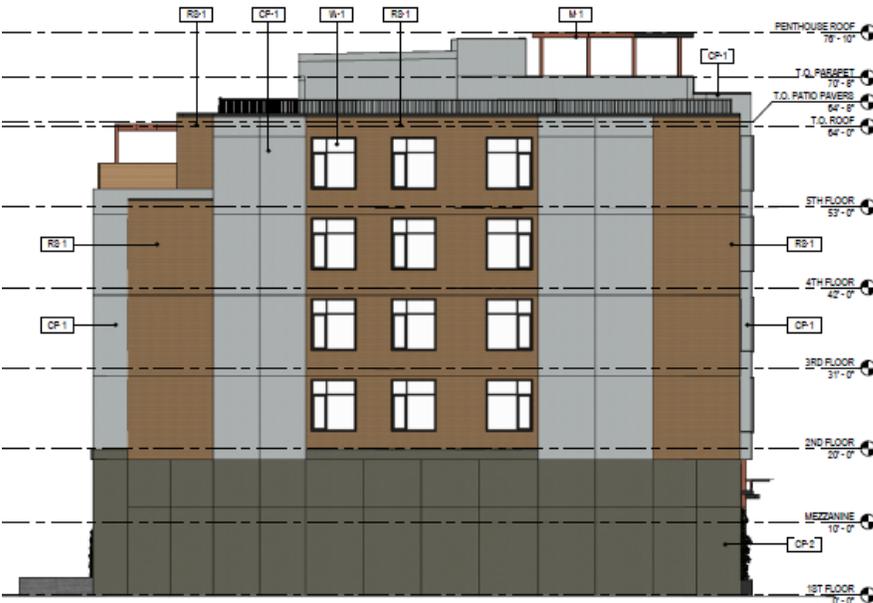


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Multifamily residential (two four-plexes)	C-W	Avenue Commercial
Surrounding Properties	North	Multifamily residential (two four-plexes)		
	South	Multifamily residential (42 unit Group Living Accommodations)		
	West	Automotive use (car wash)		
East		Single family dwelling	R-2 Restricted Two-Family Residential	Low Medium 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 project would establish a residential building with apartments and residential hotel (group living accommodation) units, therefore the fee does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable Housing Mitigations for rental housing projects (BMC Section 22.20.065) ^a	Yes	The project would provide 8 Below Market Rate (BMR) units – 3 Extremely Low Income (ELI) units, 2 Very Low-Income (VLI) units, and 3 Low Income (LI) units, and pay a fee to satisfy the requirements of BMC Section 22.20.065.
Alcohol Sales/Service Public Convenience or Necessity	No	The project does not propose any alcohol or sales service.
Coast Live Oak Trees (BMC Chapter 6.52)	No	There are no Coast Live Oak (<i>Quercus agrifolia</i>) trees on the project site.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30 feet of the project site.
Density Bonus	Yes	For Density Bonus purposes, the project would provide 5 Very Low-Income units, or 7 percent of the Base Project units, and qualifies for a 25 percent density bonus, or 17 bonus units (12 taken). See Section III.C for discussion.
Historic Resources	No	The Historic Resource Evaluation (HRE) prepared by Mark Hulbert of Preservation Architecture (April 20, 2022) evaluated the two properties and existing residential buildings at the subject address. Landmarks Preservation staff reviewed the provided HRE and concluded that the subject properties and residential buildings are not eligible

Characteristic	Applicability	Explanation
		for designation as a City of Berkeley Landmarks or Structures of Merit. Since the project does not include the demolition of non-residential buildings, Landmarks Preservation Commission demolition review is not required.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	Yes	The project meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) ^b . The base project complies with applicable, objective general plan and zoning standards, and thus section (j) of the Housing Accountability Act applies, and the project cannot be denied at the density proposed unless the findings for denial can be made. See Section IV.B of this report for additional discussion on compliance with the Housing Accountability Act.
Housing Crisis Act of 2019 (SB 330)	Yes	The project meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2). ^b See Section IV.C of this report for additional discussion on the sections of SB 330 that apply to the project.
Rent Controlled Units	Yes	The project would demolish eight rent-controlled dwelling units, which would be replaced in the new building. See Section IV.E, Replacement of Demolished Units.
Residential Preferred Parking (RPP)	No	The site is not located in an RPP zone. The project is not eligible for RPP permits per BMC Section 14.72.080(C)(1) as no permits shall be issued to residents in newly constructed residential units.
Seismic Hazards (SHMA)	Yes	The project site is located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones map. ^c The applicant submitted a geotechnical investigation for the project ([Rockridge Geotechnical, April 30, 2024]). The City's peer reviewer recommended specific geotechnical conditions of approval that are included as conditions of approval.
Soil/Groundwater Contamination	Yes	The project site is not on the Cortese List. ^d The project site is within the City's Environmental Management Area. The applicant has submitted a Phase I report. No further investigation is recommended. Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The site is located mid-block along San Pablo Avenue. The site is served by Alameda County (AC) transit lines 72, 72M, and 802. The site is also proximate to cross-town AC transit line 36. There are several Bay Wheels bike share locations within a half-mile of the site.
Notes:		
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.		

Characteristic	Applicability	Explanation
<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 16, 2022 (vesting date)	SB 330 complete preliminary housing development project application submitted
September 2, 2022	SB 330 Use Permit Application submitted
October 5, 2022	Application deemed incomplete
December 5, 2022	Application resubmitted
January 4, 2023	Application deemed incomplete
March 2, 2023	Application resubmitted
April 14, 2023	Application deemed incomplete
June 15, 2023	Design Review Committee meeting
November 20, 2023	Application resubmitted
December 19, 2023	Application deemed incomplete
January 4, 2024	Application resubmitted
January 16, 2024	Application resubmitted
February 6, 2024	Application deemed complete
June 5, 2024	Application resubmitted
June 17, 2024	Application resubmitted
July 1, 2024	Application resubmitted
June 27, 2024	Public hearing notices mailed/posted
July 11, 2024	ZAB hearing

**Table 4: C-W Development Standards BMC Sections 23.204.140 and 23.322
Parking and Loading**

Standard		Existing	Proposed Total	Permitted/ Required
Lot Area (sq. ft.)		5,425 (north lot) 5,393 (south lot)	10,818 (with parcel merger)	n/a
Gross Floor Area (sq. ft.)		4,800	36,280	n/a
Floor Area Ratio		0.4	3.5	3 max
Dwelling Units	Total	8	78	n/a

	Affordable	8 Rent Controlled Units	8	7 min Per CHAS ^a Data – see Section III.B
Building Height (ft. - in.)	Maximum	20	70'8"	50 max
	Stories	2	5	4 max
Building Setbacks (ft. - in.)	Front (San Pablo)	8'8"	1'7"	0 min
	Rear	40	10	10 min
	Left Side (South)	7	1	0 min
	Right Side (North)	7	5'3"	0 min
Lot Coverage (%)		22	84	100 max
Usable Open Space (sq. ft.)		1,350	320	3,120 min
Parking	Automobile	8	15	33 max
	Bicycle	0	44 (38 long term; 6 short term)	36 min (31 long term; 5 short term)
<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>				

II. Project Setting

A. Neighborhood/Area Description:

The project site is located within the C-W Commercial District along San Pablo Avenue, outside of a designated node. Located several blocks south University Avenue, the subject area is characterized by existing small-scale multifamily buildings

(i.e. fourplexes), automotive uses, neighborhood serving commercial (i.e. cafes, grocery/ liquor store, hair salon, etc.) and the redevelopment of several sites into mixed-use multifamily commercial buildings.

The project site is located midblock along San Pablo Avenue on the eastern portion of the street, between Channing Way and Dwight Way. This portion of the block is composed of two-story fourplexes, commercial uses, and vacant non-residential structures. Over 50 percent of the western portion of the block is currently under redevelopment. Entitled projects currently under construction in this neighborhood include the Berkeley Moshav (2403 San Pablo Avenue), an intentional community, multifamily building, and another GLA called Poet's Place (2435 San Pablo Avenue). The eastern portion of the block also abuts a residentially zoned district composed of primarily single and two- family dwelling units. The western portion of the block is composed of mix of automotive and general commercial uses. As San Pablo Avenue is regional thoroughfare that extends through several east bay cities, the project site is proximate to several high- quality transit (bus) lines and designated bicycle boulevards.

B. Site Conditions:

The project site is composed of two contiguous lots totaling 10,818 square feet and maintains about 113 feet of frontage along San Pablo Avenue. The relatively flat interior lot is developed with two, two-story four-plex residential buildings, totaling eight units and 4,800 square feet in gross floor area. The rear of the lot is dedicated to eight off-street parking spaces. The lot is accessed by one curb cut along the front of the site.

III. Project Description

A. Proposed Project Details: The proposed project would demolish the two multifamily buildings and construct a five-story residential building with the following primary components:

1. 70 residential hotel rooms (Group Living Accommodation (GLA)) (65 studio units, 5 one-bedroom units) with a total of 70 bedrooms
2. 8 replacement units (8 one-bedroom units)
3. Include affordable units: three ELI units, two VLI units, three LI units
4. 38 long-term bicycle parking spaces and 6 short-term spaces
5. 15 automobile parking spaces
6. Communal kitchens and dining space on floors 2-4
7. 3,157 square feet of useable open space (1,379 square foot roof deck, 1,120 square foot patio on the ground floor, three communal balconies on floor two, four, and five)
8. The lot merger of two lots

B. Replacement of Demolished Units:

Government Code Section 66300(d) prohibits the demolition of residential dwelling units unless the project will create at least as many residential units as the greatest number of residential dwelling units that existed on the project site within the last five

years that will be demolished; prohibits the demolition of occupied or vacant protected units (i.e. rent-controlled or affordable units), unless replaced according to replacement provisions therein; and does not supersede any local ordinance that reserves greater protections/provisions for lower income households or displaced households. The project proposes to demolish and replace the eight dwelling units that are on site.

The existing unit(s) are considered “protected” units as defined in Section 66300(d) because they are rent-controlled, and have been occupied within the last five years. Government Code Section 65915 (Density Bonus) and Government Code Section 66300 (SB 330) prohibit the demolition of occupied or vacant protected units (i.e. rent-controlled or affordable units, or units occupied by lower income households) unless the project will create at least as many residential units as will be demolished and will replace them with at least as many residential dwelling units as the greatest number of units that existed on the project site within the last five years. Further, if the income levels of the existing tenants or tenants within the last five years are unknown, the units are presumed to be occupied according to the income distribution data for City of Berkeley in the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy (CHAS) database. The units presumed to be occupied by lower income households must be replaced with “equivalent” units in the same or greater proportion of lower income renter households to all renter households in the City. Based on the CHAS database, the project should provide replacement units according to the following distribution: three Extremely Low Income (ELI), two Very Low Income (VLI), two Low Income (LI), and one Moderate Units. The project will instead provide a total of eight Lower Income Units – three ELI, two VLI, and three LI units, more than the required amount of Lower Income replacement units per the CHAS database.

Pursuant to Section 66300(d)(3), lower income occupants of protected units that are proposed to be demolished are subject to local tenant relocation provisions in BMC Chapter 23.326. As of this writing, five of the eight units are currently occupied.

C. 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 project^b is 66 units, as the maximum allowable density for the site. The 4-story base project and the resulting 5-story proposed project both have an average unit size of 439 square feet. By providing five VLI units (three ELI and two VLI) on site (seven percent of the 66 - unit base density), the project is eligible for a 25 percent density bonus, or 17 additional

^b 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).

units. The applicant proposes 12 additional units above the base density for a total of 78 dwelling units. Table 5, below includes 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
66	5 VLI (7% of base project)	25%	17 (25 percent x 66 units)	78 (12 used)
<p>Notes:</p> <p>a. Pursuant to Government Code 65915(q), all unit calculations are rounded up to the nearest whole number.</p> <p>Abbreviations: % = percent</p>				

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 located within 300 feet of the project site to a project preview meeting. The meeting was held on September 14, 2022, and attended by seven individuals (meeting minutes are included as Attachment #4). A pre-application poster was installed on site by the applicant in September 2022. On June 27, 2024, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations. The City also posted notices within the neighborhood at nearby three locations. At the time of writing this report, staff has received several messages from an existing tenant of one of the existing multifamily buildings. Their correspondence comments on the poor condition of their unit. In response to their comments, staff has directed the tenant to seek services from a Housing Counselor from the Rent Stabilization Board.

B. Design Review Committee:

On June 15, 2023 the Design Review Committee (DRC) reviewed the project design, gave a favorable recommendation on the design as presented, and provided the following direction for Final Design Review (FDR):

Conditions

- Refine color palette and location of color transitions so that whole design flows better.
- Look carefully at material transitions – both stucco and base.
- Look more carefully at increasing the native plants; Provide more information on planters and soil depth at FDR.
- At FDR, provide window, railing, planter, garage door / gate and details.

Recommendations

- Carefully review ground floor bedrooms with no window – further refine plan to resolve
- Windows on San Pablo at the ground floor should have be a better contribution for the sidewalk – develop further.
- Ground floor horizontal element / canopy should be lowered and more substantial for a better presence on the sidewalk; Resolve blank appearance at transom.
- East elevation should be more interesting with plants and/or color; consider any details for increased privacy.
- Add more life onto San Pablo elevation.
- Add entrance canopies to walk up units.
- Terrace posts appear unresolved where they meet the ground.
- Very small windows are not successful.
- Consider more contrast for Ceraclad and stucco colors.
- Look carefully at the back wall of the terrace – both sides look blank.
- Recommend bird safe glass.
- Recommend adding a take-out window.
- Underground vault is good as it helps retain a more open elevation.
- Species that support butterflies are recommended.
- Support the existing street trees.

IV. 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 adverse impact on public health or safety^c 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 mixed-use building with at least two-thirds of the floor area in residential use/transitional or supportive housing. The Base Project includes Use Permits^d to demolish existing residential units, establish over 5,000 square feet of gross floor area, to establish a mixed-use residential building, and to establish residential hotel, 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 reduced 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. 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.

^c 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.”

^d 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.”

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

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

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

- 1. Government Code Section 65905.5(a)** states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in 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 Section 65920)).

The July 11, 2024 ZAB hearing represents the first public hearing for the proposed project since the project was deemed complete. The City can hold up to four additional public hearings on this project, if needed. One of those hearings must be reserved for any possible appeal to the City Council.

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

As discussed in an historic resource evaluation prepared for the project in April 20, 2022, 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. A demolition referral is not required for this project as it does not propose the demolition of non-residential buildings.

- 3. Government Code Section 65950(a)(5)** requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the CEQA. Should ZAB determine the application is categorically exempt from CEQA at the July 11, 2024 public hearing, the application must be approved or disapproved by September 9, 2024.

D. Density Bonus Concessions and Waivers:

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

1. **Concessions:** A concession is a modification of a development standard that reduces the cost of providing affordable housing. The applicant is not requesting any concessions.
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:
 - Waiver of BMC Section 23.204.140(E)(1) to exceed the maximum building height of 50 feet with a height of 70 feet, 8 inches.
 - Waiver of BMC Section 23.204.140(E)(1) to exceed four stories with five stories.
 - Waiver of BMC Section 23.204.140(E)(1) to exceed the floor area ratio (FAR) limit of 3 with an FAR of 3.5.

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.^e

E. Elimination of Dwelling Units through Demolition:

1. BMC Section 23.326.020(B) allows the ZAB to approve a Use Permit to eliminate or demolish a dwelling unit only if the elimination of the dwelling unit would not be materially detrimental to the housing needs and public interest of any affected neighborhood or the City. The project would replace eight rent controlled dwelling units with eight dwelling units (three units affordable to Extremely Low-Income households, two units affordable to Very Low-Income households, and three units affordable to Low-Income households,). Per the CHAS data, the replacement of seven of the eight units at a lower income rate is required. This project provides an

^e See Footnote 5.

additional lower income unit at the LI rate, for a total of eighth lower income, deed restricted units.

Generally, the increase in the number of housing units would help meet the City's need for additional housing and Regional Housing Needs Assessment target, and thus the Finding under BMC Section 23.326.020(B) would be met. The project would also provide housing in proximity to regional transit, bicycle facilities, retail, and services, therefore reducing vehicle miles traveled, and air quality and greenhouse gas emission impacts. The proposed project would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.

2. The project is compliant with all provisions of Government Code Section 66300(d) for the demolition and replacement of residential units. See Section III.B.
3. Per BMC Section 23.326.030(A)(2)(a), demolition is not allowed if the building was removed from the rental market under the Ellis Act during the preceding five years, or there have been verified cases of harassment, or threatened or actual illegal eviction during the preceding five years. Rent Stabilization Board staff reviewed the property records and determined that the existing units have not been removed from the rental market under the Ellis Act at any time during the preceding five years, or there is no record of any verified cases of harassment or threatened or actual illegal eviction. (Attachment 5)

BMC Section 23.326.030(A)(3) allows the ZAB to approve demolition of a building constructed before June 1980 on a property containing two or more dwelling units if one or more of the following findings can be met: the building containing the units is hazardous or unusable and is infeasible to repair; the building containing the units will be moved to a different location within Berkeley with no net loss of units and no change in the affordability levels of the units; the demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community; the demolition is necessary to permit construction approved pursuant to BMC Chapter 23.326 Demolition and Dwelling Unit Control, of at least the same number of dwelling units. This can be met because the demolition of this building results in the replacement of demolished eight units within the development of a new, 36,280 square-foot mixed use residential building. The demolition of the existing residential structures and proposed construction of the new multifamily building conform to the adjacent uses permitted in the C-W district.

4. The dwelling units proposed to be demolished are occupied and are subject to tenant relocation provisions pursuant to BMC Chapter 23.326.

F. Administrative Use Permit for Rooftop Projections

BMC Section 23.304.050(A) requires an Administrative Use Permit for rooftop 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 831 square feet that would extend eight feet, four inches over the 70-foot, 8 inches roof height. The penthouses represent about 14 percent of the 5,854-square-foot average of all the floor areas. The projection is, therefore, permissible.

V. Other Considerations (Zoning and Land Use Considerations)

The following analyses of conformance with district purposes, and the 2002 General Plan goals and policies are provided for informational purposes only, to provide context, because the proposed project is HAA-compliant. The following permits have been determined by the City to be included in the Base Project of the proposal, and are subject to Section 65589.5(j) of the HAA. See section IV.B for discussion of the HAA. All permits are subject to the C-W District permit findings and General Non-Detriment findings discussed in section V.

G. 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. The project is a higher-density development in proximity to constructed and entitled mixed use projects of a comparable density along San Pablo Avenue. The project site is located within the C-W commercial district. The project includes 70 residential hotel rooms and eight apartment units for a total of 78 units. The eight one-bedroom units would replace the existing eight units currently on site at affordability rates that correspond with and go beyond the regional Comprehensive Housing Affordability Strategy (CHAS) data. Three units would be restricted as affordable housing for extremely-low-income residents, two units would be restricted as affordable housing for very-low-income residents, and three units would be restricted as affordable for low-income residents. The project provides an additional low-income unit beyond CHAS data requirements. The residential hotel rooms would range from one-bedroom to studio units. The project also includes several residential amenities, communal kitchens and lounges on floors two through five, a 1,379 square foot roof deck, and bike room. The project site is well served by public transportation, with the location of several high- quality AC transit lines located along San Pablo Avenue. The site is also proximate to bicycle boulevards and several bicycle share kiosks. The project would add additional dwelling units, furthering the redevelopment of underutilized site, which is compatible with the purposes of the district and development pattern in the surrounding area.

2. **Shadows:** According to the shadow studies submitted for the project (Attachment 2), the majority of the impacted area is shaded by existing development. During the summer and winter months new shadows cast by the proposed development would shade existing commercial uses across from the site along San Pablo Avenue, existing multifamily residential buildings north of the project, and single-two family residential units that abut the rear of the project along Byron Street. These changes in sunlight pattern are found to be reasonable given the orientation of these properties in relation to the subject building and their close proximity given the urban environment. The shadow impacts would not be found to be detrimental because they would be limited in duration and would not persist for extended periods of time throughout the year.

Further, shadow impacts on adjacent commercial and mixed-use residential buildings are to be expected, because the project site is located in the C-W district, which allows heights of up to 50 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 believes that shadow impacts from the project would be reasonable and not detrimental.

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.

H. New Floor Area Greater than 5,000 Square Feet in the C-W

BMC Section 23.204.030(A) states that before the ZAB approves the application for Use Permit to allow for the creation of over 5,000 square feet in new floor area, they must find that the new use or structure provides an intensity of development which does not underutilize the property. The proposed project would redevelop an underutilized lot with 78 dwelling units, where eight units currently exist on the site. The project would increase the residential density of the site and would therefore not underutilize the subject property.

I. C-W District Purpose

BMC Section 23.204.110(E) states that before the ZAB approves an application for a Use Permit, they must find that the project is compatible with the purposes of the C-W district, the surrounding uses and buildings, the West Berkeley Plan, does not degrade the existing urban fabric, provides ground floor commercial where feasible, and creates new floor area that does not underutilize the property. The proposed project would create a 78- unit residential building with 70 residential hotel rooms and 8 one-bedroom apartment units. The project would construct a residential building with four communal

kitchens and lounge space, in addition to several residential amenities. Although the project does not provide ground floor commercial space, the project would still improve the pedestrian street wall experience with reduced front setbacks that match existing and approved commercial and mixed- use developments along San Pablo Avenue. The project is also consistent with the West Berkeley Plan and the C-W district because the proposed residential building aligns with existing development patterns in area, would provide new development, thereby increasing residential density, and enhancing the presence of the street wall in this commercial corridor. The project is located in proximity to several public transit lines and bicycle boulevards.

J. General Plan Consistency:

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

1. **Policy LU-3 Infill Development:** Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. **Policy LU-7 Neighborhood Quality of Life, Action A:** Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. **Policy 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 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.
5. **Policy H-19 Regional Housing Needs:** Encourage adequate housing production to meet City needs and the City's share of regional housing needs.
6. **Policy T-16 –Access by Proximity, Action B:** Encourage higher density housing and commercial infill development that is consistent with General Plan and zoning standards in areas adjacent to existing public transportation services.
7. **Policy H-12 Transit-Oriented New Construction:** Encourage construction of new medium- and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.
8. **Policy T-43 Bicycle Network, Action C:** Encourage, and when appropriate, require new multi-family residential developments to provide secure locker space for resident bicycles.

Staff Analysis: The proposed project is consistent with the above general plan policies as it is a higher density infill development that proposes 78 new dwelling units (70 residential hotel rooms and 8 apartment/replacement units) that will count towards the City's share of regional housing needs. The project is proximate to public transit, bicycle boulevards, and commercial corridors that offer various goods and services to residents, and would result in shading that is limited in duration and will not persist for extended periods throughout the year.

K. West Berkeley Plan Consistency: The West Berkeley Area Plan, adopted in 1993, contains several goals, policies, and aims applicable to the project, including the following:

1. **Urban Design Policy 1.7:** Insure that new construction along the corridors maintains and strengthens the urban character of the street by locating new buildings to the front of the property line to reinforce the street wall; locating parking at the side or rear of the lot, and designing street facades and ground level doors and windows to include elements of pedestrian scale and three-dimensional interest
2. **Urban Design Policy 1.8:** Develop incentives to encourage new construction to be 2-4 stories in height (and to incorporate residential and office uses above the ground floor) along these corridors, especially at nodes.
3. **Urban Design Policy 1.10:** Encourage infill buildings on vacant and low intensity use sites along these corridors. Residential and/ or office uses should be encouraged where appropriate.
4. **Urban Design Policy 1.11:** Develop incentives to encourage housing along these corridors, such as reduction in parking and other site developments.

Staff Analysis: The project is consistent with the above West Berkeley Plan and policies as it redevelops an existing low-density site with a five-story, 78 unit residential building along the San Pablo Avenue commercial corridor. The project reinforces the street wall by reducing the front setback to less than two feet the project would improve the pedestrian street wall experience with reduced front setbacks that are consistent with existing and approved commercial and mixed-use developments along San Pablo Avenue. The project is proximate to public transit, bicycle boulevards, and number commercial services that would be supported by future residents of the project.

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 Projects"); and

ZONING ADJUSTMENTS BOARD

2427 SAN PABLO

July 11, 2024

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2. APPROVE/DENY ZP#2022-0115 pursuant to Section 23.406.040(D) and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received July 1, 2024
3. Notice of Public Hearing
4. Community Meeting Notes, September 22, 2022
5. Rent Stabilization Board memo, dated March 3, 2024
6. Correspondence Received

Staff Planner: Katrina Lapira, klapira@berkeleyca.gov, (510) 981-7488

ATTACHMENT 1

FINDINGS AND CONDITIONS

JULY 11, 2024

2427 San Pablo Avenue

Use Permit #ZP2022-0115 to demolish two existing multifamily buildings and construct a 36,280 square foot, 5-story (70 feet, 8 inches), residential building containing 8 replacement apartment units and a Residential Hotel (Group Living Accommodation) with 70 single-occupancy rooms (3 Extremely Low-Income, 2 Very Low-Income units, and 3 Low-Income) for a total of 78 units, utilizing State Density Bonus. Fifteen off-street automobile parking spaces would be provided.

ZONING PERMITS REQUIRED

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.326.030(A)(2)(b), to demolish two buildings with two or more units constructed before June 1980
- Use Permit pursuant to BMC Section 23.204.020(A) to establish multi-family dwellings
- Use Permit pursuant to BMC Section 23.204.020(A) to establish a Residential Hotel
- Use Permit pursuant to BMC Section 23.204.030(A) for the creation of 5,000 square feet or more of gross floor area Administrative Use Permit pursuant to BMC Section 23.304.050(A) for rooftop projections above the height limit

CONCESSIONS/WAIVERS UNDER GOVERNMENT CODE SECTION 65915-65918

- Waiver of BMC Section 23.204.140(E)(1) to exceed the maximum building height of 50 feet with a height of 70 feet, 8 inches.
- Waiver of BMC Section 23.204.140(E)(1) to exceed four stories with five stories.
- Waiver of BMC Section 23.204.140(E)(1) to exceed the floor area ratio (FAR) limit of 3 with an FAR of 3.5.

I. CEQA FINDINGS

- A. The project meets all of the requirements of this exemption, as follows:
1. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
 2. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
 3. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.

4. 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.

5. The site can be adequately served by all required utilities and public services.

B. 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 78 dwelling units. 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, written public health or safety standards, policies, or conditions, have been identified.

III. DENSITY BONUS FINDINGS

A. Pursuant to Government Code Section 65915, the Zoning Adjustments Board finds that:

1. Under the City's methodology for implementing density bonuses, the base project consists of 66 units;
2. The project will provide at least 5 Very Low Income (3 ELI and 2 VLI) qualifying units in the 66-unit base project, as more fully set forth in Condition 38;
3. The project is entitled to a density increase of 25 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 concessions or incentives. This equates to a density bonus of up to 17 units above the base project, for a total of up to 83 units (12 taken for a total of 78 units).

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

1. Waiver of BMC Section 23.204.140(E)(1) to exceed the maximum building height of 50 feet with a height of 70 feet, 8 inches; and

2. Waiver of BMC Section 23.204.140(E)(1) to exceed four stories with five stories; and
3. Waiver of BMC Section 23.204.140(E)(1) to exceed the floor area ratio (FAR) limit of 3 with an FAR of 3.5.

D. 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 a higher-density development in proximity to constructed and entitled mixed use projects of a comparable density along San Pablo Avenue, within the C-W commercial district. The project includes 70 residential hotel rooms and eight apartment units for a total of 78 units. The eight one-bedroom units will replace the existing eight units currently on site at affordability rates that correspond with the regional Comprehensive Housing Affordability Strategy (CHAS) data. Three units will be restricted as affordable housing for extremely-low-income residents, two units will be restricted as affordable housing for very-low-income residents, and three units will be restricted as affordable for low-income residents. The residential hotel rooms will range from one-bedroom to studio units. The project also includes several residential amenities, communal kitchens and lounges on floors two through five, a 1,379 square foot roof deck, and bike room. The project site is well served by public transportation, with the location of several high- quality AC transit lines located along San Pablo Avenue. The site is also proximate to bicycle boulevards and several bicycle share kiosks. The project will add additional dwelling units, furthering the redevelopment of underutilized site, which is compatible with the purposes of the district and development pattern in the surrounding area.
2. Shadows: The majority of the impacted area is shaded by existing development. During the summer and winter months new shadows cast by the proposed development will shade existing commercial uses across from the site along San Pablo Avenue, existing multifamily residential buildings north of the project, and single-two family residential units that abut the rear of the project along Byron Street. These changes in sunlight pattern are found to be reasonable given the orientation of these properties in relation to the subject building and their close proximity given the urban environment. The shadow impacts will not be detrimental because they will be limited in duration and will not persist for extended periods of time throughout the year; and

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

- A. As required by BMC 23.326.020(B), the elimination or demolition of dwelling units will not be materially detrimental to the housing needs and public interest of any affected neighborhood or the City. The project will replace eight demolished dwelling units with 78 dwelling units (3 units affordable to Extremely Low-Income households, 2 units affordable to Very Low-Income households and 3 unit affordable to Low-Income households). The increase in the number of housing units will help meet the City's need for additional housing and Regional Housing Needs Assessment target.
- B. The demolition of residential units is allowed because:
 1. Pursuant to BMC Section 23.326.030(A)(2), the existing units were not removed from the rental market under the Ellis Act at any time during the preceding five years, or there is no record of any verified cases of harassment or threatened or actual illegal eviction; and
 2. Pursuant to BMC Section 23.326.030(A)(3), ZAB finds that the demolition is necessary to permit construction of at least the same number of dwelling units. The project will replace 8 dwelling units with 3 units affordable to Extremely Low-Income households, 2 units affordable to Very Low-Income households, and 3 units affordable to Low-Income households. The increase in the number of housing units will help meet the City's need for additional housing and Regional Housing Needs Assessment target, and thus the Finding under BMC Section 23.326.020(B) will be met. The project will also provide housing in proximity to regional transit, bicycle facilities, retail, and services, therefore reducing vehicle miles traveled, and air quality and greenhouse gas emission impacts. The proposed project will not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.
- C. Government Code Section 65915 (Density Bonus) and Government Code Section 66300 (SB 330) prohibit the demolition of occupied or vacant protected units (i.e. rent-controlled or affordable units) unless the project will create at least as many residential units as will be demolished, will replace them with at least as many residential dwelling units as the greatest number of units that existed on the project site within the last five years, and replace "protected" units as specified in these sections.
 1. The project site has held eight protected units, and is constructing 78 units, in compliance with state law.
 2. The project will replace the eight removed protected dwelling units with equivalent units – three units affordable to Extremely Low-Income households, two units affordable to Very Low-Income households, and two units affordable to Low-Income households), subject to a recorded affordability restriction of at least 55 years.

- D.** As required by BMC Section 23.204.030(A) the project does not underutilize the subject property. The proposed project will redevelop an underutilized lot with 78 dwelling units, where eight units currently exist on the site. The project will increase the residential density of the site and will therefore not underutilize the subject property.
- E.** As required by BMC Section 23.204.110(E) the project is consistent with the purposes of the underlying district, the surrounding uses and buildings, and the West Berkeley Plan. The proposed project will create a 78- unit residential building with 70 residential hotel rooms and 8 one-bedroom apartment units. The project will include four communal kitchens and lounge space, in addition to several residential amenities. Although the project does not provide ground floor commercial space, the project will still improve the pedestrian street wall experience with reduced front setbacks that match existing and approved commercial and mixed- use developments along San Pablo Avenue. The project is also consistent with the West Berkeley Plan and the C-W district because the proposed mixed-use building aligns with existing development patterns in area, will increase residential density, and will enhance the presence of the street wall in this commercial corridor. The project is located in proximity to several public transit lines and bicycle boulevards.
- F.** 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 831 square feet that will extend eight feet, four inches over the 70-foot, 8 inches roof height. The equipment structures represent about 14 percent of the 5,854-square-foot average of all the floor areas. The projection is, therefore, permissible.

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 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. Rent Stabilization Board – Prior Rental Rate.** Pursuant to Government Code Section 66300.6(b)(3), any existing residents will be allowed to occupy their units until six months before the start of construction activities with proper notice and, if asked to leave, shall be allowed to return at their prior rental rate if the demolition does not proceed and the property is returned to the rental market.
- 15. Rent Stabilization Board – Requirement for Relocation Expenses.** Pursuant to BMC 23.326.030(A)(5)(c),

(i) the applicant shall provide qualified tenants assistance with moving expenses equivalent to those in Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households), and

(ii) shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City. The applicant shall submit proof of implementation that includes an overall building tenant relocation plan and relocation agreements all applicable tenant households prior to submittal for building permits.

16. Rent Stabilization Board – Sitting Tenants Rights. Pursuant to BMC 23.326.030(A)(5)(d),

(i) sitting tenants who are displaced as a result of demolition shall be provided the right of first refusal to move into the new building, and

(ii) tenants of units that are demolished shall have the right of first refusal to rent new below market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues.

(iii) Income restrictions do not apply to displaced tenants

17. Rent Stabilization Board – Regulatory Agreement. Prior to issuance of the building permit, the applicant shall enter into a Regulatory Agreement to be reviewed, approved, and implemented by the Health, Housing and Community Services Department (HHCS), which will oversee and monitor the income qualification of returning tenants

18. 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 #
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19. 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.

- 20. 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.

21. 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.

22. Compliance with Conditions of Approval. The building permit application is subject to verification of compliance of these Conditions of. 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)

23. 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.

- 24. Final Design Review.** The Project requires approval of a Final Design Review application by the Design Review Committee.
- 25. 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.
- 26. 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.
- 27. 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.
- 28. 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

- 29. Parcel Merger.** The applicant shall secure approval of a parcel merger associated with this Use Permit.
- 30. Percent for Public Art.** Consistent with BMC Section 23.316, the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
- 31. 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.
- 32. 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.
- 33. 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.
- 34. 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.)
- 35. Electric Vehicle (EV) Charging.** At least 5 percent of the project parking spaces for residential parking shall have installed Level 2 (40 amp) electric vehicle (EV) charging stations, at least 25 percent shall have installed low power Level 2 EV charging receptacles (20 amp), and at least 20 percent shall be "EV Capable" equipped with raceway, electrical panel service capacity, and an electrical system to support future Level 2 (40 amp) EV charging stations, or any more stringent EV charging requirements as specified by the Berkeley Green Code (BMC Chapter 19.37). Required Level 2 charging stations and low power Level 2 EV charging receptacles shall be installed, maintained, and made available for building resident use. EV charging station installations, EV charging receptacles, and EV Capable spaces shall be noted on the construction plans. Public access parking spaces shall provide any applicable mandatory accessibility provisions. (Project required to meet applicable code at time of building permit application, if different from above.)

- 36. Water Efficient Landscaping.** Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET_o) for Berkeley is 41.8.
- 37. 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 at zerowaste@berkeleyca.gov.
- 38. 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

- 39. Affordable Housing Mitigation Fee (AHMF).** Consistent with BMC 22.20.065 and 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 eight 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.

- 40. Number of Below Market Rate Units.** The project shall provide 3 Extremely Low-Income (ELI) 2 Very Low-Income (VLI) and 3 Low-Income (LI) 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.

- 41. 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.
- 42. 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

- 43. 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.
- 44. 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.
- 45. 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:

- 46. 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.
- 47. 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.

- 48. 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:

- 49. 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.
- 50. 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.
- 51. 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.
- 52. 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.

53. 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.

54. 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.

55. 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.)

56. 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.

57. 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.

58. 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.

59. 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.

- 60. 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.
- 61. 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.** Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- L.** The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 62. 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.
- 63. 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.

- 64. 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.
- 65. 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.
- 66. 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.
- 67. 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.
- 68. 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:

- 69. Compliance with Conditions.** The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
- 70.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated July 1, 2024.
- 71. 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.

72. 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 Sections 23.334.030(C) and 23.322.090 (bike parking) have been installed. A Parking and Transportation Demand Management (PTDM) compliance report documenting that the programmatic measures required in Sections 23.334.030(C) and 23.322.090 are implemented shall be submitted to the Land Use Division prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is compliant with the applicable requirements in these sections.

- A.** Consistent with Section 23.334.030(A), all parking spaces provided for residents be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units. The property owner shall notify all residents of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of Certificate of Occupancy or final inspection.
- B.** Consistent with BMC Section 23.334.030(B), at least one of the following transit benefits shall be offered, at no cost to the resident, for a period of ten years after the issuance of a Certificate of Occupancy. A notice describing these transportation benefits shall be posted in a location or locations visible to all residents.
 - i.** One monthly pass for unlimited local bus transit service for every bedroom in each dwelling unit, up to a maximum of two benefits per dwelling unit.
 - ii.** Each Group Living Accommodation room will receive one pass
 - iii.** Subject to the review and approval of the Zoning Officer in consultation with the Transportation Division Manager, a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited adult monthly pass for unlimited local bus transit service monthly local bus pass.
- C.** Consistent with Section 23.334.030(C), publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors, shall be provided. Transportation information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.
- D.** Property owners may be required to pay administrative fees associated with compliance with this Condition.

At All Times:

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

74. Transportation Demand Management Compliance. A Transportation Demand Management compliance report shall be submitted to the Zoning Officer, on a form acceptable to the City, prior to occupancy, and on an annual basis for ten years thereafter, which demonstrates that the project complies with the applicable requirements. After three years of timely compliant submittals, staff has the option to accept less frequent submittals (minimum one every three years). Property owners may be required to pay administrative fees associated with compliance with this Condition, pursuant to BMC Section 23.334.040(B).

75. **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.
76. **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.
77. **Design Review.** Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.
78. **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.
79. **Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.
80. **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.
81. **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.
82. **Required Bike Parking.** Secure and on-site bike parking for at least 36 bicycles (31 long term, 5 short term) shall be provided for the life of the building.
83. **Residential Electric Vehicle (EV) Charging.** Required Level 2 charging stations and low power Level 2 EV charging receptacles, as specified by the Berkeley Green Code (BMC Chapter 19.37) shall be maintained in good working condition and made available for building resident use. (Project required to meet applicable code at time of building permit application, if different from above.)



**ZONING
APPLICATION**

USEABLE OPEN SPACE CALCULATION TABLE

DENSITY BONUS PROJECT

Apartment units:	13
GLA Units:	65
SUBTOTAL	78
UNITS W/ PVT...	4*
TOTAL UNITS	78 UNITS
U.O.S. / UNIT	40 SF
TOTAL U.O.S. REQUIRED	3,120 SF
TOTAL U.O.S. PROVIDED	3,157 SF

USEABLE OPEN SPACE

U.O.S. Plan Floor # OR Unit #	Balcony SQ.FT	Minimum Dimension Required in all directions (ft)
ROOF	1,468	10'
5	126	6'
507*	40*	6'
508*	40*	6'
509*	40*	6'
510*	40*	6'
4	283	6'
3	N/A	N/A
2	283	6'
1	1,120	10'
TOTAL	3,157 SF	

* Private Balconies not incl. in U.O.S. calculation

LANDSCAPING CALCULATION

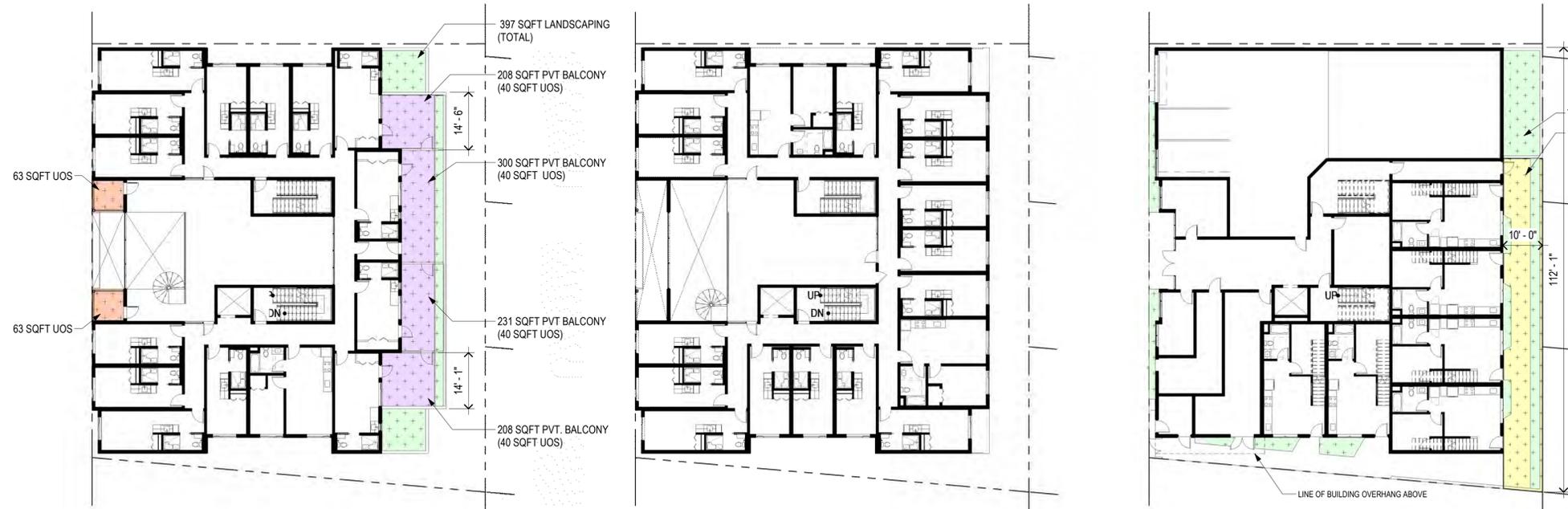
U.O.S. REQ'D	3,120 SF
LANDSCAPE % REQ'D	40%
LANDSCAPE REQ'D	1,248 SF
LANDSCAPE PROVIDED	1,494 SF



6 U.O.S. PLAN - ROOF DECK & ROOF
SCALE: 1/16" = 1'-0"

4 U.O.S. PLAN - 4TH FLOOR
SCALE: 1/16" = 1'-0"

2 U.O.S. PLAN - 2ND FLOOR
SCALE: 1/16" = 1'-0"



5 U.O.S. PLAN - 5TH FLOOR
SCALE: 1/16" = 1'-0"

3 U.O.S. PLAN - 3RD FLOOR
SCALE: 1/16" = 1'-0"

1 U.O.S. PLAN - 1ST FLOOR
SCALE: 1/16" = 1'-0"

SITE PLAN LEGEND:

- USABLE OPEN SPACE PER B.M.C. 23.304.090
- USABLE OPEN SPACE - PUBLIC BALCONY PER B.M.C. 23.304.090
- USABLE OPEN SPACE - UNIT BALCONY PER B.M.C. 23.304.090
- PERMEABLE WALKWAY, SLD
- LANDSCAPE, SLD

U.O.S. LEGEND
SCALE: 1/8" = 1'-0"

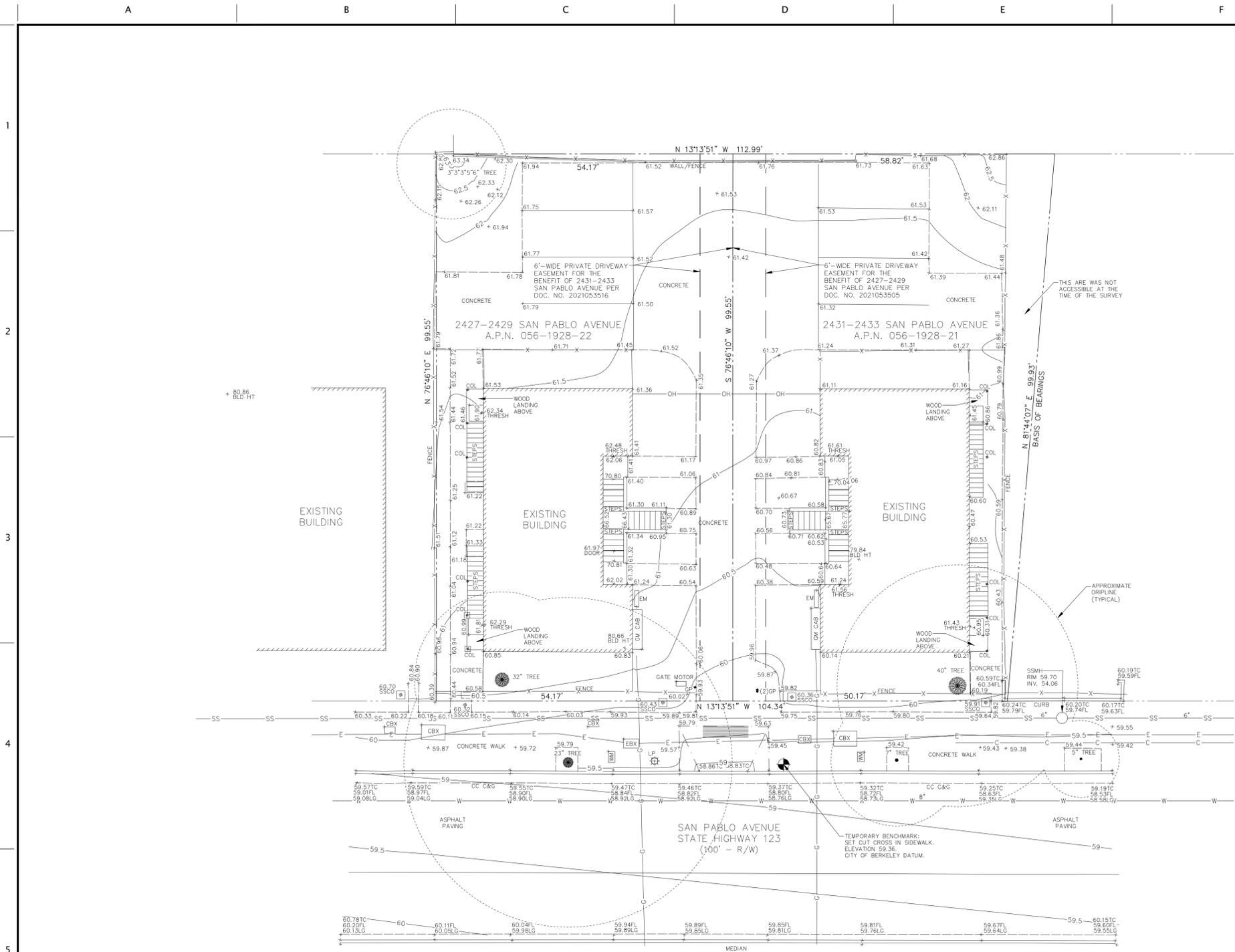
PROJECT ISSUE RECORD:

NO.	DATE	DESCRIPTION

PROJECT #: ARN01
ISSUE DATE: 1/16/2024

USABLE OPEN SPACE DIAGRAMS

G005



LEGEND

- PROPERTY LINE
- CBX COMMUNICATION BOX
- CC C&G CONCRETE CURB & GUTTER
- COL COLUMN
- EBX ELECTRIC BOX
- EM ELECTRIC METER
- FH FIRE HYDRANT
- FL FLOWLINE
- GM GAS METER
- GP GATE POLE
- INV. INVERT
- LG LIP OF GUTTER
- LP LIGHT POLE
- SSCO SANITARY SEWER CLEANOUT
- SSMH SANITARY SEWER MANHOLE
- TC TOP OF CURB
- THRESH THRESHOLD
- WM WATER METER
- WV WATER VALVE
- 12" TREE
- FENCE
- COMMUNICATION LINE
- ELECTRIC LINE
- GAS LINE
- OVERHEAD LINE
- SANITARY SEWER LINE
- WATER LINE

LOT AREA:

A.P.N. 056-1928-21 = 5,425 SQ. FT. ± = 0.125 ACRES ±
 A.P.N. 056-1928-22 = 5,393 SQ. FT. ± = 0.124 ACRES ±

UTILITY NOTE:

THE UTILITIES EXISTING ON THE SURFACE AND SHOWN ON THIS DRAWING HAVE BEEN LOCATED BY FIELD SURVEY. ALL UNDERGROUND UTILITIES SHOWN ON THIS DRAWING ARE FROM RECORDS OF THE VARIOUS UTILITY COMPANIES AND THE SURVEYOR/ENGINEER DOES NOT ASSUME RESPONSIBILITY FOR THEIR COMPLETENESS, INDICATED LOCATION, OR SIZE. RECORD UTILITY LOCATION SHOULD BE CONFIRMED BY EXPOSING THE UTILITY.

EASEMENT NOTE:

EASEMENTS SHOWN ARE BASED ON A REVIEW OF DOC. NO.'S 2021053505 AND 2021053516, ALAMEDA COUNTY RECORDS. OTHER EASEMENTS, IF ANY, ARE NOT INDICATED HEREON.

BASIS OF BEARINGS:

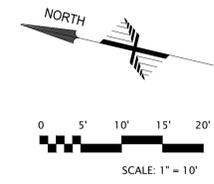
THE BEARING OF NORTH 81°44'07" EAST, TAKEN ON THE SOUTHERLY LINE OF THE SUBJECT PARCEL, AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED FEBRUARY 25, 2021 IN BOOK 47 OF RECORD OF SURVEY MAPS AT PAGE 37, OFFICIAL RECORDS OF ALAMEDA COUNTY WAS USED AS THE BASIS OF BEARINGS FOR THIS SURVEY.

FLOOD ZONE NOTE:

THE SUBJECT PROPERTY LIES ENTIRELY WITHIN FLOOD ZONE "X", BASED ON FLOOD INSURANCE RATE MAP 06001C0056H, DATED DECEMBER 21, 2018.

TEMPORARY BENCHMARK:

THE TEMPORARY BENCHMARK USED FOR THIS SURVEY IS A CUT CROSS IN SIDEWALK (SEE PLAN FOR LOCATION), ELEVATION 59.36, CITY OF BERKELEY DATUM.



NO.	DATE	REVISIONS	BY

HOHBACH-LEWIN, INC.
 STRUCTURAL & CIVIL ENGINEERS
 280 Sheridan Avenue, Suite 150
 Palo Alto, CA 94306
 (650) 617-5930, Fax (650) 617-5932



TOPOGRAPHIC SURVEY PLAN
 2427-2433 SAN PABLO AVENUE
 BERKELEY, CA 94702

Date	10/6/2021
Scale	AS SHOWN
Drawn	RJD
Checked	BJH
Job	15641.32
Sheet	

C001

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 Berkeley, CA 94703

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 www.JohnNorthmoreRoberts.com

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PROJECT TITLE

**SAN PABLO
 AVE G.L.A.**

2427-2433 San Pablo Ave
 Berkeley, CA

APN xxx-xxx

Design Development

DATE	DESCRIPTION	REV
02/09/22	DD PROGRESS	△
		△
		△
		△
		△
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SHEET TITLE

**LANDSCAPE SITE PLAN
 1st FLOOR**

SCALE

AS NOTED. SCALE IN FEET.

DRAWN: DPC PROJECT NUMBER: 436

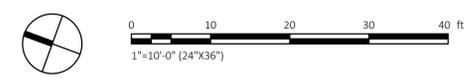
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L1.1

1 OF 11



1 1ST FLOOR SITE PLAN
 L1.1



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 2427-2433 San Pablo Ave
 Berkeley, CA
 APN xxx-xxx
 Design Development

DATE	DESCRIPTION	REV
02/09/22	DD PROGRESS	▲
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SHEET TITLE
**LANDSCAPE SITE PLAN
 2nd FLOOR**

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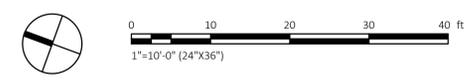
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SHEET NUMBER
L1.2
 2 OF 11



BALCONY PLANTER
 - ±30 S.F.

1
 L1.2 2ND FLOOR SITE PLAN



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Design Development

DATE	DESCRIPTION	REV
02/09/22	DD PROGRESS	
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SHEET TITLE

LANDSCAPE SITE PLAN
 4th FLOOR

SCALE

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DPC	436

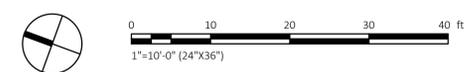
SHEET NUMBER

L1.3

3 OF 11



1
 L1.4 4TH FLOOR SITE PLAN



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 APN xxx-xxx
 Design Development

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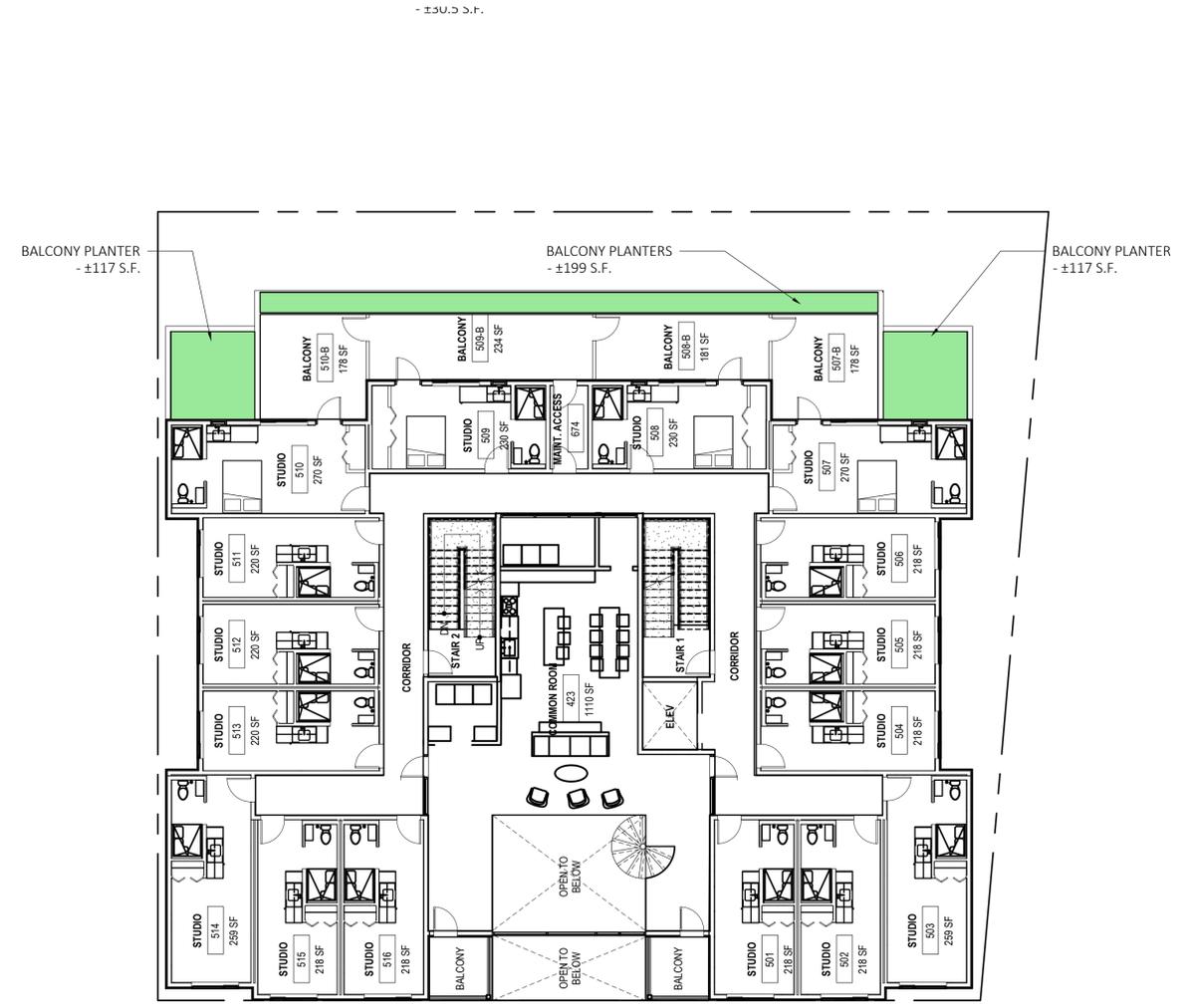
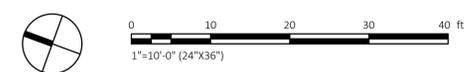
SHEET TITLE
**LANDSCAPE SITE PLAN
 5th FLOOR**

SCALE
 AS NOTED. SCALE IN FEET.

DRAWN: DPC PROJECT NUMBER: 436

SHEET NUMBER
L1.4
 4 OF 11

1
 L1.5 5TH FLOOR SITE PLAN



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PROJECT TITLE
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APN xxx-xxx

Design Development

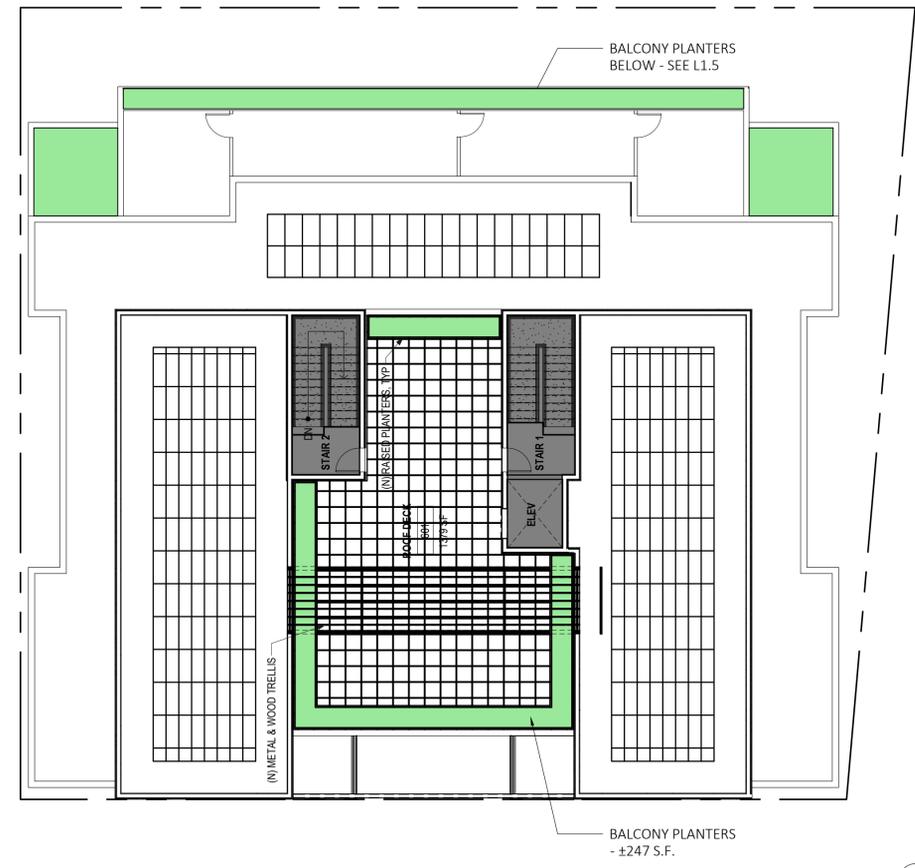
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SHEET TITLE
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 ROOF**

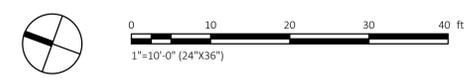
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SHEET NUMBER
L1.5
 5 OF 11



1 ROOF SITE PLAN
 L1.6



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PROJECT TITLE

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APN xxx-xxx

Design Development

DATE	DESCRIPTION	REV
02/09/22	DD PROGRESS	1
		2
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		5
		6

SHEET TITLE

**PLANTING PLAN
 1st FLOOR**

SCALE

AS NOTED. SCALE IN FEET.

DRAWN
 DPC

PROJECT NUMBER
 436

SHEET NUMBER

L4.1

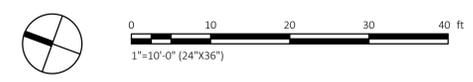
6 OF 11



PLANT SYMBOL CALLOUT:
 species abbreviation → number in this group or P.A.
 spacing, if relevant → container size

UMB CAL 2
 6-FT OC 36" BOX

**1
 L4.1** 1ST FLOOR SITE PLAN



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PROJECT TITLE
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 Berkeley, CA
 APN xxx-xxx
 Design Development

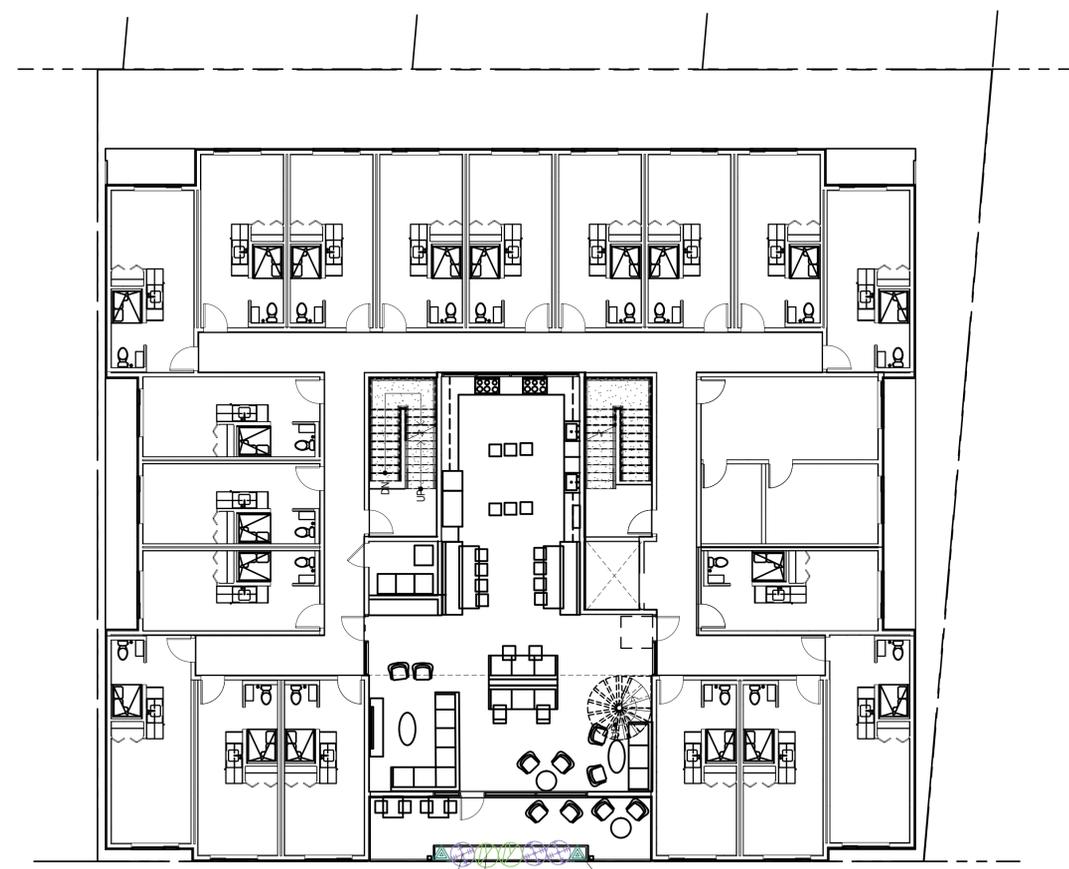
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SHEET TITLE
**PLANTING PLAN
 2nd FLOOR**

SCALE
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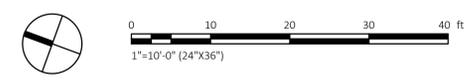
SHEET NUMBER
L4.2
 7 OF 11



SCA AEM	3	BEG BOL	2	PAS CAE	2
3' OC	1 GAL	18" OC	1 GAL	5 GAL	

PLANT SYMBOL CALLOUT:
 species abbreviation → UMB CAL
 number in this group or P.A. → 2
 spacing, if relevant → 6-FT OC
 container size → 36"BOX

1
L4.2 2ND FLOOR SITE PLAN



John Northmore Roberts & Associates
 LANDSCAPE ARCHITECTS / LAND PLANNERS

2927 Newbury Street, Suite B
 Berkeley, CA 94703
 (510) 843-3666
 www.JohnNorthmoreRoberts.com

SIGNED/STAMPED

PROJECT TITLE
**SAN PABLO
 AVE G.L.A.**
 2427-2433 San Pablo Ave
 Berkeley, CA
 APN xxx-xxx
 Design Development

DATE	DESCRIPTION	REV
02/09/22	DD PROGRESS	
		▲
		▲
		▲
		▲
		▲
		▲

SHEET TITLE
**PLANTING PLAN
 4th FLOOR**

SCALE
 AS NOTED. SCALE IN FEET.

DRAWN: DPC PROJECT NUMBER: 436

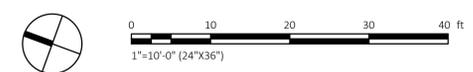
SHEET NUMBER
L4.3
 8 OF 11



PLANT SYMBOL CALLOUT:
 species abbreviation → UMB CAL
 number in this group or P.A. → 2
 spacing, if relevant → 6-FT OC
 container size → 36" BOX

LON SEM 1 5 GAL PAS CAE 2 5 GAL CAL FES 3 1' OC 1 GAL SCA AEM 3 3' OC 1 GAL LON SEM 1 5 GAL

1
L4.4 4TH FLOOR SITE PLAN



John Northmore Roberts & Associates
 LANDSCAPE ARCHITECTS / LAND PLANNERS
 2927 Newbury Street, Suite B
 Berkeley, CA 94703
 (510) 843-3666
 www.JohnNorthmoreRoberts.com

SIGNED/STAMPED

PROJECT TITLE
**SAN PABLO
 AVE G.L.A.**
 2427-2433 San Pablo Ave
 Berkeley, CA
 APN xxx-xxx
 Design Development

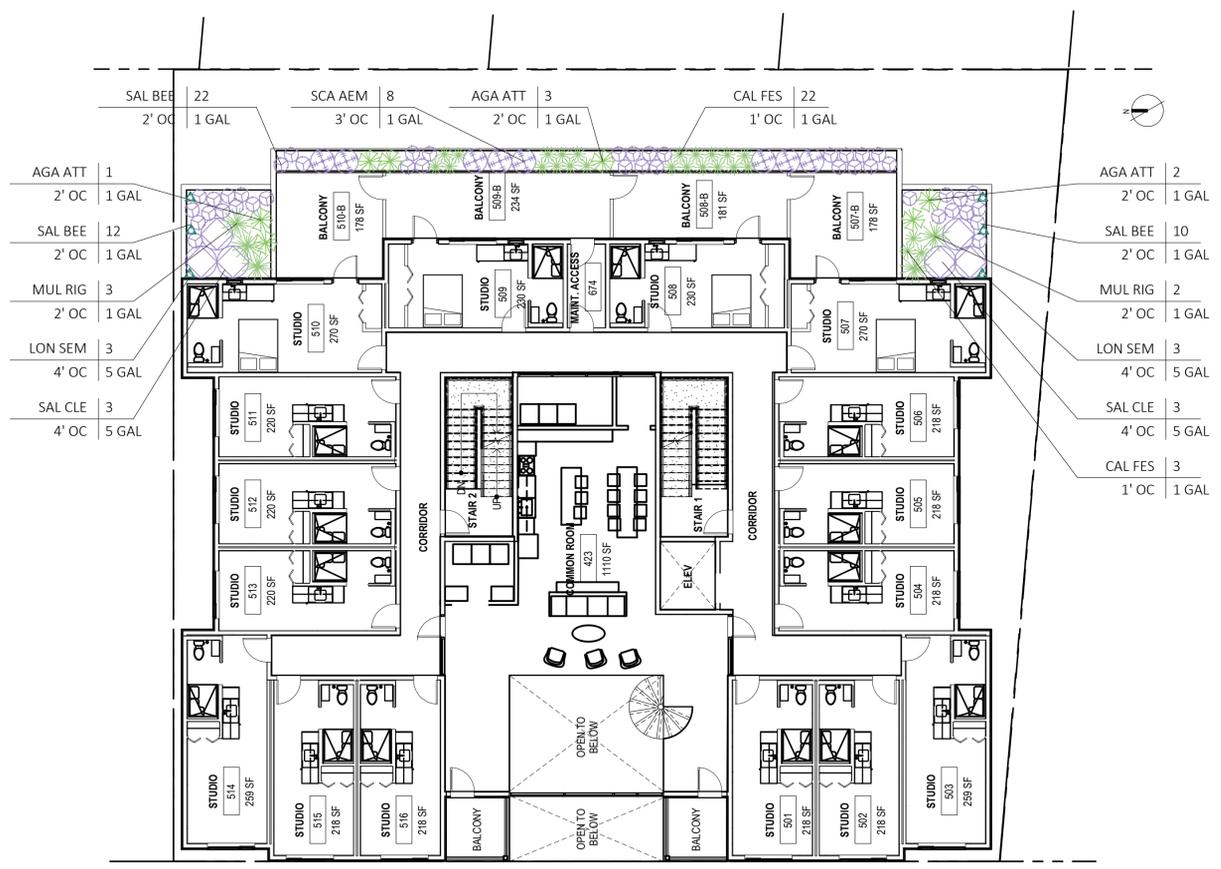
DATE	DESCRIPTION	REV
02/09/22	DD PROGRESS	△
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SHEET TITLE
**PLANTING PLAN
 5th FLOOR**

SCALE
 AS NOTED. SCALE IN FEET.

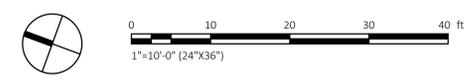
DRAWN: DPC PROJECT NUMBER: 436

SHEET NUMBER
L4.4
 9 OF 11



PLANT SYMBOL CALLOUT:
 species abbreviation | number in this group or P.A.
 UMB CAL | 2
 6-FT OC | 36" BOX
 spacing, if relevant | container size

1
L4.5 5TH FLOOR SITE PLAN



John Northmore Roberts & Associates
 LANDSCAPE ARCHITECTS / LAND PLANNERS
 2927 Newbury Street, Suite B
 Berkeley, CA 94703
 (510) 843-3666
 www.JohnNorthmoreRoberts.com

SIGNED/STAMPED

PROJECT TITLE
**SAN PABLO
 AVE G.L.A.**
 2427-2433 San Pablo Ave
 Berkeley, CA
 APN xxx-xxx
 Design Development

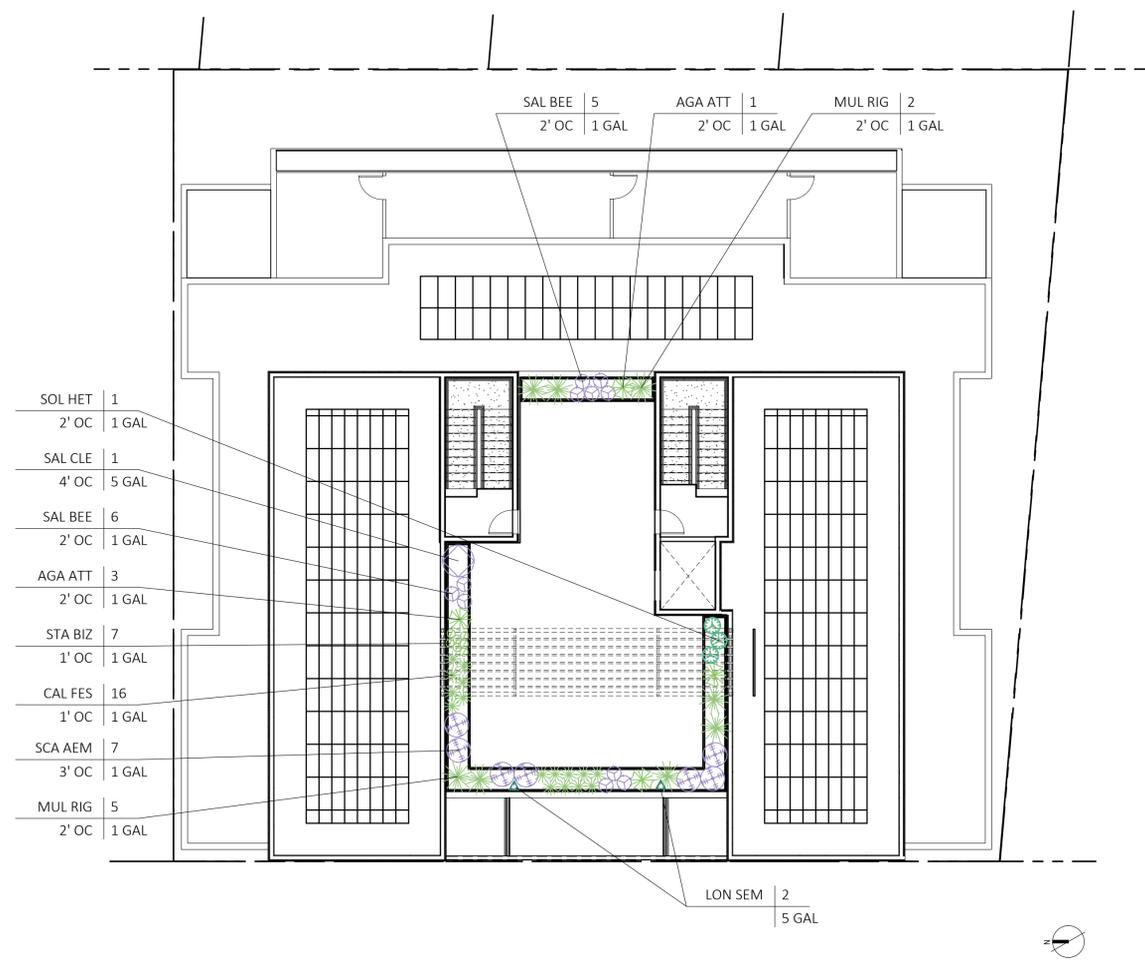
DATE	DESCRIPTION	REV
02/09/22	DD PROGRESS	
		▲
		▲
		▲
		▲
		▲
		▲

SHEET TITLE
**PLANTING PLAN
 ROOF**

SCALE
 AS NOTED. SCALE IN FEET.

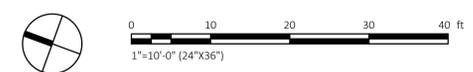
DRAWN: DPC PROJECT NUMBER: 436

SHEET NUMBER
L4.5
 10 OF 11



PLANT SYMBOL CALLOUT:
 species abbreviation | number in this group or P.A.
 UMB CAL 2
 6-FT OC | 36" BOX
 spacing, if relevant | container size

1
L4.6 ROOF SITE PLAN



SIGNED/STAMPED

PROJECT TITLE

**SAN PABLO
AVE G.L.A.**

2427-2433 San Pablo Ave
Berkeley, CA

APN xxx-xxx

Design Development

DATE	DESCRIPTION	REV
02/09/22	DD PROGRESS	△
		△
		△
		△
		△
		△

SHEET TITLE

**PLANTING PALETTE
PLANTING LIST
& MWEL CALCULATIONS**

SCALE
AS NOTED. SCALE IN FEET.

DRAWN DPC	PROJECT NUMBER 436
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SHEET NUMBER

L4.6

11 OF 11

TREES



GLE TRI
GLEDITSIA TRICANTHOS 'MORAINÉ'
MORAINÉ HONEYLOCUST

PLANT LIST

SYMBOL	SCIENTIFIC NAME	COMMON NAME	FORM	MAX HT	MAX SP	SUN	PS	SHD	WATER	36"	24"	#15	#5	#1
TREES														
GLE TRI	GLEDITSIA TRICANTHOS 'MORAINÉ'	MORAINÉ HONEYLOCUST	TREE	50'	50'	X			Low			6		
SHRUB														
MIM AUR	MIMULUS AURANTIACUS	STICKY MONKEY FLOWER	SHRUB	2-3'	2-3'	X	X	X	V. Low				33	
ROS CAL	ROSA CALIFORNICA	CALIFORNIA ROSE	SHRUB	3-10'	3-10'	X	X	X	Low				3	
SAL BEE	SALVIA 'BEE'S BLISS'	CREEPING SAGE	SHRUB	8"	1'-3'	X			Low				55	
SAL CLE	SALVIA CLEVELANDII	BLUE SAGE	SHRUB	4-5'	4-5'	X			Low				13	
SOL HET	SOLLYA HETEROPHYLLA	AUSTRALIAN BLUEBELL CREEPER	SHRUB	3-6'	3-6'	X	X		Low				6	
PERENNIALS														
BEG BOL	BEGONIA BOLIVIENSIS 'SANTA CRUZ'	TRAILING BEGONIA	PERENNIAL	1-2'	1-2'	X	X	X	Med				5	
SCA AEM	SCAEVOLA AEMULA	FAN FLOWER	PERENNIAL	2'	2-3'	X			Low				24	
STA BYZ	STACHYS BYZANTINA	LAMB'S EARS	PERENNIAL	1-2'	1-2'	X	X	X	Low				7	
SUCCULENTS														
AGA ATT	AGAVE ATTENUATA	FOX TAIL AGAVE	SUCCULENT	2-3	2-3	X	X		Low				25	
GRASSES AND SEDGES														
CAL FES	FESTUCA CALIFORNICA	CALIFORNIA FESCUE	GRASS	2-3	1-2	X	X		Low				62	
MUL RIG	MUHLENBERGIA RIGENS	DEER GRASS	GRASS	4	4	X	X		Low				19	
VINES														
LON SEM	LONICERA SEMPERVIRENS 'MAGNIFICA'	TRUMPET HONEYSUCKLE	VINE	8-15'	3-6'	X	X		Med				10	
PAS CAE	PASSIFLORA CAERULEA	PASSION VINE	VINE	10-25'	3-6'	X	X		Med				4	
TRA JAS	TRACHELOSPERMUM JASMINOIDES	STAR JASMINE	VINE	3-6'	3-6'	X	X	X	Med				15	

SHRUBS



MIM AUR
MIMULUS AURANTIACUS
STICKY MONKEY FLOWER



ROS CAL
ROSA CALIFORNICA
CALIFORNIA ROSE



SAL BEE
SALVIA 'BEE'S BLISS'
CREEPING SAGE



SAL CLE
SALVIA CLEVELANDII
BLUE SAGE



SOL HET
SOLLYA HETEROPHYLLA
AUSTRALIAN BLUEBELL CREEPER

PERENNIALS



BEG BOL
BEGONIA BOLIVIENSIS 'SANTA CRUZ'
TRAILING BEGONIA



SCA AEM
SCAEVOLA AEMULA
FAN FLOWER



STA BYZ
STACHYS BYZANTINA
LAMB'S EARS



AGA ATT
AGAVE ATTENUATA
FOX TAIL AGAVE

SUCCULENTS

GRASSES



FES CAL
FESTUCA CALIFORNICA
CALIFORNIA FESCUE



MUH RIG
MUHLENBERGIA RIGENS
DEER GRASS

VINES



LON SEM
LONICERA SEMPERVIRENS 'MAGNIFICA'
TRUMPET HONEYSUCKLE



PAS CAE
PASSIFLORA CAERULEA
PASSION VINE



TRA JAS
TRACHELOSPERMUM JASMINOIDES
STAR JASMINE

MWEL CALCULATIONS:

Flow-Through Planter Areas:
Area: 450 s.f. = 4.5 gpm

Low Water Use On-grade Planting Areas:

Area: 362 s.f. = 1 gpm

Tree/Vine Planting (@25 s.f./tree & 4 s.f./vine)
Area: 190 s.f. = 4 gpm*

On-Structure Planting (Light-Weight Soil Mix)
Area: 1,143 s.f. = 11.5 gpm

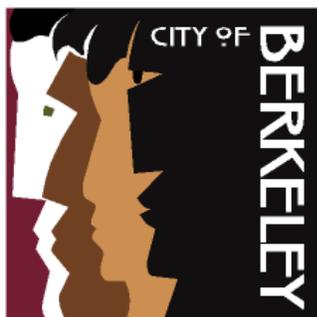
Total area of planting: 2,688 s.f.

Max. Applied Water Allowance
= ETo x 0.62 x [0.7 x Landscape Area]
MAWA = 41.8 x 0.62 x [0.7 x 2,145]
= 38,913 gals/year

Est .Total Water Use
= ETo x 0.62 x Plant Factor x Landscape Area

Irrigation Efficiency
ETWU = 41.8 x 0.62 x [(0.2 x 450)/0.75] = 3,110 gals/year +
41.8 x 0.62 x [0.2 x 362/0.85] = 1,595 gals/year +
41.8 x 0.62 x [0.2 x 190/0.65] = 1,515 gals/year +
41.8 x 0.62 x [0.2 x 1143/0.5] = 11,848 gals/year
= 18,065 gals/year

*during establishment period only



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

2427 San Pablo Avenue

Use Permit #ZP2022-0115 to demolish two existing multifamily buildings and construct a 36,280 square foot, five-story (70 feet, 8 inches), residential building containing 8 replacement apartment units and a Residential Hotel (Group Living Accommodation) with 70 single-occupancy rooms (3 Extremely Low-Income, 2 Very Low-Income units, and 3 Low-Income) for a total of 78 units, utilizing State Density Bonus. Fifteen off-street automobile parking spaces would be provided.

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, July 11, 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: AC (Avenue Commercial)

- Zoning District: C-W (West Berkeley Commercial District)

B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.326.030(A)(2)(b), to demolish two buildings with two or more units constructed before June 1980
- Use Permit pursuant to BMC Section 23.204.020(A) to establish multi-family dwellings
- Use Permit pursuant to BMC Section 23.204.020(A) to establish Residential Hotel
- Use Permit pursuant to BMC Section 23.204.030(A) for the creation of 5,000 square feet or more of gross floor area

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

D. Parties Involved:

- Applicant: Jason Andre (Studio KDA), Berkeley, CA
- Property Owner: Aron Homes, LLC (Bobby Nilsen & Adam Oback), Los Gatos, 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, Katrina Lapira, at (510) 981-7488 or klapira@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.



MEETING NOTES

Date Issued: 9/19/2022 Via: Hand Delivery
 To: City of Berkeley, Planning Dept. - Land Use Div. Email (Pdf)
 Project: 2427-2433 San Pablo Ave (PLN2022-0014) Mail/ Courier
 Prepared By: Jason André / Studio KDA Other:
 Meeting Date/ Location: 9/14/2022 / Zoom Meeting
 Subject: Neighborhood Contact Meeting
 Present: Jason André – SKDA, Till Houtermans – SKDA, Buddy Williams - SKDA

NAME	ADDRESS	COMMENTS OR OBJECTIONS
Toni Mester	2431 Tenth St	Inquired about rent control on (8) existing units; how are the rent-controlled units replaced?
Toni Mester	2431 Tenth St	Will one or more of the replacement units be included in the Very-Low Income units as part of the density bonus?
Toni Mester	2431 Tenth St	Want clarification on traffic movements on San Pablo moving into & out of proposed parking garage. Concerns adding the proposed project in conjunction with the car wash under construction across the street on San Pablo Ave
Toni Mester	2431 Tenth St	The proposed units are really just efficiency units. The Common Area is being used redefine it as a GLA.
Toni Mester	2431 Tenth St	Has a concern about public health with this type of housing, e.g. how does this type housing work in a post pandemic world?
Toni Mester	2431 Tenth St	Please describe North & South Elevations & Landscaping
Jacqueline Knight (Tenant)	2427 San Pablo Ave, Apt A	Will the new replacement apartment units maintain any Section 8 housing availability?
Jacqueline Knight (Tenant)	2427 San Pablo Ave, Apt A	Has concerns with lofted space as a disabled person who cannot walk up and down stairs.
Jacqueline Knight (Tenant)	2427 San Pablo Ave, Apt A	Will people moving into these units be screened thoroughly?

STUDIO KDA will rely on these notes as the approved record of matters discussed and conclusions reached during this meeting unless written notice to the contrary is received within seven calendar days of the issue date of this MEETING REPORT.



NAME	ADDRESS	COMMENTS OR OBJECTIONS
Lety Murillo (Tenant)	2427-2433 San Pablo Ave	Are the replacement units required to be the same size as the existing apartment units? Are they required to have the same number of bedrooms?
Lety Murillo (Tenant)	2427-2433 San Pablo Ave	What will the rental rates be for the proposed GLAs?
Cloe Guedson	2430 Byron	Requested clarification on the location of the project – the location was identified on the Berkeley zoning map.
Cloe Guedson	2430 Byron	Has concerns about the demolition of the existing 2-story apartment buildings on the proposed project site.
Cloe Guedson	2430 Byron	When will construction start?
Andres	None Given	Wanted clarification on the 77-unit Group Living Accommodation component of the project – is it an SRO?
Andres	None Given	Who is the target occupancy for the GLA units?
Andres	None Given	What is the income level required to get into one of these units?
Mitchel	None Given	*Logged into meeting, no name or address given
Anonymous	None Given	*Logged into meeting, no name or address given

Neighborhood Attendees:

1. Toni Mester, 2431 Tenth Street
2. Jacqueline Knight, 2427 San Pablo Ave, Apt. A (existing Tenant)
3. Lety Murillo, 2431 San Pablo (existing Tenant)
4. Cloe Guedson. 2430 Byron Street
5. Andres, No last name or address given
6. Mitchel, No last name or address given
7. Anonymous, logged into Zoom meeting, No last name or address given.

Zoon Meeting Info:

Meeting ID: 85688740575
 Topic: 2427-2433 San Pablo Avenue Neighborhood Outreach (Zoom)
 Start Time: 9/14/2022 16:26
 End Time: 9/14/2022 18:36
 Host: jason@studiokda.com
 Duration: 70 mins
 Participants: 11

STUDIO KDA will rely on these notes as the approved record of matters discussed and conclusions reached during this meeting unless written notice to the contrary is received within seven calendar days of the issue date of this MEETING REPORT.



Rent Stabilization Board

March 14, 2024

To: Katrina Lapira, Associate Planner, Planning & Development Department

From: Matt Brown, General Counsel

By: Lief Bursell, Senior Planner

Subject: **2429-33 San Pablo Avenue**

On February 27, 2024, you wrote to Mr. Bursell asking if Rent Board staff recommend any conditions of approval related to the application to demolish two existing, four-unit mixed-use buildings at 2429 and 2433 San Pablo Avenue. The property owner is proposing to demolish the existing buildings, combine the two parcels, and construct a new 5-story multi-family residential development with sixty-nine single-occupancy bedrooms, eleven one-bedroom dwelling units, and eight below-market rate replacement units. In addition to recommended conditions related to the protection of existing tenants, our response below includes relevant information related to the property's rental history and status under the Rent Stabilization and Eviction for Good Cause Ordinance ("Ordinance").

Property History

Alameda County records show that ARON HOMES LLC owned both properties (2429 San Pablo Avenue and 2433 San Pablo Avenue) as of January 29, 2021. City of Berkeley records indicate that the buildings were both constructed in 1943 as fourplexes.

Rent Stabilization Board records and microfiche records indicate that the properties at 2429 and 2433 San Pablo Avenue currently contains a total of eight residential units, four in each property.

Rental History and Rent Control Status

Rent Board records reflect that the residential units at 2429 San Pablo Avenue are all tenant occupied, and one (2427 San Pablo Ave. #B) is currently rented and under rent control. The residential units at 2433 San Pablo Avenue are also all tenant occupied, according to Rent Board records, and one (2433 San Pablo Ave. #B) is currently rented and under rent control. Rent Board records reflect that the other six units are all occupied by lower income, Section 8 tenants. All eight units have been registered with the Rent Stabilization Board since 1980.

Ellis Act

The buildings at 2429 and 2433 San Pablo Avenue have not been removed from the rental market under the Ellis Act at any time during the preceding five (5) years.

Harassment or Illegal Eviction

The Rent Stabilization Board has no record of any verified cases of harassment or threatened or actual illegal eviction occurring at 2429 and 2433 San Pablo Avenue.

BMC 23.326 and SB 330

Both Berkeley Municipal Code (BMC) Chapter 23.326 and Housing Crisis Act of 2019 Senate Bill (SB) 330 apply to this project. Both regulations require certain tenant protections, such as the right of first refusal to a new unit and relocation assistance. However, SB 330 does not supersede local ordinances with greater restrictions on the demolition of residential dwelling units or local ordinances that require greater relocation assistance to displaced households (Cal. Gov. Code 66300.6(c)). For instance, tenant relocation protections in BMC 23.326 are greater than those provided by SB 330, but they only apply to sitting tenants at the time the application for demolition is submitted to the City. Tenants who move in after the application is submitted would qualify for the less protective relocation requirements in SB 330 as long as the owner informed them about the proposed demolition and that demolition constitutes good cause for eviction.

Under Berkeley's Demolition Ordinance, returning tenants have the right to rent a new replacement unit at the rent level that would have applied if they remained in their former unit. SB 330 requires replacement units contain at least the same number of bedrooms as the units they are replacing.

Recommendation

Rent Stabilization Board staff recommends the ZAB adopt Use Permit conditions of approval that enforce the tenant protections and relocation assistance required by both Berkeley's Demolition Ordinance and SB 330, as all eight units qualify as "protected units" under Government Code Section 66300.5(a)(h) because they are subject to Berkeley's Rent Stabilization Ordinance, and because six units are rented to lower income households through the Section 8 program. The recommended conditions of approval are:

- Pursuant to Government Code Section 66300.6(b)(3), any existing residents will be allowed to occupy their units until six months before the start of construction activities with proper notice and, if asked to leave, shall be allowed to return at their prior rental rate if the demolition does not proceed and the property is returned to the rental market.
- Pursuant to BMC 23.326.030(A)(5)(c), (i) the applicant shall provide qualified tenants assistance with moving expenses equivalent to those in Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households), and (ii) shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City. The applicant shall submit proof of implementation that includes an overall building tenant relocation plan and relocation agreements all applicable tenant households prior to submittal for building permits.
- Pursuant to BMC 23.326.030(A)(5)(d), (i) sitting tenants who are displaced as a result of demolition shall be provided the right of first refusal to move into the new building, and (ii) tenants of units that are demolished shall have the right of first refusal to rent new below market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues. (iii) Income restrictions do not apply to displaced tenants.

- Pursuant to Government Code Section 66300.6(b)(4)(B), lower-income households that moved-in after the demolition application was submitted shall have a right of first refusal for a comparable unit available in the new housing development, affordable to the household at an affordable rent or an affordable housing cost.
- The maximum rent for such tenancies shall increase on January first of each year by no more than 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous June 30.
- Pursuant to BMC 23.326.030(A)(5)(c), (i) the applicant shall provide sitting tenants assistance with moving expenses equivalent to those in Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households), and (ii) shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City. The applicant shall submit proof of implementation of the preceding prior to submittal for building permits.
- Prior to issuance of the building permit, the applicant shall enter into a Regulatory Agreement to be reviewed, approved, and implemented by the Health, Housing and Community Services Department (HHCS), which will oversee and monitor the income qualification of returning tenants. The Regulatory Agreement will include the following provision for returning tenants: “Tenants who do not income-qualify for a below-market-rate unit in the new building shall occupy a unit per the terms in Condition of Approval (specify appropriate condition number); at the end of their tenancy, the unit shall assume the affordability level specified in the Regulatory Agreement.”

Please feel free to contact Mr. Bursell with any further questions regarding this matter.

Sincerely,



Matt Brown
General Counsel

re: 2427 San Pablo Ave

From: Melissa Tuggle (tuggle.melissa@yahoo.com)

To: zab@berkeleyca.gov

Date: Friday, June 28, 2024 at 04:20 PM PDT

To the Zoning Adjustments Board,

I'm a resident at 2433 B San Pablo Avenue in Berkeley; I strongly urge you to replace the building. My my unit is directly adjacent to the Wang Brothers build on San Pablo Avenue at Dwight. My apartment is 25° colder in winter months since they built the top floors. My fingers are numb and blue most of the winter. Summer is as hot as ever. Maybe the board could consider locating these large buildings at the north end of N/S streets. This would be more environmentally friendly to neighbors: summer sun blocked and winter light and heat unobstructed.

My apartment is practically uninhabitable in winter months. The new building occludes all the winter light I received as southern exposure. I have to wear long underwear, two sweaters and a down coat all winter.

I now have a persistent mold infestation. We never had a mold problem here before. My next door neighbor who has lived here for 15 years concurs that the mold didn't grow here before 'Poets Corner' was constructed. I will send pictures of mold on several walls, bookshelves, planters, blinds, clothes etc. Many items have been ruined. Mold endotoxins are carcinogenic and suppress immunity. I have chronic fatigue immune dysfunction, so this is a concern. I now have one or two dehumidifiers running all winter long, day and night, as well as desiccants in every corner of every room, shelf, closet etc. They fill up within weeks. During winter, the thinnest towels do not dry; I go through reams of paper towels. My heating bill has been three to five times what it was previous to the build next door, and I use it as seldom as possible.

Best regards,
Melissa Tuggle
2433 B San Pablo Ave
Berkeley CA 94702

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M Email

Melissa Tuggle <moonunittt@gmail.com>

To the Zoning Adjustments Board, re: 2427 San Pablo Ave Project, pics

1 message

Melissa Tuggle <moonunittt@gmail.com>

Fri, Jun 28, 2024 at 4:38 PM

To: zab@berkeleyca.gov

To the Zoning Adjustments Board, re: 2427 San Pablo Ave Project

Good afternoon. I sent Katrina Lapira these emails I'm now forwarding to you. I just want to be sure you receive them in time for submission to the board for the July 11 meeting. Sorry I am sending the photos separately from each other and from the original email just sent from tuggle.melissa@yahoo.com. I'm hoping you might be able to collate them for me for the board. Please let me know if you wish for me to make physical copies to submit to the board. Thank you.

Sincerely,
Melissa Tuggle
2433 B San Pablo Ave
Berkeley, Ca, 94702

----- Forwarded message -----

From: **Melissa Tuggle** <moonunittt@gmail.com>

Date: Tue, Jun 25, 2024 at 1:31 PM

Subject: Pics of wet winter windows

To: <klapira@berkeleyca.gov>

Dear Ms Lapira

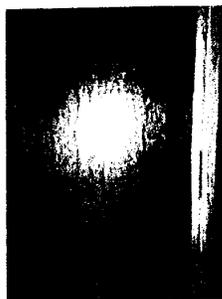
Good afternoon. These are photos of how wet my single-paned windows now get in the winter time. It's literally raining on the inside when I wake up every morning. I have to dry them daily with several paper towels each. This never happened before the building next door was erected.

I would appreciate it if you could forward this email with these photos, as well as a couple of other emails that I'm sending with photos, to the ZAB.

Thank you for your help.

Best regards,
Melissa Tuggle
2433 B San Pablo Ave
Berkeley CA 94702

2 attachments



IMG_20230921_064125.jpg
3216K



IMG_20230921_074313 (1).jpg
4418K

6/28/24, 4:47 PM
Gmail

Melissa Tuggle <moonunittt@gmail.com>

ZAB: more pics from 2433 B San Pablo Ave/ re: 2427 San Pablo Ave Build

1 message

Melissa Tuggle <moonunittt@gmail.com>
To: zab@berkeleyca.gov

Fri, Jun 28, 2024 at 4:47 PM

To the Zoning Adjustments Board,

Good afternoon. I'm forwarding you some photos sent to Katrina Lapira of the mold infestation in my apartment that has occurred since the building was erected next door. I'm hoping you can include them, along with forwarded email comments, with my other emails to present to the board for their July 11 meeting.

Thank you.
Sincerely,
Melissa Tuggle
2433 B San Pablo Ave
Berkeley, Ca 94702

----- Forwarded message -----

From: **Melissa Tuggle** <moonunittt@gmail.com>
Date: Tue, Jun 25, 2024 at 1:49 PM
Subject: Photos from Melissa Tuggle for ZAB
To: <klapira@berkeleyca.gov>

Dear Ms Lapira, ZAB,

Good afternoon. These are four photos of mold from my apartment. In the dark, damp winter conditions I now experience, I've gotten mold infestations in every room of the apartment. The property manager and I have been detoxifying it with bleach and painting over it as it occurs. Once it infested the wall next to which I sleep at night, and I didn't know it was there because a quilt was pinned to the wall. I only found the mold after I had experienced about a week of extreme brain fog and liver sluggishness. After I treated the wall and washed the quilt (& dried it in a really hot dryer for a long time), the brain fog and liver sluggishness went away. (Yes, I am getting brain frogs now, too!)

Thank you for forwarding this to the ZAB.

Best regards,
Melissa Tuggle
2433 B San Pablo Ave
Berkeley CA 94702

4 attachments



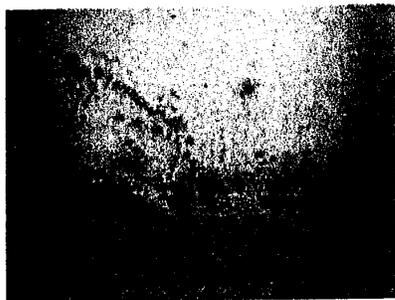
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74K



IMG_20240120_093342.jpg
4862K



IMG_20231207_081352 (1) (1).jpg
5249K



IMG_20231207_082116.jpg
5452K



Melissa Tuggle <moonunittt@gmail.com>

Fwd: More pics for ZAB re: 2427 San Pablo Ave proposed project

1 message

Melissa Tuggle <moonunittt@gmail.com>
To: zab@berkeleyca.gov

Fri, Jun 28, 2024 at 4:52 PM

To the Zoning Adjustments Board,

Good afternoon. I'm forwarding this third email that I'd sent to Katrina Lapira recently. I just want to be certain you receive these pictures and comments to submit to the board before the deadline for submittal for comments for the July 11 meeting.

Thank you.

Melissa Tuggle
2433 B San Pablo Ave
Berkeley Ca 94702

----- Forwarded message -----

From: **Melissa Tuggle** <moonunittt@gmail.com>
Date: Tue, Jun 25, 2024 at 2:03 PM
Subject: More pics for ZAB
To: <klapira@berkeleyca.gov>

Dear Ms Lapira/ ZAB

Good afternoon. Thank you for forwarding this to the ZAB.

The first two pictures are of mildew all over a planter. I've had to throw out many planters and plants since the building was erected next door.

The third photo is the back of a bookcase. I actually have many bookcases in my apartment, some of which are located against outside walls- which I never realized were more susceptible to mildew damage until it was too late. Unfortunately, those bookshelves did not have solid backs to protect the books.

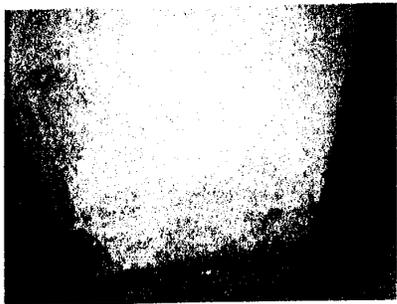
Melissa Tuggle
2433 B San Pablo Ave
Berkeley CA 94702

3 attachments



IMG_20231223_094446.jpg
3050K

0/2024, 0.12 1.11



IMG_20231128_105527.jpg
4277K



IMG_20231128_110625.jpg
4359K

My Gmail

Melissa Tuggle <moonunittt@gmail.com>

Fwd: Photos of new building erected next to 2433 B San Pablo Ave

Melissa Tuggle <moonunittt@gmail.com>
To: zab@berkeleyca.gov

Fri, Jun 28, 2024 at 5:00 PM

Dear Zoning Adjustments Board,

Good afternoon. The photos I'm forwarding are of the building recently erected next door. I've been forwarding pics of the devastating effects of that building upon my unit located directly next door. Please include these for the board's consideration of the 2427 San Pablo Ave project proposal. My unit has become practically uninhabitable in winter. Thank you.

Melissa Tuggle
2433 B San Pablo Ave
Berkeley, Ca 94702

----- Forwarded message -----
From: **Melissa Tuggle** <moonunittt@gmail.com>
Date: Tue, Jun 25, 2024 at 2:15 PM
Subject: Photos of new building next door
To: <klapira@berkeleyca.gov>

Dear Ms Lapira,

Good afternoon. Thank you for forwarding this email to the ZAB.

I'm sending two photos of the building that was just constructed next door. The first photo illustrates a sound well noise amplifier that the new building forms right across from my bedroom window. The second photo illustrates how all 16 windows on the northern side of the new building are directly across from my apartment unit. There are no windows on the eastern or western thirds of the north side of the new building, as the photo illustrates.

My apartment unit is on the right side of the first photo. The eastern wall of my unit is in the photo, and you can see how the entire southern side of my apartment is directly across from all of the windows on the north side of the new building.

Best regards,
Melissa Tuggle
2433 B San Pablo Ave
Berkeley CA 94702

2 attachments



IMG_20240107_081644.jpg
4699K



IMG_20240107_081211.jpg
4060K



Melissa Tuggle <moonunittt@gmail.com>

One more photo and a couple more comments for ZAB

Melissa Tuggle <moonunittt@gmail.com>
To: zab@berkeleyca.gov

Fri, Jun 28, 2024 at 5:11 PM

Dear ZAB,

Good afternoon. I'm forwarding the last of the pics/ comments I emailed to Ms Lapira for submittal to the ZAB for their July 11 meeting. Thank you for assisting me with getting all of this to them. Please let me know if there's anything further you would like me to do to get these submitted for their consideration.

Melissa Tuggle
2433 B San Pablo Ave
Berkeley Ca 94702

----- Forwarded message -----

From: **Melissa Tuggle** <moonunittt@gmail.com>
Date: Tue, Jun 25, 2024 at 2:38 PM
Subject: One more photo and a couple more comments for ZAB
To: <klapira@berkeleyca.gov>

Dear Ms Lapira,

Sorry I couldn't get this all into one email for the ZAB.

This is just a photo of six full hanging damp rids. These are the type that I hang in my closets the past couple of years. Despite that, I have still had mildew infestations of some of my clothing. I also have free standing canister damprids in various sizes all over the apartment.

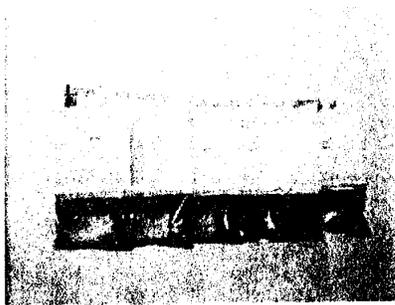
I forgot to mention that mold spores grow on dust, and the wall heater can potentially broadcast mold spores all over the heated area if all of the dust is not removed from its internal parts. So most of my apartment is potentially infested with mold, even though I meticulously clean out all accessible dust in the unit before turning on the heat in the winter.

Anyway, since the comments will be made public, I wanted to say something nice about the people working on the build next door. I have grown to have a great deal of respect for construction workers. The men here work very well together and work extremely hard. I was so impressed with them, that the construction noise itself didn't really bother me. I actually kind of enjoyed watching the building go up.

I just felt the need to say something positive after all my complaints, but winters are really ridiculously difficult now.

Thank you for reading all of my comments and looking at all of my photos.

Best regards,
Melissa Tuggle
2433 B San Pablo Ave
Berkeley CA 94702



IMG_20240105_085129.jpg
2881K

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6/29/24, 1:36 PM



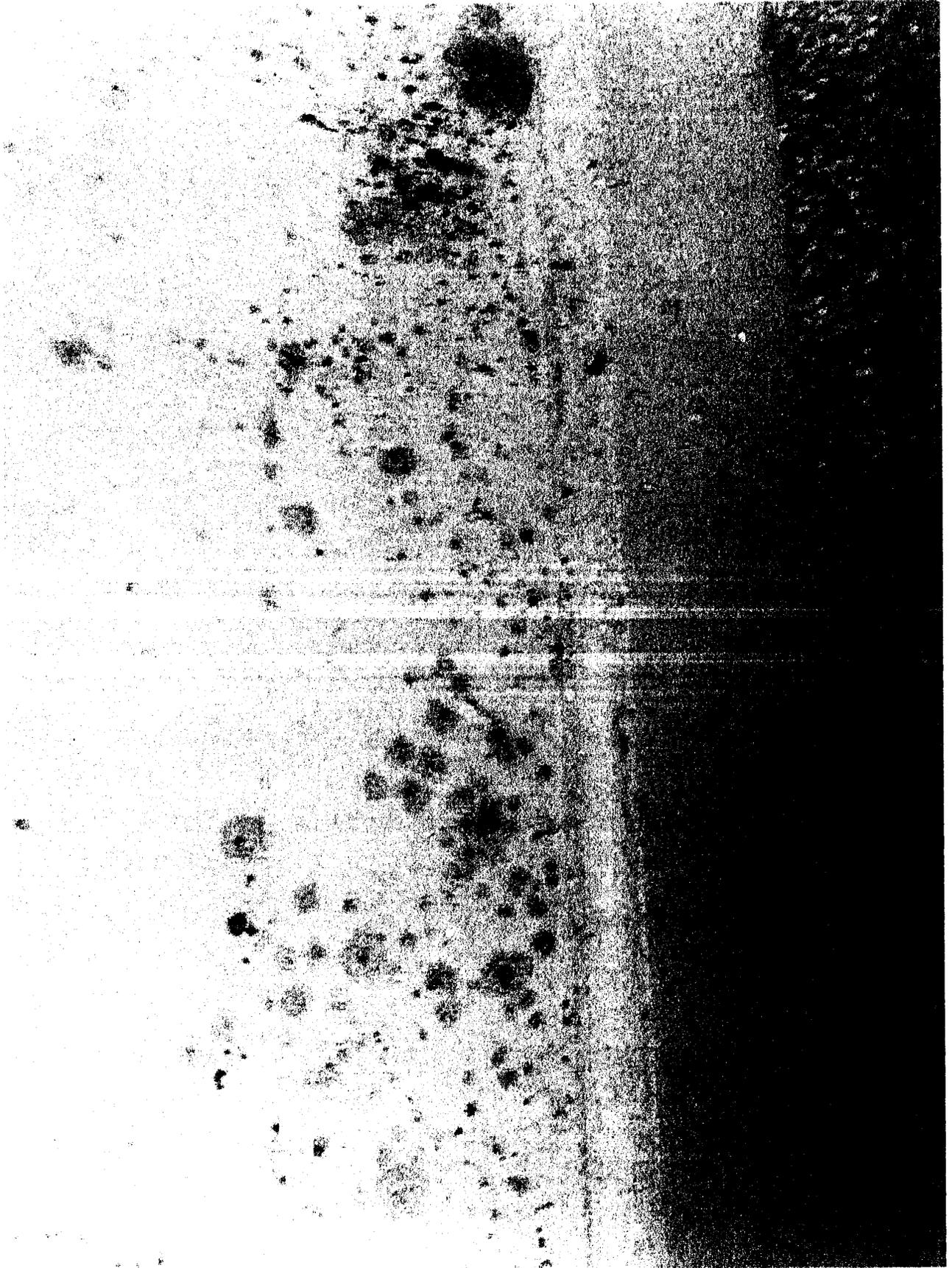
6/29/24, 1:38 PM

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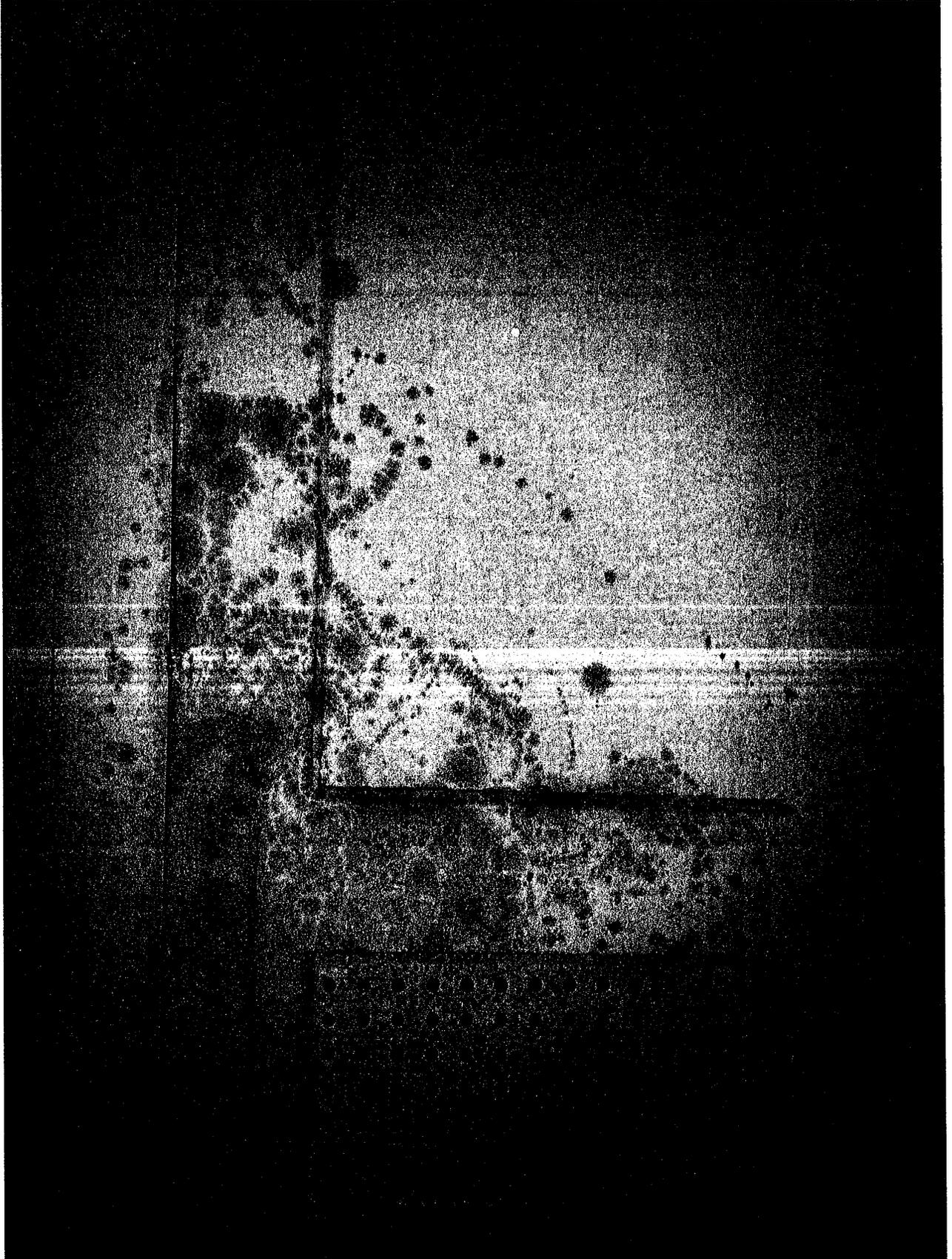
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6/29/24, 12:11 PM



6/29/24, 12:45 PM

IMG_20231207_081352 (1) (1).jpg



6/29/24, 12:36 PM

IMG_20240120_093342.jpg



6/28/24, 5:33 PM

IMG_20231223_094446.jpg



<https://mail.google.com/mail/u/0/#sent/QgrCJHtswwTTKRvTvrZSHFGTSpNFGRVXL?projector=1&messagePartId=0.1>

6/29/24, 1:48 PM

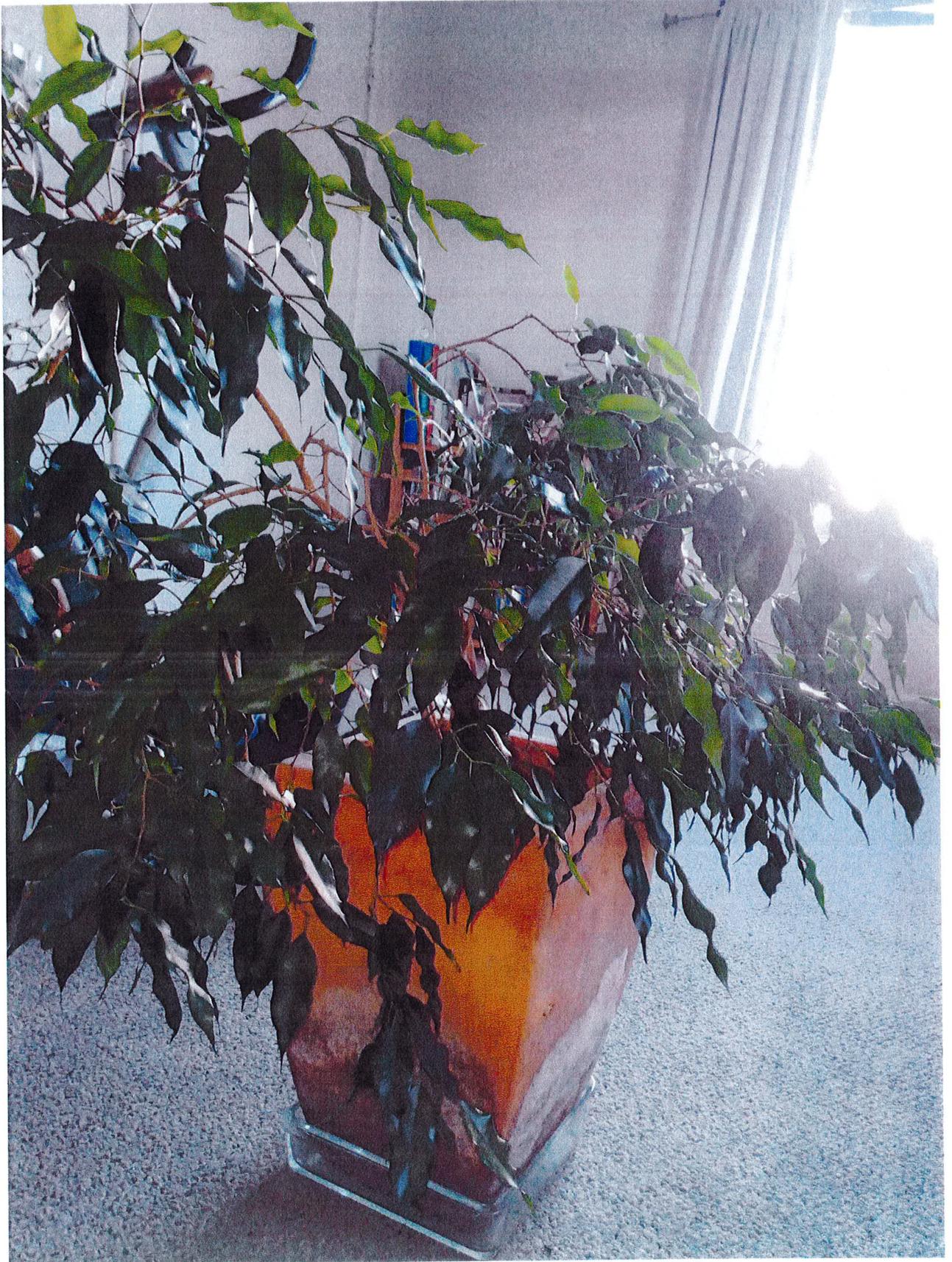
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<https://mail.google.com/mail/u/0/#sent?projector=1>

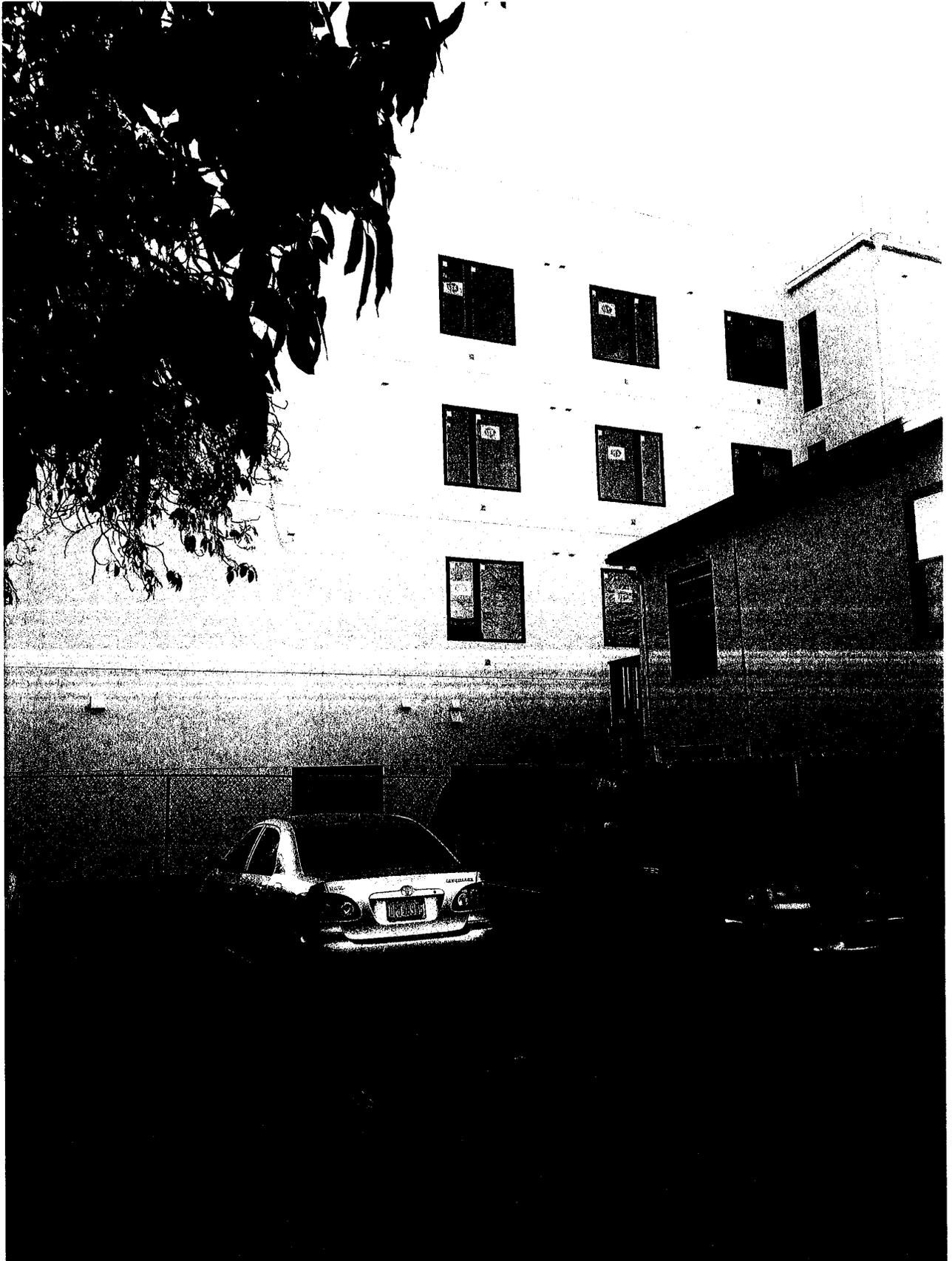
6/28/24, 5:42 PM

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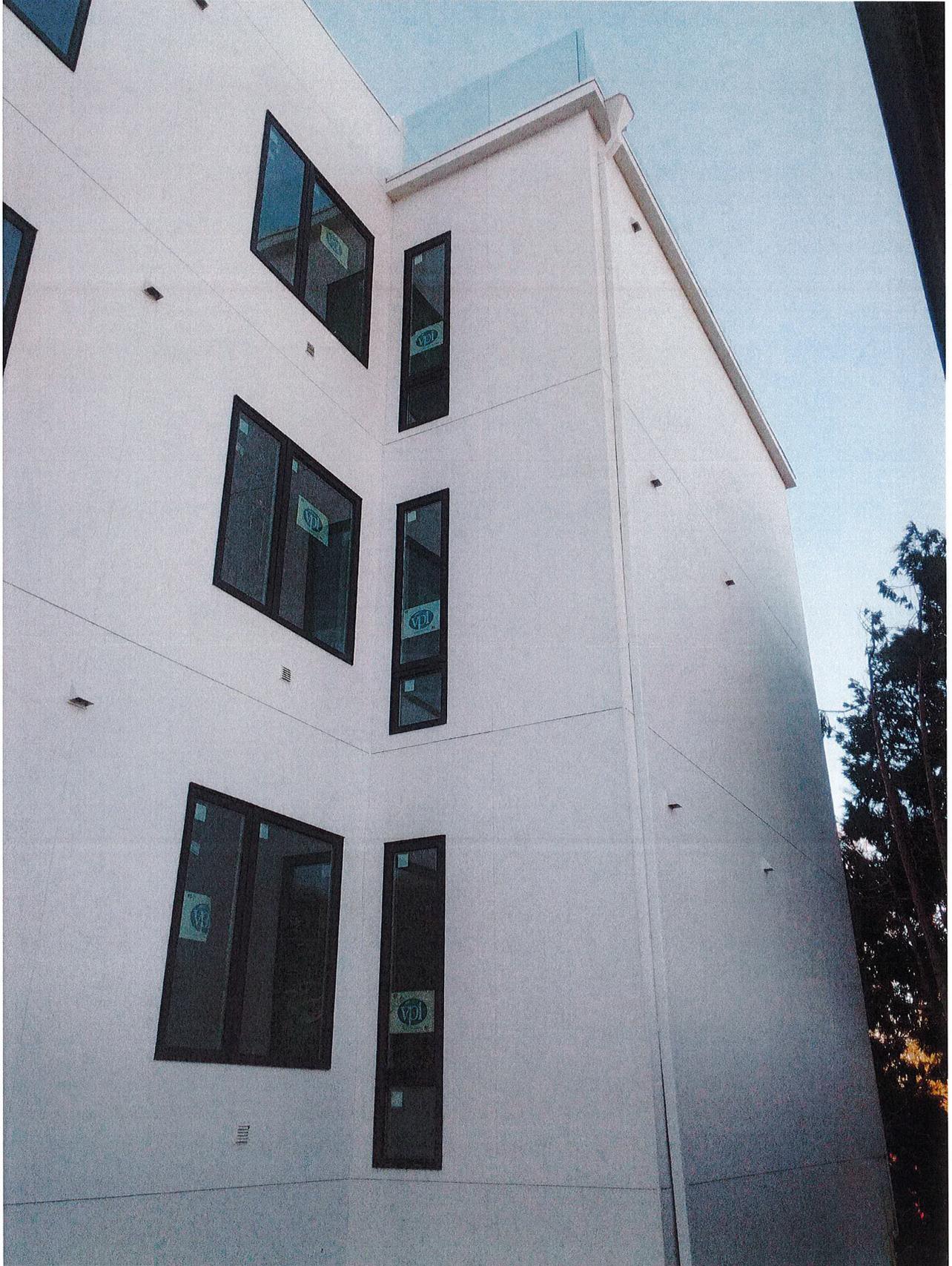
6/29/24, 1:30 PM

IMG_20240107_081644.jpg



7/1/24, 4:41 PM

IMG_20240107_081211.jpg



6/29/24, 12:14 PM

IMG_20240105_085129.jpg

