

Office of the City Manager

PUBLIC HEARING
April 22, 2025

To: Honorable Mayor and Members of the City Council
From: Paul Buddenhagen, City Manager
Submitted by: Jordan Klein, Director, Planning & Development Department
Subject: ZAB Appeal: 2274 Shattuck Avenue, Use Permit #ZP2023-0079

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board decision to approve Use Permit #ZP2023-0079 to demolish the commercial building (preserving and renovating the front façade and lobby), and construct a 17-story (183 feet, plus 5-foot parapet), 214,032-square-foot, mixed-use residential building with 227 dwelling units (including 23 Very Low-Income Density Bonus qualifying units), and one ADA parking space, and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On November 29, 2022, Isaiah Stackhouse, Trachtenberg Architects, submitted a Preliminary Application to vest rights pursuant to Senate Bill (SB) 330, the Housing Crisis Act of 2019¹, for a housing development project.

On June 2, 2023, staff received from Isaiah Stackhouse of Trachtenberg Architects, Use Permit application #ZP2023-0079 to demolish the commercial building on a landmarked site (preserving and renovating the front façade and lobby), and construct a 17-story, mixed-use building with 227 dwelling units (“Project”).

On December 5, 2023, staff received Landmark Initiation application #LMIN2023-0003, submitted by members of Save the UA Theater organization. On January 4, 2024, the use permit application #ZP2023-0079 was deemed complete.

On February 1, 2024, the Landmarks Preservation Commission (LPC) reviewed the demolition referral and Landmark Initiation application #LMIN2023-0003, and

¹ Government Code, §§ 65941.1 and 66300-66301.

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designated the United Artists (UA) Theater building a City Landmark, with the following distinguishing features to be preserved and restored: the upper portion of the Shattuck Avenue building façade in relation to the overall height and massing of the façade, and the architectural and decorative features of the upper portion of the Shattuck Avenue building façade. The Notice of Decision (NOD) was issued thereafter, and became effective on March 20, 2024.

On November 21, 2024, the Project was reviewed by the Design Review Committee (DRC) for Preliminary Design Review (under application #DRCP2023-0008). The DRC provided a favorable recommendation to the ZAB with conditions and recommendations for Final Design Review.

On March 4, 2024, the Applicant's attorney, Hanson Bridgett, LLP, submitted an Assembly Bill (AB) 1633 Notice with attached technical reports to support a California Environmental Quality Act (CEQA) Categorical Exemption for Infill projects.

On October 4, 2024, upon review of all evidence on the record, staff determined the project to be exempt from CEQA under the Class 32 Categorical Exemption for "In-Fill Development Projects".

On December 12, 2024, the Zoning Adjustments Board (ZAB) conducted a public hearing for the use permit application. After hearing public comments and holding discussion, the ZAB approved the use permit by a vote of 8-0-0-1 (Yes: Duffy, Plese, Capitelli, Jersey, Sanderson, Thompson, Gaffney, Allen; No: None; Abstain: None; Absent: Kashani).

On December 30, 2024, staff issued a Notice of Decision for the ZAB approval.

On January 13, 2025, the City Clerk received an appeal filing from Brandt-Hawley Law Group on behalf of Save the UA Berkeley.

On or before March 8, 2025, staff posted the public hearing notice at the site and three nearby locations and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal.

BACKGROUND

The following background is a summary of salient information on the Project for the Council's consideration of this appeal. For details and additional project background, see Attachment 4, the December 12, 2024 ZAB staff report for the Project.

Project Setting and Description

The Project site is located on an L-shaped lot, on the west side of Shattuck Avenue and the north side of Bancroft Way, within the Downtown Mixed-Use District (C-DMU), Corridor Sub-Area, as identified in the City's Downtown Area Plan (DAP). The Project

site is surrounded by commercial, residential, institutional and mixed-use commercial/residential buildings ranging in height from one to five stories.

The site is occupied by a 23,289 square foot movie theater that was originally constructed in 1932 as the United Artists Theater (UA Theater), that operated until its closure in February 2023. The UA Theater is listed on the California Register of Historical Resources (CRHR), and the façade on Shattuck Avenue was designated a City Landmark in March 2024.

The Project proposes to demolish the former theater building on the landmarked site (while preserving the front façade and lobby), and construct a 17-story (183 feet, plus 5-foot parapet), 214,032-square-foot, mixed-use residential building with 227 dwelling units, utilizing the State Density Bonus. The Project is eligible for a density bonus² by including 23 Very Low-income units (15 percent of the 151-unit base project), and qualifies for a 50 percent density bonus, or 76 bonus units, resulting in a 227-unit density bonus project. The Project requests no concessions, but requests waivers for height, front and side setbacks, diagonal width, private (usable) open space, and long-term bicycle parking to accommodate the density bonus project on the site.

Design Review Committee and Landmarks Preservation Commission

The Project was referred to the DRC for Preliminary Design Review (#DRCP2023-0008) on November 21, 2024. The DRC provided a favorable recommendation to the ZAB with conditions and recommendations for Final Design Review.

Since the Project involves demolition of a commercial building over 40 years in age, the proposed demolition was referred to the LPC for review under the use permit application. In addition, a Landmark Initiation Application (#LMIN2023-0003) was submitted on December 6, 2023 by Save the UA Theater organization. The LPC reviewed the demolition referral and the landmark initiation concurrently at a meeting on February 1, 2024, and designated the façade a City Landmark, with the following distinguishing features to be preserved and restored: the upper portion of the Shattuck Avenue building façade in relation to the overall height and massing of the façade, and the architectural and decorative features of the upper portion of the Shattuck Avenue building façade. The Notice of Decision was issued, and became effective on March 20, 2024.

The Project's SB 330 Preliminary Application vested the site's historical resource status on November 29, 2022, at which time it had not yet been designated as a local historic resource (City Landmark). Therefore, the LPC and the City are prohibited by state law from denying the project or imposing conditions related to cultural or historic resources protections on the project after this date. Although the site is currently a designated City Landmark, the requirements that typically apply to Landmarks do not apply to the

² Government Code Section 65915

project. However, the project's impact on cultural resources under CEQA is not affected by the LPC determination.

CEQA Categorical Exemption

On October 4, 2024, staff determined that the Project is categorically exempt from the provisions of CEQA under Section 15332 ("Infill Development Projects") of the CEQA Guidelines, pursuant to AB 1633 (See Exhibit 1 to Exhibit A of Attachment 1, the proposed Resolution). AB 1633, which became effective on January 1, 2024, revised a provision in the Housing Accountability Act³ (HAA) that allows project sponsors to file a petition to enforce the HAA's protections where a local agency fails to make a determination that the project is exempt from CEQA when it is eligible for the exemption.

The Project applicant filed an AB 1633 Notice with the City on March 4, 2024, and attached technical reports that supported the Project's eligibility for a Class 32 Categorical Exemption from CEQA and the inapplicability of any Exceptions to the exemption⁴ (see Attachment 2). Submitted technical reports included: Traffic Impact Analysis, Historic Resources Evaluation, Project Impacts Analysis, Air Quality Impacts Analysis, Noise Impact Analysis, and Water Quality Impact Analysis. All technical reports were peer reviewed by the City's CEQA consultant ("Consultant") and were revised or supplemented for adequacy.

Upon review of all evidence on the record, it was determined that the Project met all of the requirements of the Class 32 Infill Exemption.⁵ Further, it was determined that the Project would not result in a substantial adverse change to the historical resource (the UA Theater) because it would preserve and rehabilitate the main character-defining feature of the historical resource (namely, the Art Deco upper façade on Shattuck Avenue). Thus, staff determined that the Project would not meet the criteria for the historical resource *exception* to the use of a categorical exemption.⁶ Staff also determined that none of the other exceptions in the CEQA Guidelines apply to the

³ Government Code, § 65589.5.

⁴ CEQA Guidelines, § 15300.2.

⁵ CEQA Guidelines, § 15332 describes a categorical exemption for infill development projects meeting the following conditions:

- (a) 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.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value, as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

⁶ CEQA Guidelines, § 15300.2(f). "Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource."

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Project [(a) Location, (b) Cumulative Impact, (c) Significant Effect, and (d) Scenic Highways, and (e) Hazardous Waste Sites].

Staff issued an AB 1633 Determination Letter on October 4, 2024, with the determination that the Project is exempt under the Class 32 Infill Exemption. The ZAB found the Project compliant with all vested and applicable, objective General Plan and zoning standards, without specific adverse impact on public health or safety, and approved the Project at the decision hearing on December 12, 2024 without reductions to Project's density, pursuant to the HAA.⁷

RATIONALE FOR RECOMMENDATION

The issues raised in the Appellant's letter and staff's responses follow. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the appeal letter (Attachment 3) for the full text.

Issue 1:

The appellant asserts that the UA Theater qualifies as a "mandatory" historic resource vis-a-vis its listing in the California Register of Historical Resources (Public Resources Code, Section 21084.1). The State of California recognizes that the historic status encompasses more than the facade. The substantial demolition of the theater would cause a substantial adverse change in its historic significance, and therefore, the historic resource exemption exception applies.

Response:

The City recognizes that the UA Theater building is an historic resource as defined in CEQA Guidelines, Section 21084.1⁸, as the appellant asserts. The building as a whole was designated in the CRHR on March 15, 2006 by the State, after an evaluation of the building as a part of the Alameda-Contra Costa County Transit East Bay Rapid Transit Project, in which the site's condition was documented. The applicant submitted a Historic Resource Evaluation (HRE, dated December 7, 2023) and a Project Impact Analysis (PIA, dated March 1, 2024) prepared by a qualified consultant, which extensively evaluated the history of alterations to the building, the building's current condition, and the Project's consistency with applicable Secretary of Interior standards. The HRE found substantial evidence documenting that the UA Theater historic resource has been significantly altered over time, such that its extant character-defining features

⁷ The Housing Accountability Act (HAA), Government Code, § 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that the development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

⁸ Public Resources Code § 21000, et seq., is also known as the CEQA Guidelines.

no longer convey the site's significance. The PIA concluded that the Project would not cause "substantial adverse change" to the remaining character-defining features of the theater building that still convey significance (the upper front façade), and that the Project is consistent with the Secretary of Interior standards for rehabilitation. The City's LPC conducted a review and public hearing to consider the designation of the theater as a City Landmark on February 1, 2024, and after considering the request in the initiation application to designate the entire theater building (including interior elements) as a City Landmark, the LPC chose to designate only the building façade and its decorative detail as the distinguishing features to be preserved.⁹

Staff retained a Consultant to peer review all of the applicant-submitted technical reports. The City's Consultant prepared a revised PIA that identified other character-defining features in addition to the theater façade, and recommended that despite the Project's proposal to retain aspects of the theater's Art Deco design, the proposed demolition of the theater would result in a substantial adverse change to the resource.

Prior to making the CEQA determination for the Project, staff reviewed all of the evidence in the record, including: 1) the project application materials, plans and technical reports¹⁰; 2) City Consultant peer reviews of submitted technical reports, including the historic resource reports; 3) the revised PIA prepared by the City's Consultant; 4) the LPC's Notice of Determination; 5) City Attorney guidance; and 6) City Council's deliberations at the closed session meeting held on September 24, 2024.

Based on the consideration of all evidence on the record for the Project, staff ultimately determined that there is substantial evidence in the record that the Project meets all of the requirements for a Class 32, Infill Exemption from CEQA review.¹¹ Further, staff determined that the Project would not result in a substantial adverse change to the UA Theater historical resource, because it proposes to retain the architectural design and details of the character-defining feature that embodies its historical significance, and that the historical resource exception to the use of a categorical exemption would not

⁹ The LPC's Notice of Determination (NOD) states that the designation shall apply to specific distinguishing features of the main building as the features that shall be preserved and restored to the extent possible: 1) the upper portion of the Shattuck Avenue building façade in relation to the overall height and massing of the façade; and 2) the architectural and decorative features of the upper portion of the Shattuck Avenue building façade.

Note that while the LPC designated the site a City Landmark, the project's SB 330 Preliminary Application vested the site's historical resource status on November 29, 2022 as not a local historic resource (City Landmark). This status remains valid during the pendency of the housing development project for which the application was made.

¹⁰ Technical reports submitted by the applicant included a Traffic Impact Analysis, an Historic Resource Evaluation, a Project Impacts Analysis, and Air Quality, Noise, and Water Quality reports.

¹¹ Pursuant to Government Code, § 65589.5, the Housing Accountability Act (under AB 1633)

apply. Staff issued an AB 1633 determination letter to convey the exempt determination on October 4, 2024.¹²

Issue 2:

The categorical exemption is not consistent with the Downtown Plan, including policies for the protection and expansion of historic theaters that specifically reference UA Berkeley (Theater).

Response:

The City's Downtown Area Plan (DAP) is comprised of broad policies and goals that guide development in the downtown district. It includes policies and goals that encourage the retention and expansion of cinema, along with live theater and music venues, with the goal to strengthen the downtown as a prime regional destination for these types of art. Specifically, Policy ED-1.7: Entertainment & Culture in the DAP, speaks to the goal of preserving cinema in the downtown:

Policy ED-1.7: Entertainment & Culture. Strengthen Downtown as a prime regional destination for alternative and mainstream cinema, and live theater and music. Evaluate and enhance the theater- and cinema-going experience in subareas where they are concentrated.

- a) Work to retain and expand cinemas, live theaters, and music venues.*
- b) Work with cinema, theater, and music venues to upgrade to state-of-the-art facilities.*
- c) Evaluate the experience of going to Downtown theaters, cinemas and music venues, and make enhancements to public safety and aesthetics. Adopt SOSIP recommendations such as pedestrian-scaled lighting for enhancing Downtown as a destination as part of the SOSIP (see policies under Goal OS-1). Give special attention to improving the theater-going experience near Shattuck and Kittredge Street and near Shattuck and Addison, as well as connections to nearby parking facilities.*
- d) Promote the arts and cultural events, programs and activities.¹³*

Economic Development Policy ED-1.7 identifies the UA Theater in a photograph in Figure ED-1 Historic Cinemas¹⁴ as a building that helps to “contribute to the special sense of place that distinguishes Downtown from other destinations”, along with the California Theater, and music clubs and live theater venues in the area. Though the UA Theater is referenced, this policy is not an objective development standard that can be

¹² Pursuant to Government Code, § 65589.5(h)(6)(D)(iv), in the Housing Accountability Act (under AB 1633)

¹³ Berkeley Downtown Area Plan, p. ED-5.

¹⁴ Ibid.

specifically applied to the Project. The Project complies with the policy by preserving as much of the existing theater as is feasible – the front façade and the lobby area. A Structural Review Memo, dated January 24, 2024¹⁵ was submitted by the applicant’s structural engineer to the LPC for its landmark review which concluded that substantial demolition of the theater building would be required in order to bring it into compliance with current seismic and building code, if preservation of the larger building were considered. Instead, the ZAB found that the Project is consistent with all applicable objective General Plan and Downtown Area Plan goals and policies, as discussed in the ZAB staff report (see Attachment 4), and approved the Project in accordance with state housing permit streamlining requirements.

Issue 3:

The project description relied upon in ZAB's review is not finite or stable, and is inadequate for consideration for categorical exemption, per the applicant's recent public assertions that the application will be substantially modified.

Response:

Staff determined that the CEQA exemption applies to the project that is described in the use permit #ZP2023-0079, and that is represented in the plans that are attached to the permit. Any substantial change to the project as approved that meets the revision thresholds specified in BMC Section 23.404.070, Permit Modifications¹⁶ will be required to undergo a Use Permit Modification that is subject to a new staff review (including any review required pursuant to CEQA) and decision by the ZAB on the modified project. To date, no application to modify the approved project has been submitted to the City.

Issue 4:

Appellant asserts that there was a potential “due process violation” in the ZAB proceedings, based on a representation in the applicant’s letter to ZAB that “the City approved the Class 32 categorical exemption in October of 2024 after deliberation by the City Council and in consultation with the City Attorney”, where there has been no public review before any City Council deliberation regarding the subject categorical exemption.

Response:

Staff reviewed the Project in accordance with the regulations and timeframes set forth in AB 1633¹⁷ that apply to projects which invoke the law to ensure that the City determines a project exempt from CEQA when it is eligible. The AB 1633 Notice was received from

¹⁵ See “Structural Review for LPC hearing”, in the Administrative Record, page 2691.

¹⁶ <https://berkeley.municipal.codes/BMC/23.404.070>

¹⁷ Pursuant to Government Code, § 65589.5(h)(6)(D) in the HAA.

the applicant on March 4, 2024. A local agency is required by law to make a lawful determination on the project's eligibility for a CEQA exemption within 90 days of the written notice, and may extend the time period up to 90 days, if needed.¹⁸ Staff issued the determination letter on October 4, 2024, following 180 days and a tolling agreement signed with the applicant to extend the deadline by 30 days. Because the project application was required to appear at public meetings before the LPC for the Structural Alteration Permit and the DRC for Preliminary Design Review prior to appearing before the ZAB for a decision, significant lead times that are typically required for public hearings (for staff review, staff report writing, noticing, and commission materials publishing) necessitated that staff make the CEQA exemption determination prior to appearing before the ZAB. It is acceptable under CEQA, and a common practice, for exemption determinations to be made at the staff level.

The City Council met in closed session on September 24, 2024, as noticed on the Council hearing agendas webpage¹⁹, to discuss potential litigation related to the City's consideration of the exemption determination for the Project under CEQA. No public discussion regarding the CEQA determination is required by AB 1633/HAA, and none was conducted prior to the determination.

Issue 5:

The ZAB was not provided with all relevant City reports from architectural historians regarding the UA Berkeley (Theater).

Response:

The City Consultant's peer review of the historic resource reports and supplemental PIA were publicly released on October 4, 2024, concurrently with the CEQA Determination Letter. Staff used the 180 days provided by law, as well as an additional 30 days per a written agreement with the applicant, to consider all of the evidence on the record, including consultation with the City Attorney, in order to make the determination of CEQA exemption.

Also, as discussed in the previous appeal point response, staff had already made the exemption determination prior to the ZAB hearing on December 12, 2024. Though all technical reports were publicly available well in advance of the hearing, the reports staff relied upon were not necessary for ZAB's deliberation on whether to approve or disapprove the Project's use permit.

¹⁸ Pursuant to HAA, Government Code, § 65589.5(h)(6)(D)(V)(ic) (2024).

¹⁹ The City Council agenda for September 24, 2024 is at this link: <https://berkeleyca.gov/city-council-closed-meeting-eagenda-september-24-2024>

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ENVIRONMENTAL SUSTAINABILITY

The project approved by the ZAB is compliant with all applicable State and local environmental requirements, would be located in a transit-rich area, and would be built and operated according to current codes for energy conservation, waste reduction, low toxicity, and other factors.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23.410.040(G), the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB. The April 22, 2025 City Council appeal hearing represents the fourth public hearing for the Project, pursuant to Government Code Section 65905.5(a). The City can hold one additional public hearing for a decision on the Project.

Action Deadline:

Pursuant to BMC Section 23.410.040(I), if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS

Jordan Klein, Director, Planning & Development Department, (510) 981-7534
Anne Hersch, Land Use Planning Manager, (510) 981-7411
Sharon Gong, Principal Planner, (510) 981-7429

Attachments:

1. Draft Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit 1 to Findings and Conditions: AB 1633 CEQA Exemption Determination Letter, dated October 4, 2024
 - Exhibit B: Project Plans, received December 8, 2023
2. AB 1633 Notice from Hanson Bridgett, LLC, dated March 4, 2024
3. Appeal Letter, dated received January 13, 2025
4. December 12, 2024 ZAB Staff Report
5. Index to Administrative Record
6. Administrative Record
7. Public Hearing Notice

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD APPROVAL OF USE PERMIT #ZP2023-0079 TO DEMOLISH THE COMMERCIAL BUILDING (PRESERVING AND RENOVATING THE FRONT FAÇADE AND LOBBY), AND CONSTRUCT A 17-STORY (183 FEET, PLUS 5-FOOT PARAPET), 214,032-SQUARE-FOOT, MIXED-USE RESIDENTIAL BUILDING WITH 227 DWELLING UNITS (INCLUDING 23 VERY LOW-INCOME DENSITY BONUS QUALIFYING UNITS), AND ONE ADA PARKING SPACE, AND DISMISS THE APPEAL

WHEREAS, on November 29, 2022, Isaiah Stackhouse, Trachtenberg Architects (“applicant”) submitted a Preliminary Application to vest rights pursuant to Senate Bill (SB) 330, the Housing Crisis Act of 2019 (Government Code Sections 65941.1 and 66300), for a housing development project; and

WHEREAS, on June 2, 2023, Isaiah Stackhouse submitted Use Permit application #ZP2023-0079 to demolish the commercial building on a landmarked site (preserving and renovating the front façade and lobby), and construct a 17-story, mixed-use building with 227 dwelling units (“project”); and

WHEREAS, on December 5, 2023, staff received Landmark Initiation application #LMIN2023-0003, submitted by members of Save the UA Theater organization; and

WHEREAS, on January 4, 2024, staff deemed the Use Permit application complete; and

WHEREAS, on February 1, 2024, the Landmarks Preservation Commission (LPC) reviewed the demolition referral and Landmark Initiation application #LMIN2023-0003, and designated the United Artists (UA) Theater building a City Landmark, and the Notice of Decision (NOD) was issued thereafter, and became effective on March 20, 2024; and

WHEREAS, on November 21, 2024, the project was reviewed by the Design Review Committee (DRC) for Preliminary Design Review (application #DRCP2023-0008), and provided a favorable recommendation to the ZAB with conditions and recommendations for Final Design Review; and

WHEREAS, on March 4, 2024, the Applicant’s attorney, Hanson Bridgett, LLP, submitted an Assembly Bill (AB) 1633 Notice with attached technical reports to support a California Environmental Quality Act (CEQA) Categorical Exemption for Infill projects; and

WHEREAS, on October 4, 2024, upon review of all evidence on the record, staff determined the project to be exempt from CEQA under the Class 32 Categorical Exemption for “In-Fill Development Projects”; and

WHEREAS, on November 26, 2024, staff mailed and posted a Notice of Public Hearing for the project at the site and at nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area; and

WHEREAS, on December 12, 2024, the Zoning Adjustments Board (ZAB) conducted a public hearing for the use permit, and after hearing public comments and holding discussion, the ZAB approved the use permit by a vote of 8-0-0-1 (Yes: Duffy, Plese, Capitelli, Jersey, Sanderson, Thompson, Gaffney, Allen; No: None; Abstain: None; Absent: Kashani); and

WHEREAS, on December 30, 2024, staff issued the notice of the ZAB decision; and

WHEREAS, on January 13, 2025, the City Clerk received an appeal filing from Brandt-Hawley Law Group on behalf of Save the UA Berkeley; and

WHEREAS, on or before March 8, 2025, staff mailed and posted a Notice of Public Hearing at the site and at nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area; and

WHEREAS, on April 22, 2025, the Council held a public hearing to consider the ZAB's decision, and in the opinion of this Council, the facts stated in, or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A to affirm the decision of the ZAB to approve Use Permit #ZP2022-0144, adopts the conditions of approval in Exhibit A; adopts the project plans in Exhibit B; and dismisses the appeal.

Exhibits

- Exhibit A: Findings and Conditions
 - Exhibit 1 to Findings and Conditions: AB 1633 CEQA Exemption Determination Letter, dated October 4, 2024
- Exhibit B: Project Plans, received December 8, 2023

Attachment 1, Exhibit A

Findings and Conditions

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Use Permit #ZP2023-0079 to demolish the commercial building (preserving and renovating the front façade and lobby), and construct a 17-story (183 feet, plus 5-foot parapet), 214,032-square-foot, mixed-use residential building with 227 dwelling units (including 23 Very Low-Income Density Bonus qualifying units), and one ADA parking space.

ZONING PERMITS REQUIRED

- Use Permit under BMC Section 23.326.070(A) to demolish a non-residential building
- Use Permit under BMC Section 23.204.020(A) to construct a new mixed-use residential development
- Use Permit under BMC Section 23.204.020(A) to construct dwelling units
- Use Permit under BMC Section 23.204.030(B)(1) to create new floor area of 10,000 square feet or more
- Use Permit under BMC Section 23.204.130(E)(1) to exceed the maximum building height limit, up to 75 feet (plus 5-foot parapet, by right)
- Use Permit under BMC Section 23.04.130(E)(3)(b) to modify front and side setback requirements
- Administrative Use Permit under BMC Section 23.304.050(A) to exceed building height limits with rooftop architectural elements which exceed the maximum height limit for the district

CONCESSIONS/WAIVERS UNDER GOVERNMENT CODE SECTION 65915-65918

- Concession – none.
- Waiver of BMC Section 23.04.130(E)(1) to exceed building height limits – to be 183 feet to roof (plus 5-foot parapet, by right), where 75 feet is the limit (plus 5-foot parapet by right)
- Waiver of BMC Section 23.204.130(E)(3)(b) to waive front and side setback minimums
- Waiver of BMC Section 23.204.130(E)(3) to increase front setback maximum to 7-foot, 1 inch, where 5 feet maximum is required, at 0-20-foot building height
- Waiver of BMC Section 23.204.130(E)(3)(b)(i) to exceed 120 feet in width in diagonal measurement above 120 feet in height – to be 178 feet, 9 inches in width, where 120 feet is required
- Waiver of BMC Section 23.204.130(E)(4) to reduce the usable open space requirement – to provide 7,737 square feet, where 18,160 square feet is required
- Waiver of BMC Section 23.322.090(A) to provide 72 long term residential bicycle parking, where 210 is required

I. CEQA FINDINGS

- A.** On October 4, 2024, the City determined that the project is categorically exempt from the provisions of CEQA under Section 15332 (“Infill Development Projects”) of the CEQA Guidelines, pursuant to Assembly Bill (AB) 1633. (See Exhibit A.)

The project applicant filed an AB 1633 Notice with the City on March 4, 2024 and attached technical reports that supported the project’s eligibility for a Class 32 Categorical Exemption from CEQA and the inapplicability of any Exceptions to the exemption (CEQA Guidelines, Section 15300.2). Submitted technical reports included the following: Traffic Impact Analysis, Historic Resources Evaluation, Project Impacts Analysis, Air Quality Impacts Analysis, Noise Impact Analysis, and Water Quality Impact Analysis. All technical reports were peer reviewed by a CEQA consultant, and were revised or supplemented for adequacy.

- B.** Upon review of all evidence on the record, the City determined that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15332 (“Infill Development Projects”) of the CEQA Guidelines.

The project meets the requirements under CEQA Guidelines Section 15332, 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 would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
5. The site can be adequately served by all required utilities and public services.

- C.** Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects on the environment due to unusual circumstances, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not cause a substantial adverse change in the significance of 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 227 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, identified written public health or safety standards, polices, or conditions, have been identified.

III. DENSITY BONUS FINDINGS

- A.** Pursuant to Government Code Section 65915, the Zoning Adjustments Board finds that:
1. Under the City's methodology for implementing density bonuses, the "base project" consists of 151 units;
 2. The project will provide at least 23 Very Low-Income (VLI) qualifying units in the 151-unit "base project";
 3. The project is entitled to a density increase of 50 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 three concessions or incentives. This equates to a density bonus of 76 units above the Base Project, for a total of 227 units.
- B.** 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 23.04.130(E)(1) to exceed building height limits – to be 183 feet to roof (plus 5-foot parapet, by right), where 75 feet is the limit (plus 5-foot parapet by right)
 2. Waiver of BMC Section 23.204.130(E)(3)(b) to waive front and side setback minimums
 3. Waiver of BMC Section 23.204.130(E)(3) to increase front setback maximum to 7-foot, 1 inch, where 5 feet maximum is required, at 0-20-foot building height
 4. Waiver of BMC Section 23.204.130(E)(3)(b)(i) to exceed 120 feet in width in diagonal measurement above 120 feet in height – to be 178 feet, 9 inches in width, where 120 feet is required
 5. Waiver of BMC Section 23.204.130(E)(4) to reduce the usable open space requirement – to provide 7,737 square feet, where 18,160 square feet is required
 6. Waiver of BMC Section 23.322.090(A) to provide 72 long term residential bicycle parking, where 210 is required
- 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 approval of waivers is required 1) construct the proposed project at the density permitted under State law; 2) approval of requested waivers will not have a specific adverse impact upon

public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) approval of the requested waivers will not be contrary to State or Federal law.

IV. FINDINGS FOR APPROVAL

- A.** As required by Section 23.406.040(E) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
1. The project is consistent with all applicable C-DMU District standards and qualifies for waivers and concessions for the listed district standards granted pursuant to State Density Bonus, Government Code, Section 65915;
 2. New shadow impacts will occur: a) in the summer months in the hours after sunrise on the residential buildings at 2120 Bancroft Way and 2020 Kittredge Street to the west, and in the hours before sunset on the mixed-use residential buildings at 2295 and 2319 Shattuck Avenue to the east; and b) in the winter months in the hours after sunrise on the residential buildings at 2020 Kittredge Street to the west, and in the hours before sunset on the mixed-use residential building at 2231 Shattuck Avenue to the east. All other new shadows will impact commercial buildings in the vicinity. The extent of the new shadow impact from the project on the site's adjacent areas will not be unreasonable for a development in the dense, downtown district that allows building heights up to 60-foot, with zero to five-foot setbacks from property lines, by right.
 3. 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 Section 23.326.070(A), in order to approve a Use Permit to demolish a commercial structure, the Zoning Adjustments Board finds that:
1. Although proposed demolition of the majority of the existing movie theater building will replace the existing commercial building with a mixed-use residential building that would reduce the amount of commercial floor area on the site, the project will not be materially detrimental to the commercial needs and public interest of the neighborhood because the movie theater business ceased operations in February 2023, and the new project will contain a ground-floor café, to bring more services to residents and workers in the vicinity.
 2. The existing structure to be demolished is a 23,289-square-foot movie theater. This commercial use will be replaced by a 865-square-foot café and 227 new residential units, including 23 very low-income affordable units. The demolition is required in order to allow the proposed mixed-use residential project to be built.

3. The LPC reviewed the demolition referral for the project and did not recommend against the demolition permit.
- B.** As required by BMC Section 23.204.130(I) of the, the Zoning Adjustments Board finds that the proposed use or structure:
1. *Is compatible with the purposes of the district to implement the vision and goals of the Downtown Area Plan (DAP):*
 - a. Environmental Sustainability and Access: The project will be a high-density development in proximity to regional transit, shops and amenities, and will provide more housing in the Downtown to increase access to local services and amenities by foot, by bicycle and via transit, while promoting public transit as an efficient and attractive choice through its location and through its Transportation Demand Management measures and other associated Conditions of Approval. The project is designed to achieve GreenPoint Rated Silver certification, which is equivalent to LEED Gold, and satisfies this DAP requirement. The project will also comply with the State's Model Water Efficient Landscape Ordinance (MWELo), and will feature a number of native plant species in its landscape palette.
 - b. Land Use: The mixed-use residential project, which includes 23 VLI units, will add affordable housing to the Downtown area. The rehabilitated movie theater front façade and café (repurposed from a theater lobby) will contribute to the area's vitality, livability, sustainability, and character. New street trees and landscaping along Bancroft Way will add to the cultivation of the Downtown as an attractive residential neighborhood.
 - c. Housing and Community Health and Services: The project will involve construction of a mixed-use residential building with a total of 227 dwelling units, including 23 VLI units. The project will expand the supply of affordable housing and contribute to a thriving, livable, diverse residential neighborhood with a mix of supportive uses in Downtown.
 - d. Economic Development: The project will introduce 227 new residential units, in a mix of unit sizes – studio, two-bedroom and four-bedroom units – and 23 very low-income units to the neighborhood, to help broaden the range of household incomes in the area and contribute to diversifying housing opportunities for households of different ages, incomes, varying sizes, and abilities in the Downtown, while preserving the character of the Downtown Historic neighborhood through the rehabilitation of the UA Theater façade.
 - e. Historic Preservation and Urban Design: The 2274 Shattuck building, also known as the United Artists Theater, is an historic resource listed in the CRHR and was found to be eligible for NAHP designation, as well as a contributor to the Shattuck Avenue Commercial Corridor Historic District. The LPC designated the building a City Landmark in February 2024, with the upper portion of the Shattuck Avenue building façade as the distinguishing features to be preserved and restored . The project will demolish the entire building, excepting the Shattuck Avenue façade and theater lobby, which will be rehabilitated and repurposed.
 - f. Streets and Open Space: The project will include new street trees along Bancroft Way and 7,737 square feet of private open space in the form of private patios, ground-floor common space and a roof deck for residents, that will comply with the State's MWELo requirements. In addition, the project will be required to contribute to the Streets and Open Space Improvement Plan (SOSIP) fund via Condition of Approval.

2. *Is compatible with surrounding uses and buildings:* Uses on properties surrounding the project site include retail, the Berkeley Public Library, restaurants, retail and offices, and multi-family residential. The project features primarily a multi-family residential use with a ground-floor café, a similar mixture of uses that already exists on the site and in the vicinity. Thus, the project will not introduce new land uses that do not already exist in the Downtown, and will further the vision and goals of the DAP. The DRC provided a favorable recommendation of the project with conditions for further design refinement, and deemed the project consistent with DAP design guidelines.
- C. As required by Section 23.304.050(A) of the BMC, 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. None of the equipment structures will be used as habitable or commercial space. The project will include mechanical and staircase/elevator penthouses and an architectural frame totaling 1,891 square feet on the roof that will extend 15 feet over the roof height. These areas represent 15 percent of the 12,659-square-foot average of all the floor areas.
- D. As required by BMC Section 23.204.130(E), the Zoning Adjustments Board finds that:
1. The setback encroachment in the Base Project will result in a minimal contribution to new shadow impact relative to the increase in shadow impact from the Density Bonus project height and reduced setbacks that are requested as waivers. Thus, the setback reduction the Base Project will not unreasonably limit solar access.
 2. A Wind and Comfort Impact Analysis was prepared in March, 2022 for an approved use permit at 2190 Shattuck, a site that is one block to the east of the subject site, for a 25-story building proposal with zero to five-foot setbacks up to 268 feet in height, that concluded that the building will not cause significant additional wind impact on the street level at Shattuck Avenue and Allston Way. Based on that study, the project, which consists of a 17-story building with similar setback reductions up to 183 feet in height, will also result in insignificant changes to wind patterns on the sidewalk at the site along Shattuck Avenue or Bancroft Way.

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. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual’s name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. Please designate the name of this individual below:

Project Liaison _____

Name Phone #

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

16. Construction Noise Reduction Program. The applicant shall develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:

- A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
- B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- C. Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
- D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
- E. Prohibit unnecessary idling of internal combustion engines.
- F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
- G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
- H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.

17. Damage Due to Construction Vibration. The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall consider project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake study of existing conditions (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage.

1. 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.
2. The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.

18. Compliance with Conditions of Approval and Environmental Mitigations. The building permit application is subject to verification of compliance of these Conditions of Approval and the DAP Mitigation Monitoring and Reporting Program (Attachment 4). The applicant shall be responsible for demonstrating compliance with all conditions of approval and mitigation measures per the timeline set forth by this use permit. The applicant shall deposit \$10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with these Conditions of Approval and other applicable conditions and regulations. Should compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses upon the request of the Zoning Officer; any unused deposit will be refunded to the applicant.

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

19. **Demolition.** Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
20. **Construction Noise Management** - Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within 500 feet of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

- 21. Construction Phases.** The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.
- 22. 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.
- 23. 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

24. Historic Resource Inventory. The Applicant shall prepare and submit an Historic Resource Inventory to the Land Use Planning Division prior to Final Design Review (FDR).

25. Final Design Review. The Project requires approval of an FDR application by the Design Review Committee (DRC). The DRC shall review and consider the incorporation of the Historic Resource Inventory submitted by applicant.

26. 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.

27. 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.

- 28. HVAC Noise Reduction.** Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
- 29. Interior Noise Levels.** Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
- 30. Streets and Open Space Improvement Plan.** Street Frontage Improvements. Consistent with the Downtown Streets and Open Space Improvement Plan (SOSIP) (or subsequent iterations as adopted by the City), the developer shall construct improvements along Oxford Street and Center Street to the centerline. Such improvements shall be included with the building permit submittal, designed and constructed as directed by the Public Works Engineering, Public Works Transportation, and Fire Departments, and constructed prior to certificate of occupancy.
- 31. Streets and Open Space Improvement Plan.** Impact Fee: As required by BMC Section 23.204.130(F), the project shall pay an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP) per the fee schedule adopted by the Council by resolution. The City shall deposit this payment into the Downtown Streets and Open Space Improvement Fund (SOSIF), or its equivalent, to pay for the design and construction of the SOSIP Major Projects. The fee shall apply to the project's "Gross Floor Area" as defined in BMC Section 23.106.030, less any existing Gross Floor Area removed as part of the project.
- At the City's discretion, the City Manager or her designee may reduce the required SOSIP Impact Fee, on a \$1 to \$1 ratio, as a credit for constructing all or a portion of a Major SOSIP Improvement Project beyond the frontage improvements already required by this Permit. The first half of this fee shall be paid prior to issuance of a building permit, and the second half shall be paid prior to issuance of a certificate of occupancy.
- 32. Green Building Certification.** The applicant shall submit documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation shall include proof of payment of the registration/application fee to the organization administering the green building certification system (e.g. USGBC/GBCI for LEED, Build It Green for GreenPoint Rated, etc.), a copy of the updated green building checklist that reflects anticipated points, and a statement from the appropriate project team professional (e.g. LEED Accredited Professional, GreenPoint Rater, etc.) verifying that the project is on track for certification at the required level or above. The submitted green building checklist must be a type that is appropriate for the project and a version that is being accepted by the organization granting the green building certification at the time of building permit application. Whenever applicable, measures from the green building checklist shall be incorporated and noted on site plans.

- 33. 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.)
- 34. Nonresidential Electric Vehicle (EV) Charging.** At least 10 percent of project parking spaces for nonresidential use shall have installed Level 2 (40 amp) electric vehicle (EV) charging stations and/or DC Fast Charging Stations, and least 40 percent shall be “EV Capable” equipped with raceway, electrical panel service capacity, and an electrical system to support future Level 2 (40 amp) EV charging stations, or any more stringent EV charging requirements, as specified by the Berkeley Green Code (BMC Chapter 19.37). EV charging station installations and EV Capable spaces shall be noted on the construction plans. Public access parking spaces shall provide any applicable mandatory accessibility provisions. (Project required to meet applicable code at time of building permit application, if different from above.)
- 35. 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.
- 36. Recycling and Organics Collection.** Applicant shall provide recycling and organics collection areas for occupants, clearly marked on plans, which comply with the Alameda County Organics Reduction and Recycling Ordinance (2021-02). Contact the Zero Waste Division’s Recycling Program Manager, Julia A. Heath, at jheath@berkeleyca.gov.
- 37. 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

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

As indicated on the development application, the applicant shall provide below market rate rental dwelling units (“BMR Units”) – 23 VLI units, in perpetuity – 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.

39. Number of Below Market Rate Units. The project shall provide below market rate rental dwelling units (“BMR Units”) – 23 VLI units, in perpetuity – which are required to comply with the State Density Bonus Law (Government Code Section 65915) and BMC Section 22.20.065. 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.

40. 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.

41. 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

- 42. **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.
- 43. **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.

44. 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:

45. 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.

46. 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.

47. 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:

48. 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.

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

52. 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.

53. 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.

- 54. 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.)
- 55. 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.
- 56. 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. There shall be no destructive or invasive testing on sacred items, burial goods and Native American human remains (invasive procedures include photography of cultural materials).
 - 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.

57. 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.

58. 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.

59. 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.

60. 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 shall be conducted prior to the issuance of a Building Permit.
- E.** All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
- F.** All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
- G.** All private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological). (Project required to meet applicable code at time of building permit application, if different from above.)
- H.** All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.

- I. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - J. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
 - K. Restaurants, where deemed appropriate, must be designed with a contained area for cleaning mats, equipment and containers. This contained wash area shall be covered or designed to prevent run-on or run-off from the area. The area shall not discharge to the storm drains; wash waters should drain to the sanitary sewer, or collected for ultimate disposal to the sanitary sewer. Employees shall be instructed and signs posted indicating that all washing activities shall be conducted in this area. Sanitary connections are subject to the review, approval and conditions of the waste water treatment plant receiving the discharge.
 - L. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - M. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 61. 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.
- 62. 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.
- 63. 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.
- 64. 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.

- 65. 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.
- 66. 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.
- 67. 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:

- 68. Compliance with Conditions and Environmental Mitigations.** The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit. Occupancy is subject to verification of compliance to the Mitigation Monitoring and Reporting Program.
- 69.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **December 8, 2023**.
- 70. 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.
- 71. Transportation Demand Management.** Prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Land Use Division staff to confirm that the physical improvements required in BMC Section 23.322.060 have been installed. A Parking and Transportation Demand Management (PTDM) compliance report documenting that the programmatic measures required in BMC Section 23.322.060 are implemented shall be submitted to the Land Use Division prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is compliant with the applicable requirements in this section:

A. For new structures or additions over 20,000 square feet, the property owner shall provide transportation benefits at no cost to every employee, residential unit, and/or group living accommodation resident, one pass for unlimited local bus transit service; or (subject to the review and approval of the Zoning Officer in consultation with the Transportation Division) a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted adult monthly local bus pass. A notice describing these transportation benefits shall be posted in a location or locations visible to all employee and residents.

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

At All Times:

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

74. 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.

75. 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.

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

77. 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.

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

79. 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.

80. 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.

81. Required Bike Parking. Secure and on-site bike parking for a minimum of 72 bicycles shall be provided for the life of the building.

- 82. Nonresidential Electric Vehicle (EV) Charging.** Required Level 2 charging stations and DC Fast Charge stations, as specified by the Berkeley Green Code (BMC Chapter 19.37) shall be maintained in *good working condition and made available for building occupant and/or visitor* use. (Project required to meet applicable code at time of building permit application, if different from above.)
- 83. Tenant Notification.** The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service, and entertainment uses, and that each occupant shall not seek to impede their lawful operation.
- 84. Guaranteed Ride Home.** If qualifying for participation in the Alameda County Guaranteed Ride Home program (or successor program), shall participate in the “Guarantee Ride Home” program to reduce employee single occupant vehicle trips by providing alternate means of leaving work in an emergency. Enrollment shall be encouraged by providing Guarantee Ride Home information to all employees. An affidavit/statement indicating number of participating employees shall be provided annually to the Transportation Division Manager
- 85. Transit Subsidy Condition.** If 10 or more employees, the business operator shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area as per BMC Chapter 9.88.



Planning and Development
Land Use Planning Division

October 4, 2024

Robin Baral
Senior Counsel
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Sent via Email:
RBaral@hansonbridgett.com

RE: Response to AB 1633 Notice for Use Permit #ZP2023-0079 – 2274 Shattuck Avenue

Dear Mr. Baral,

The City of Berkeley has received the AB 1633 Notice of CEQA Exemption prepared by Hanson Bridgett, LLC, dated March 4, 2024, with the attached technical reports (Traffic Impact Analysis, Historic Resource Evaluation, Project Impacts Analysis, and Air Quality, Noise, and Water Quality reports). With this letter, staff is fulfilling its obligation to provide a determination on the AB 1633 Notice within 180 days, plus the extension of time in the Tolling Agreement executed on September 3, 2024.

Staff has determined that this project meets the criteria for a Categorical exemption pursuant to CEQA Guidelines, Section 15332, “In-Fill Development Projects” (Class 32).

Next Steps

1. ZAB Decision. Pursuant to Government Code Section 65950, the project shall be approved or disapproved within 60 days of staff’s determination that the project is exempt from CEQA (December 3, 2024). However, the Berkeley Municipal Code requires the permit application to undergo Preliminary Design Review (DRCP2023-0008) at a public meeting before the Design Review Committee (DRC) prior to a decision on the use permit (ZP2023-0079) by the Zoning Adjustments Board (ZAB). The earliest that the design review application can be scheduled for DRC review is November 21, 2024. Following the DRC review, the earliest that the permit application can be scheduled for a decision hearing before the ZAB is December 14, 2024.

Pursuant to Government Code Section 65957, the project applicant and lead agency may extend the time limit once, up to 90 days, by mutual written agreement. To meet the time limits afforded by Section 65950, staff is recommending a time extension agreement to allow the DRC meeting to occur on November 21 and ZAB hearing to occur on December 14.

Please provide written confirmation that you agree to an extension of the time limit set forth in Government Code section 65950.

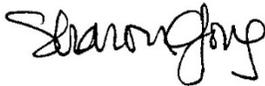
2. Notice of Exemption. The City will be filing the Notice of Exemption (NOE) for projects that go to the ZAB or City Council. Filing the NOE starts a 35-day statute of limitations period on legal challenges to the agency's decision that a project is exempt from CEQA. If the NOE is not filed, a 180- day statute of limitations applies. The NOE needs to be filed with the State Clearinghouse and with the County Clerk's office. The City will post with the State Clearinghouse, but the posting with the County Clerk's office can be done by either the City or the applicant. If the City completes the posting, there is a fee of \$920. Otherwise, the applicant can file with the County and provide the \$50 filing fee directly to the County. The NOE is filed after the use permit becomes effective.

Please complete the attached form to state your preference and return it to me via email.

Note that additional information may be required to correct, clarify, or amplify the materials submitted in the application, to prepare the project for a ZAB decision hearing. Please provide the information requested by staff in a timely manner in order to maintain the discussed project schedule.

Please feel free to contact me with any questions regarding this letter or your application.

Sincerely,



Sharon Gong
Senior Planner
(510) 981-7429
sgong@berkeleyca.gov

Cc:

JP Walsh, Panoramic Interests
Patrick Kennedy, Panoramic Interests
Farimah Brown, City Attorney, City of Berkeley
Sara Stephens, Deputy City Attorney, City of Berkeley
Jordan Klein, Director of Department of Planning and Development, City of Berkeley
Anne Hersch, Land Use Planning Manager, City of Berkeley
Claudia Garcia, Principal Planner, City of Berkeley

Attachment:

Notice of Exemption Filing Preference Form



PLANNING & DEVELOPMENT

1947 Center St., 2nd Floor • Berkeley, CA 94704 • (510) 981-7400 • TDD: (510) 981-7474 • planning@berkeleyca.gov

To: Applicant

From: City of Berkeley Planning & Development

Project Address/Permit # (ZP): _____

Subject: Private Projects – Filing Notice of Exemption (NOE) form with the Alameda County Clerk-Recorder

Following decision-maker approval of a project exempt from the provisions of the California Environmental Quality Act (CEQA), a NOE may be filed with the Alameda County Clerk-Recorder. It is strongly recommended that the NOE be filed in a timely manner. The filing of a NOE starts a 35-day statute of limitations period on legal challenges to the agency’s decision that the project is exempt from the provisions of CEQA. If the NOE is not filed a 180-day statute of limitations will apply, refer to CEQA Guidelines Section 15062(d). Please note that recent legislation requires the City to file the NOE with the State Clearinghouse in the Office of Planning and Research.

Please review the attached NOE and indicate how you would like to proceed with filing by selecting one of the options below:

- Berkeley Planning & Development to file the NOE:** Within 30-days of deeming the project complete, the Applicant will be invoiced for the NOE filing fee, refer to the current fee schedule linked [here](#). Please note that Berkeley Planning staff will schedule the public hearing once all outstanding fees are paid. Once the project receives final approval and after the 15-day appeal period expires, Berkeley Planning staff will file the NOE with the Alameda County Clerk-Recorder and the State Clearinghouse.
- Applicant to file the NOE:** Applicant shall submit a copy to the Alameda County Clerk-Recorder in accordance with CEQA Guidelines Section 15062 after the project receives final approval and the 14-day appeal period expires. The Office of the County Clerk-Recorder is located at 1106 Madison Street, Oakland, CA 94607. The Clerk will stamp the NOE, return the original set, and post the NOE for a period of 30 days. Once recorded, the applicant shall provide a stamped copy to the Berkeley Planning staff person assigned to the project. Refer to Alameda County Clerk-Recorder’s website linked [here](#) for more information on hours of operation, fees, and payment methods.

Applicant Name (please print): _____

Applicant Signature: _____

Date: _____

Please note that categorical exemptions are not subject to the California Department of Fish and Wildlife environmental document filing fee and do not require a no effect determination (Cal. Code Regs., tit. 14, §§ 15260-15333; Fish & Game Code §711.4, subd. (d)(1)).

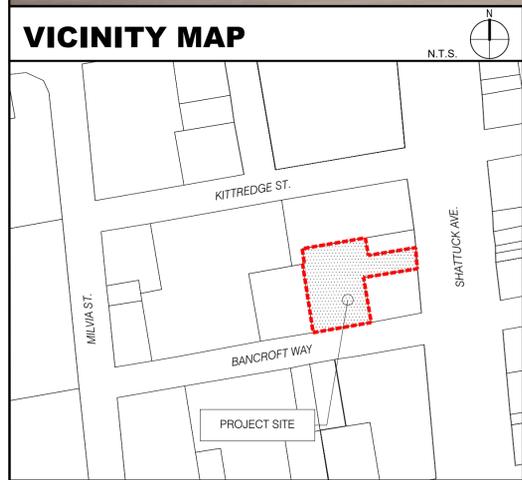
2421 Fourth Street
Berkeley, California 94710
510.649.1414
www.TrachtenbergArch.com



**2274
SHATTUCK**

Berkeley, CA

- 11.29.2022 SB-330 APPLICATION
- 05.22.2023 ZONING APPLICATION
- 08.09.2023 ZONING RESUBMITTAL
- 12.08.2023 ZONING RESUBMITTAL



PROJECT DIRECTORY

OWNER/APPLICANT:
JP Walsh, Director
PANORAMIC INTERESTS
2539 Telegraph Ave, Suite 101
415.701.7000
Berkeley, CA 94704
panoramic.com

ARCHITECT:
David Trachtenberg, Principal
TRACHTENBERG ARCHITECTS
2421 Fourth Street
Berkeley, CA 94710
510.649.1414
www.TrachtenbergArch.com

LANDSCAPE ARCHITECT:
Jesse Markman, Principal
JETT LANDSCAPE ARCHITECTURE + DESIGN
2 Theatre Square, Suite 218
Orinda CA 94563
www.jett.land

PROJECT DESCRIPTION

PROJECT ADDRESS: 2274 Shattuck Ave.
Berkeley, CA 94704 (APN: 057 202800300)

SCOPE OF WORK:
PARTIAL REMOVAL OF THE EXISTING COMMERCIAL STRUCTURES TO CONSTRUCT A NEW 17-STORY MIXED-USE BUILDING WITH 227 DWELLING UNITS, GROUND LEVEL LOBBIES, COMMERCIAL SPACE, AND PARKING WITH STATE OF CALIFORNIA DENSITY BONUS.

ZONING CODE SUMMARY
(BASED ON THE BERKELEY MUNICIPAL ZONING CODE)

ZONING: C-DMU

SEE SHEET A0.1 FOR COMPLETE ZONING DATA

DRAWING LIST

SHEET NO. & TITLE		
ARCHITECTURAL		
A0.0 GENERAL INFORMATION	A3.2 BUILDING ELEVATIONS	LANDSCAPE
A0.1 ZONING DATA	A3.3 BUILDING ELEVATIONS	L1.01 LANDSCAPE PLAN - GROUND FLOOR
A0.3A DENSITY BONUS DIAGRAMS	A3.4 BUILDING ELEVATIONS	L1.02 LANDSCAPE ROOF PLAN
A0.3B DENSITY BONUS DIAGRAMS	A3.5 STREET STRIP ELEVATION	L2.01 PRECEDENT IMAGES
A0.4A SHADOW STUDIES	A3.6 STREET STRIP ELEVATION	L3.01 PLANT IMAGES, NOTES AND CALCULATIONS
A0.4B SHADOW STUDIES	A3.7 PHOTO MATCH VIEWS	L4.01 PRELIMINARY PLANTING PLAN - GROUND
A0.4C SHADOW STUDIES	A3.8 PHOTO MATCH VIEWS	L4.02 PRELIMINARY PLANTING PLAN - ROOF
A0.5 SITE CONTEXT PHOTOS	A3.9 RENDERED PERSPECTIVE	L5.01 PRELIMINARY IRRIGATION PLAN - GROUND
A0.6 VICINITY MAP	A3.10 RENDERED PERSPECTIVE	L5.02 PRELIMINARY IRRIGATION PLAN - ROOF
A1.0 SURVEY	A3.11 RENDERED PERSPECTIVE	
A1.1 SURVEY	A3.12 RENDERED PERSPECTIVE	
A2.0A EXISTING SITE PLAN	A3.13 RENDERED PERSPECTIVE	
A2.0B SITE PLAN	A3.14 RENDERED PERSPECTIVE	
A2.1 FLOOR PLANS	A3.15 RENDERED PERSPECTIVE	
A2.2 FLOOR PLANS	A4.0 HISTORIC FACADE RESTORATION	
A2.3 FLOOR PLANS	MAT BUILDING MATERIALS	
A3.0 BUILDING SECTIONS		
A3.1 BUILDING ELEVATIONS		

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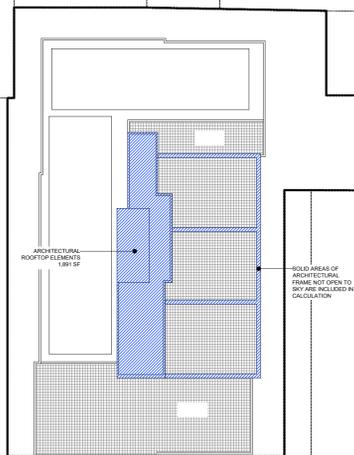
JOB: 2201

SHEET:

GENERAL
INFORMATION

A0.0

ROOFTOP ELEMENTS



OPEN SPACE DIAGRAM

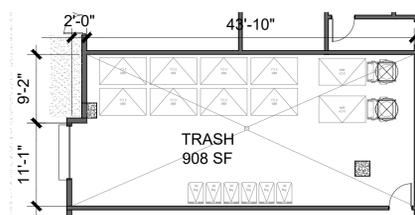


ROOF



GROUND LEVEL

REFUSE AND RECYCLING



Waste and Recycling Calculation

	# of Bedrooms	Factor	Occupants	Total cuft required (.25cy or 50 gallons / 3)	Waste (40%)	Recycling - Container (10%)	Recycling - Paper (20%)	Organics (20%)
Base Required	780	1.00	780	65.00 cy	13,000 gal	26,000 cuft	5,200 gal	2,600 gal
Trash pickups per week				2				
Total Required				32.50 cy	6,500 gal	13,000 cuft	2,600 gal	1,300 gal

Quantities and Space Calculations

Bin Size	Container	Quantities Provided	Space Required	Additional Increase for Operation
3 cy bin (606 gal)	Waste	4	28 sf	280 sf
2 cy bin (404 gal)	Recycling - Paper	1	28 sf	
96 gallon cart	Recycling - Paper	2	7 sf	42 sf
64 gallon cart	Organics	1	6 sf	
Total Capacity				

ZONING COMPLIANCE

SETBACKS TABLE

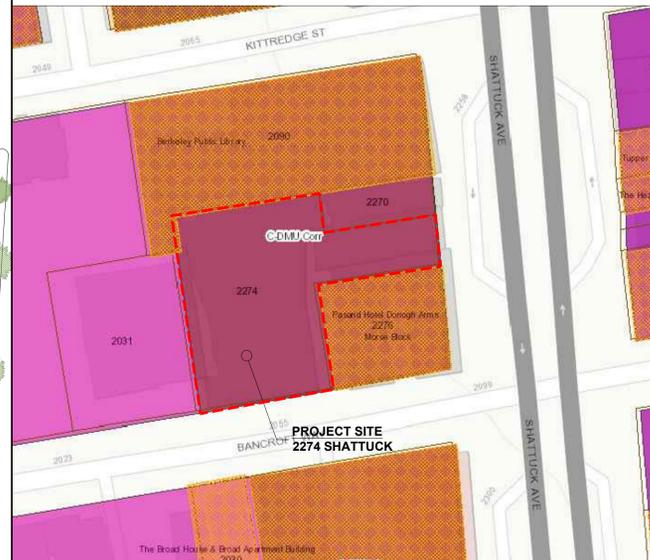
	BASE ZONING ALLOWABLE / REQUIRED	ALLOWABLE W/ UP OR AUP MODIFICATION	PROPOSED W/DENSITY BONUS	ZONING COMPLIANCE
SETBACK - FRONT (SHATTUCK)				
0'-20'	0'	0'	0'	COMPLIES
21'-75'	0'	0'	VARIES; 0' TO 121'-4"	COMPLIES
76'-120'	15'	0'	121'-4"	COMPLIES
> 120'	15'	0'	121'-4"	COMPLIES
SETBACK - FRONT (BANCROFT)				
0'-20'	0'	0'	0'	COMPLIES
21'-75'	0'	0'	0'	COMPLIES
76'-120'	15'	0'	0'	WAIVER
> 120'	15'	0'	0'	WAIVER
SETBACK - INTERIOR SIDE (<65' FROM FRONT)				
0'-20'	0'	0'	VARIES; 0' TO 10'	COMPLIES
21'-75'	0'	0'	VARIES; 0' TO 10'	COMPLIES
76'-120'	5'	0'	10'	COMPLIES
> 120'	15'	0'	10'	WAIVER
SETBACK - INTERIOR SIDE (>65' FROM FRONT)				
0'-20'	0'	0'	VARIES; 0' TO 23'-1"	COMPLIES
21'-75'	5'	0'	VARIES; 0' TO 23'-1"	WAIVER
76'-120'	15'	0'	VARIES; 10' TO 23'-1"	WAIVER
> 120'	15'	0'	VARIES; 10' TO 23'-1"	WAIVER
DIAGONAL WIDTH - MAX. DIMENSION ABOVE 120'	120'	NOT LIMITED	178'-9"	WAIVER

ZONING COMPLIANCE

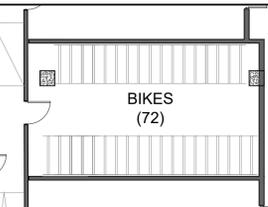
CITY OF BERKELEY ZONING TABULATIONS

	BASE ZONING	ALLOWABLE W/UP'S	PORPOSED W/ DENSITY BONUS	ZONING COMPLIANCE
ZONING			C-DMU CORR.	
NUMBER OF DWELLING UNITS	N/A	N/A	227	COMPLIES
COMMERCIAL AREA	N/A	N/A	865	COMPLIES
PARKING	SEE TABLE	SEE TABLE	SEE TABLE	COMPLIES
BIKE PARKING	SEE TABLE	SEE TABLE	SEE TABLE	WAIVER
FRONT YARD SETBACK (SHATTUCK)	SEE TABLE	SEE TABLE	SEE TABLE	COMPLIES
FRONT YARD SETBACK (BANCROFT)	SEE TABLE	SEE TABLE	SEE TABLE	WAIVER
INTERIOR SIDE YARD SETBACK	SEE TABLE	SEE TABLE	SEE TABLE	WAIVER
REAR YARD SETBACK	N/A	N/A	N/A	COMPLIES
BUILDING HEIGHT	60'	75'	183'-0"	WAIVER
BUILDING STORIES	N/A	N/A	17	COMPLIES
LOT AREA	22,112	22,112	22,112	COMPLIES
LOT AREA (ACRES)	0.51	0.51	0.51	COMPLIES
GROSS FLOOR AREA (SEE TABLE)	N/A	N/A	214,082	COMPLIES
BUILDING FOOTPRINT	22,112	22,112	16,337	COMPLIES
LOT COVERAGE	N/A	N/A	74%	COMPLIES
USABLE OPEN SPACE (SEE TABLE)	SEE TABLE	SEE TABLE	SEE TABLE	WAIVER
PROJECT FAR	N/A	N/A	9.68	COMPLIES

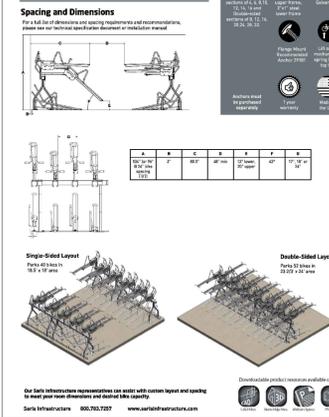
ZONING MAP



BIKE PARKING



Stack Rack



RESIDENTIAL OPEN SPACE TABLE

	UNITS	RATIO	TOTAL	LANDSCAPE AREA - 40%
GROUND LEVEL COMMON SPACE			1,657	
ROOF DECK COMMON SPACE			5,840	
TOTAL COMMON SPACE			7,497	2,999
PRIVATE PATIOS	3	80	240	
TOTAL AREA PROVIDED			7,737	
RESIDENTIAL OPEN SPACE REQD.	227	80	18,160	
TOTAL REQUIRED			18,160	
TOTAL WAIVER			10,423	

PRIVATELY OWNED PUBLIC OPEN SPACE

	AREA	PER	TOTAL
COMMERCIAL OPEN SPACE REQD.	865	50	17
TOTAL REQUIRED			17
TOTAL PROVIDED			17

BIKE PARKING CALCULATIONS

	BEDROOMS / SF	SPACES PER BEDROOM/SF	TOTAL REQ.	PROVIDED
NEW COMMERCIAL	865	1/2000	1	2
RESIDENTIAL (LONG TERM)	634	0.33	210	72
RESIDENTIAL (SHORT TERM)	634	0.025	16	16
TOTAL BIKE PARKING			227	90
TOTAL WAIVER				137

PARKING TABLE

	UNITS/SF	MIN. MAX (.5/UNIT)	PROPOSED
RESIDENTIAL	227	0	113.5
COMMERCIAL	865	N/A	N/A
			1 Per AB 2097

ROOFTOP ARCHITECTURAL ELEMENTS CALCS

LEVEL	AREA
AVERAGE AREA PER FLOOR	12,659
PENTHOUSE (MECH/ELEV/CIRC)	1,541
ARCHITECTURAL FRAME	350
TOTAL AREA OF ROOFTOP ELEMENTS	1,891
% AREA OF ROOFTOP ARCH. FEATURES	14.9%
ALLOWABLE % (PER 23E.04.020C)	15.0%

2421 Fourth Street
Berkeley, California 94710
510.649.1414
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2274 SHATTUCK

Berkeley, CA

11.29.2022 SB-330 APPLICATION
05.22.2023 ZONING APPLICATION
08.09.2023 ZONING RESUBMITTAL
12.08.2023 ZONING RESUBMITTAL

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JOB: 2201

SHEET:

ZONING DATA

A0.1

BASE PROJECT ZONING COMPLIANCE TABLE				
ZONING	BASE ZONING	ALLOWABLE W/UP'S	PORPOSED BASE PROJECT	ZONING COMPLIANCE
C-DMU CORR.				
NUMBER OF DWELLING UNITS	N/A	N/A	151	COMPLIES
COMMERCIAL AREA	N/A	N/A	865	COMPLIES
PARKING	SEE TABLE	SEE TABLE	SEE TABLE	COMPLIES
BIKE PARKING	SEE TABLE	SEE TABLE	SEE TABLE	COMPLIES
FRONT YARD SETBACK (SHATTUCK)	SEE TABLE	SEE TABLE	SEE TABLE	COMPLIES
FRONT YARD SETBACK (BANCROFT)	SEE TABLE	SEE TABLE	SEE TABLE	COMPLIES
INTERIOR SIDE YARD SETBACK	SEE TABLE	SEE TABLE	SEE TABLE	COMPLIES W/UP
REAR YARD SETBACK	N/A	N/A	N/A	COMPLIES
BUILDING HEIGHT	60'	75'	75'	COMPLIES
BUILDING STORIES	N/A	N/A	7	COMPLIES
LOT AREA	22,112	22,112	22,112	COMPLIES
LOT AREA (ACRES)	0.51	0.51	0.51	COMPLIES
GROSS FLOOR AREA (SEE TABLE)	N/A	N/A	143,312	COMPLIES
BUILDING FOOTPRINT	22,112	22,112	21,107	COMPLIES
LOT COVERAGE	N/A	N/A	95%	COMPLIES
USABLE OPEN SPACE (SEE TABLE)	SEE TABLE	SEE TABLE	SEE TABLE	COMPLIES
PROJECT FAR	N/A	N/A	6.48	COMPLIES

FAR CALCULATIONS				
	BASE PROJECT ALLOWABLE	ALLOWABLE W/ 50% DENSITY BONUS	PROPOSED W/ DENSITY BONUS	
SITE AREA	22,112	22,112	22,112	
FAR	N/A	N/A	6.48	
FLOOR AREA	N/A	N/A	143,312	

BASE PROJECT FLOOR AREA					
	COMMERCIAL	RESIDENTIAL	MECH.	POPOS	TOTAL
LEVEL 7		20,561			20,561
LEVEL 6		20,561			20,561
LEVEL 5		20,561			20,561
LEVEL 4		20,561			20,561
LEVEL 3		20,561			20,561
LEVEL 2		20,561			20,561
GROUND LEVEL (EXCLUDES PARKING)	865	16,310	2,621	150	19,946
TOTAL FLOOR AREA W/ DENSITY BONUS	865	139,676	2,621	150	143,312
FAR (FLOOR AREA RATIO)					6.48
PARKING					1,161
TOTAL WITH PARKING					144,473

UNIT COUNTS					
UNIT TYPE	STUDIO	2-BED	3-BED	4-BED	TOTAL
TOTAL	22	34	53	44	151
PERCENT OF TOTAL	14.0%	22.0%	35.0%	29.0%	
TOTAL BEDROOM COUNT	22	68	159	176	425

RESIDENTIAL OPEN SPACE TABLE				
	UNITS	RATIO	TOTAL	LANDSCAPE AREA - 40%
GROUND LEVEL COMMON SPACE			-	
ROOF DECK COMMON SPACE			14,043	
TOTAL COMMON SPACE			14,043	5,617
PRIVATE PATIOS				
TOTAL AREA PROVIDED			14,043	
RESIDENTIAL OPEN SPACE REQD.	151	80	12,080	
TOTAL REQUIRED			12,080	

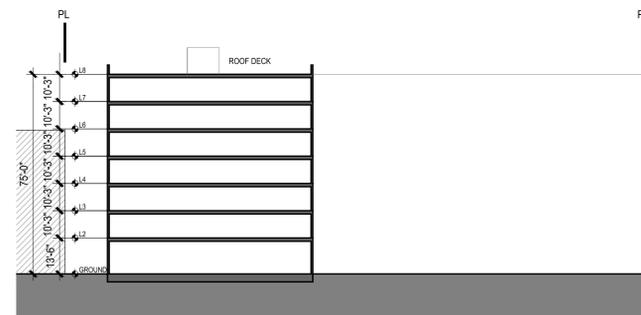
COMMERCIAL OPEN SPACE TABLE			
	AREA	PER	TOTAL
COMMERCIAL OPEN SPACE REQD.	865	50	17
TOTAL REQUIRED			17
TOTAL PROVIDED			150

BICYCLE PARKING CALCULATIONS				
	BEDROOMS / SF	SPACES PER BEDROOM/SF	TOTAL REQ	PROVIDED
NEW COMMERCIAL	865	1/2000	1	2
RESIDENTIAL (LONG TERM)	425	0.33	141	160
RESIDENTIAL (SHORT TERM)	425	0.025	11	11
TOTAL BICYCLE PARKING			153	173

PARKING TABLE				
	UNITS/SF	MIN.	MAX (.5/UNIT)	PROPOSED
RESIDENTIAL	151	0	75.5	0
COMMERCIAL	865	N/A	N/A	0 Per AB 2097

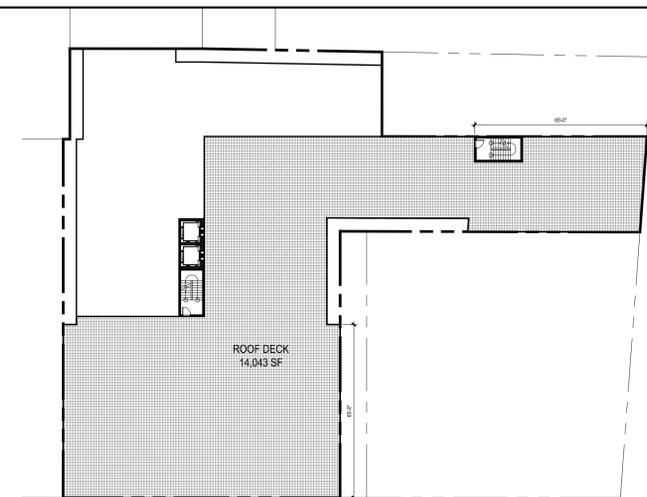
ROOFTOP ARCHITECTURAL ELEMENTS CALCS	
LEVEL	AREA
AVERAGE AREA PER FLOOR	20,292
PENTHOUSE (MECH/ELEV/CIRC)	509
TOTAL AREA OF ROOFTOP ELEMENTS	509
% AREA OF ROOFTOP ARCH. FEATURES	2.5%
ALLOWABLE % (PER 23E.04.020C)	15.0%

BASE PROJECT - SETBACKS TABLE					
	BASE ZONING ALLOWABLE / REQUIRED	ALLOWABLE W/ UP OR AUP MODIFICATION	BASE PROJECT	ZONING COMPLIANCE	
SETBACK - FRONT (SHATTUCK)					
0'-20'	0'	0'	0'	COMPLIES	
21'-75'	0'	0'	0'	COMPLIES	
76'-120'	15'	0'	N/A	COMPLIES	
> 120'	15'	0'	N/A	COMPLIES	
SETBACK - FRONT (BANCROFT)					
0'-20'	0'	0'	0'	COMPLIES	
21'-75'	0'	0'	0'	COMPLIES	
76'-120'	15'	0'	N/A	COMPLIES	
> 120'	15'	0'	N/A	COMPLIES	
SETBACK - INTERIOR SIDE (<65' FROM FRONT)					
0'-20'	0'	0'	0'	COMPLIES	
21'-75'	0'	0'	0'	COMPLIES	
76'-120'	5'	0'	N/A	COMPLIES	
> 120'	15'	0'	N/A	COMPLIES	
SETBACK - INTERIOR SIDE (>65' FROM FRONT)					
0'-20'	0'	0'	0'	COMPLIES	
21'-75'	5'	0'	0'	COMPLIES W/UP	
76'-120'	15'	0'	N/A	COMPLIES	
> 120'	15'	0'	N/A	COMPLIES	
DIAGONAL WIDTH - MAX. DIMENSION ABOVE 120'	120'	NOT LIMITED	N/A	COMPLIES	

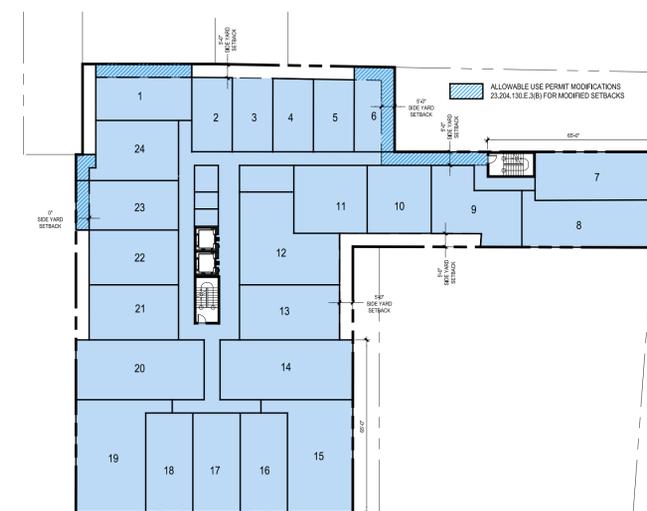


SECTION

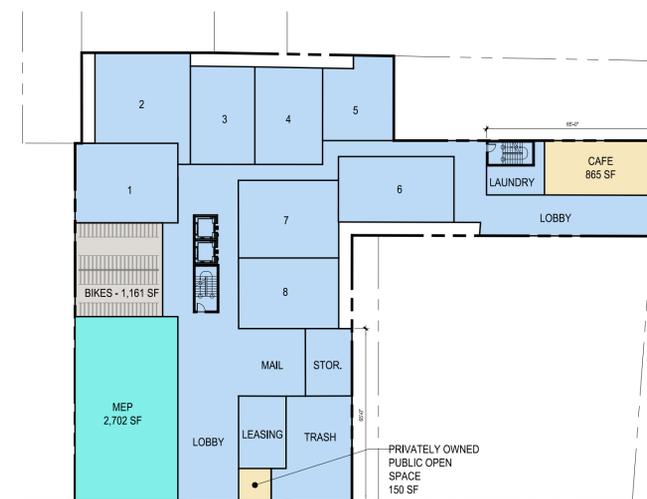
BASE PROJECT



PLAN AT ROOF



PLAN AT LEVELS 2-7 (21' TO 75')



PLAN AT GROUND (0' TO 20')

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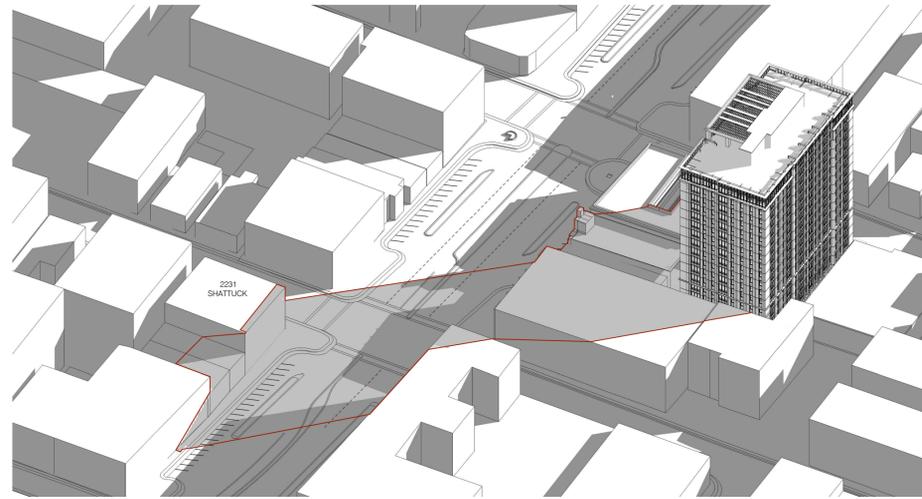
SHEET:

DENSITY BONUS DIAGRAMS - BASE PROJECT

A0.3A

WINTER SOLSTICE
DEC 21ST:
2-HRS BEFORE SUNSET (PM)

- PROPOSED BUILDING
 - DARK TONE GREY INDICATES SHADOWS FROM EXISTING BUILDINGS
 - LIGHTER TONE GREY INDICATES SHADOWS FROM PROPOSED BUILDING
 - NEW SHADOW AT RESIDENTIAL BUILDING
- ALL RESIDENTIAL BUILDINGS BEING SHADOWED SHOWN IN THESE DIAGRAMS



6 SHADOW STUDY AXONOMETRIC - PM
 N.T.S.



5 SHADOW STUDY - PM
 1:180 @ 11X17 1:90 @ 24X36

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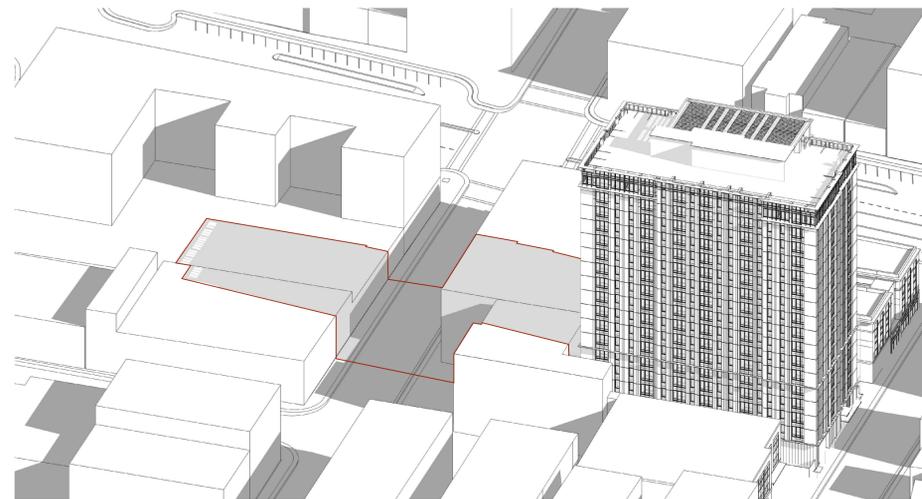
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WINTER SOLSTICE
DEC 21ST:
NOON

- PROPOSED BUILDING
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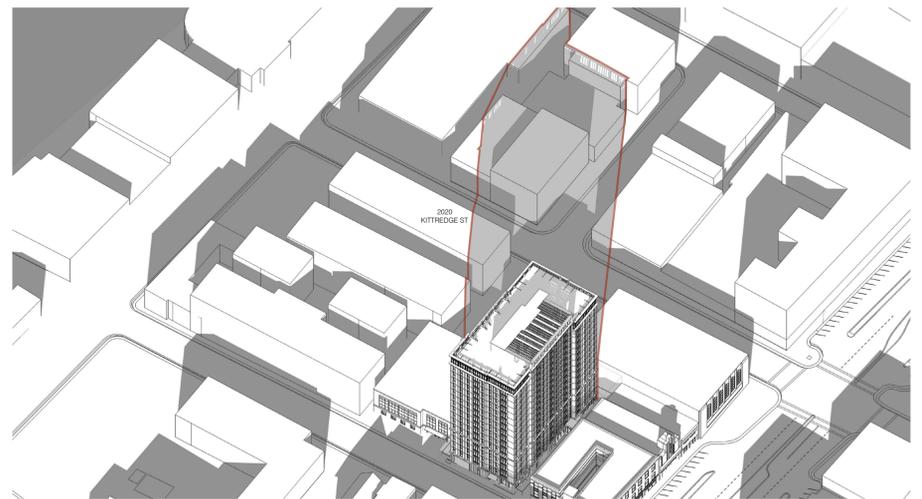
4 SHADOW STUDY AXONOMETRIC - NOON
 N.T.S.



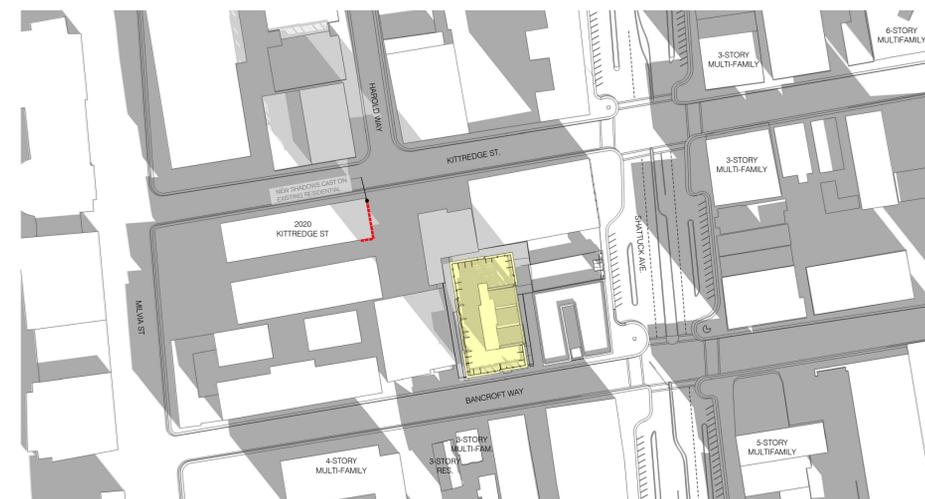
3 SHADOW STUDY - NOON
 1:180 @ 11X17 1:90 @ 24X36

WINTER SOLSTICE
DEC 21ST:
2-HRS AFTER SUNRISE (AM)

- PROPOSED BUILDING
 - DARK TONE GREY INDICATES SHADOWS FROM EXISTING BUILDINGS
 - LIGHTER TONE GREY INDICATES SHADOWS FROM PROPOSED BUILDING
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2 SHADOW STUDY AXONOMETRIC - AM
 N.T.S.



1 SHADOW STUDY - AM
 1:180 @ 11X17 1:90 @ 24X36

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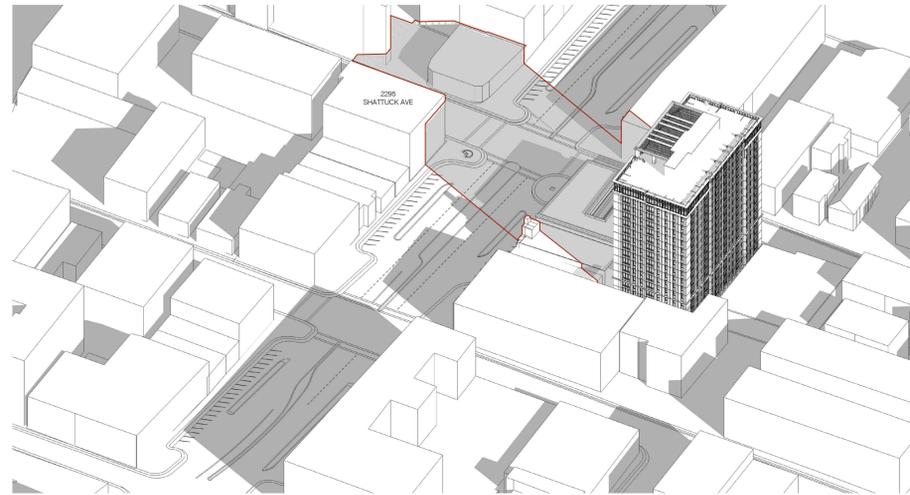
JOB: 2201

SHEET:
 SHADOW STUDIES
 DECEMBER 21ST

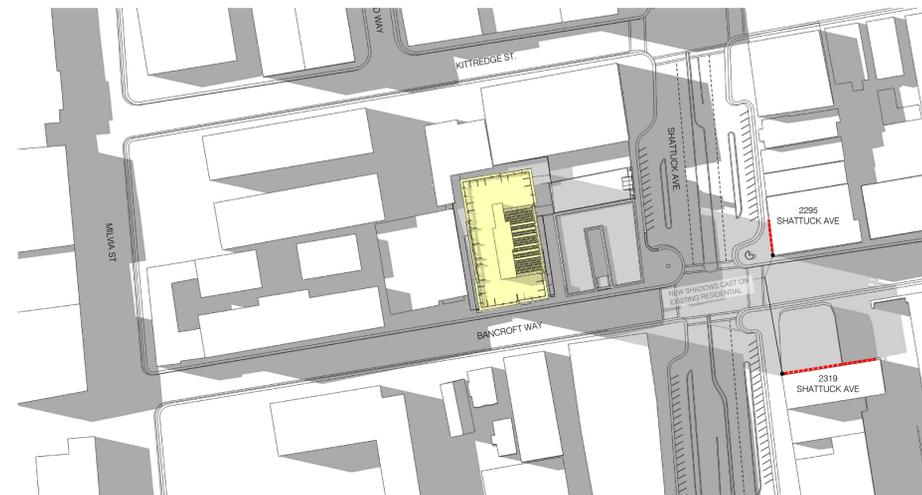
A0.4A

SUMMER SOLSTICE
JUN 21ST:
2-HRS BEFORE SUNSET (PM)

- PROPOSED BUILDING
 - DARK TONE GREY INDICATES SHADOWS FROM EXISTING BUILDINGS
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6 SHADOW STUDY AXONOMETRIC - PM
 N.T.S.



5 SHADOW STUDY - PM
 1:160 @ 11X17 1:80 @ 24X36

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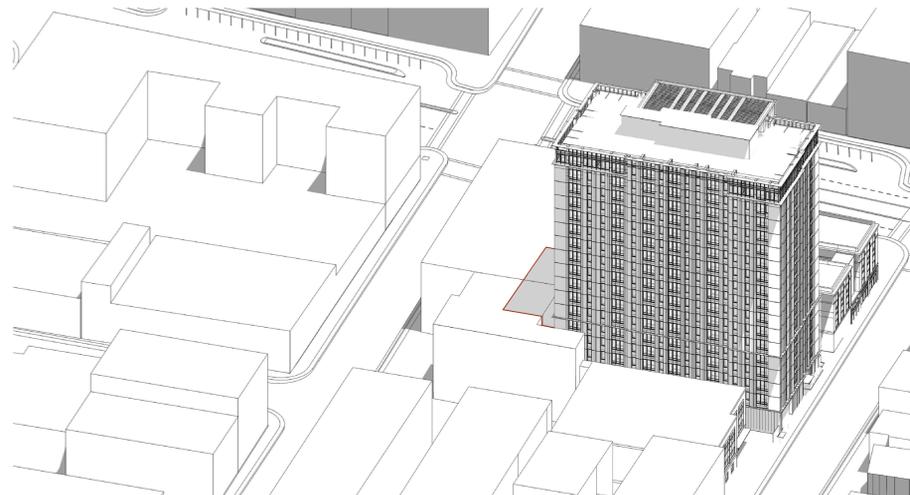
JOB: 2201

SHEET:
 SHADOW STUDIES
 JUNE 21ST

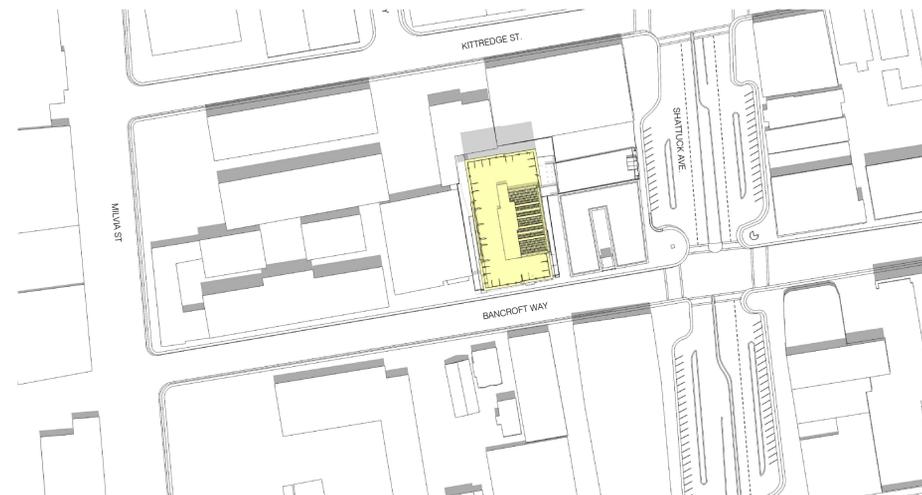
A0.4B

SUMMER SOLSTICE
JUN 21ST:
NOON

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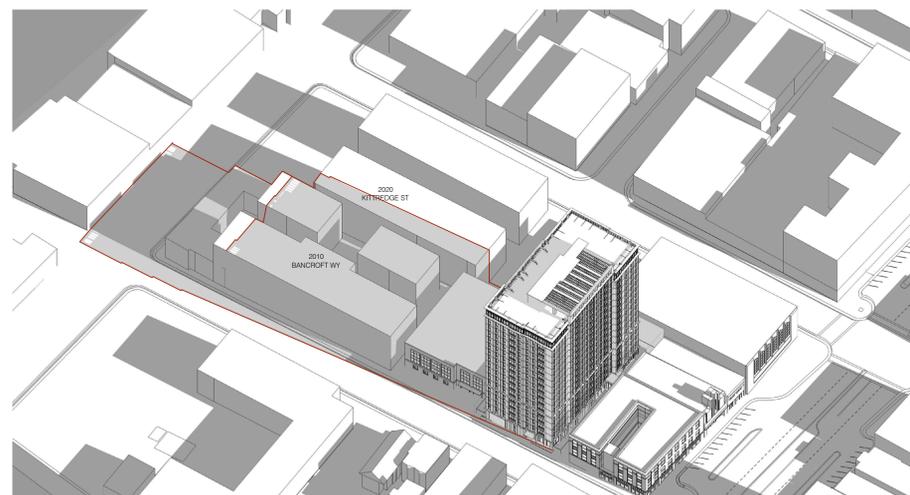
4 SHADOW STUDY AXONOMETRIC - NOON
 N.T.S.



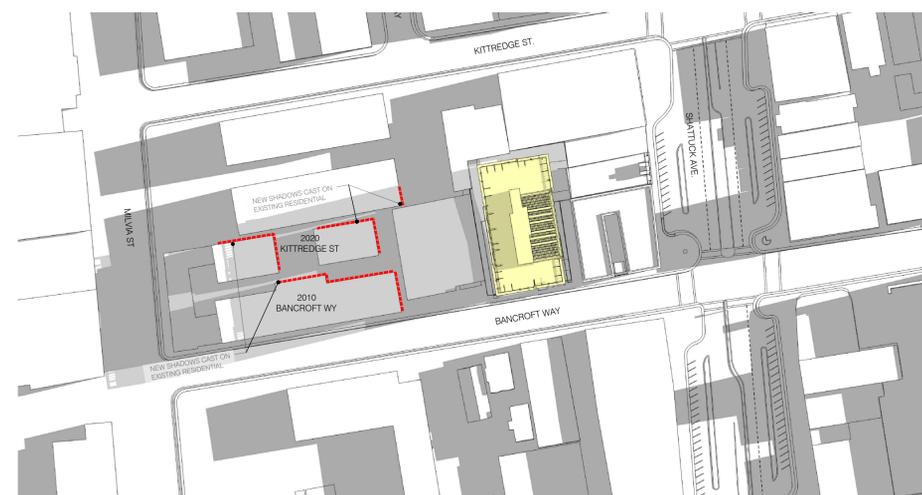
3 SHADOW STUDY - NOON
 1:160 @ 11X17 1:80 @ 24X36

SUMMER SOLSTICE
JUN 21ST:
2-HRS AFTER SUNRISE (AM)

- PROPOSED BUILDING
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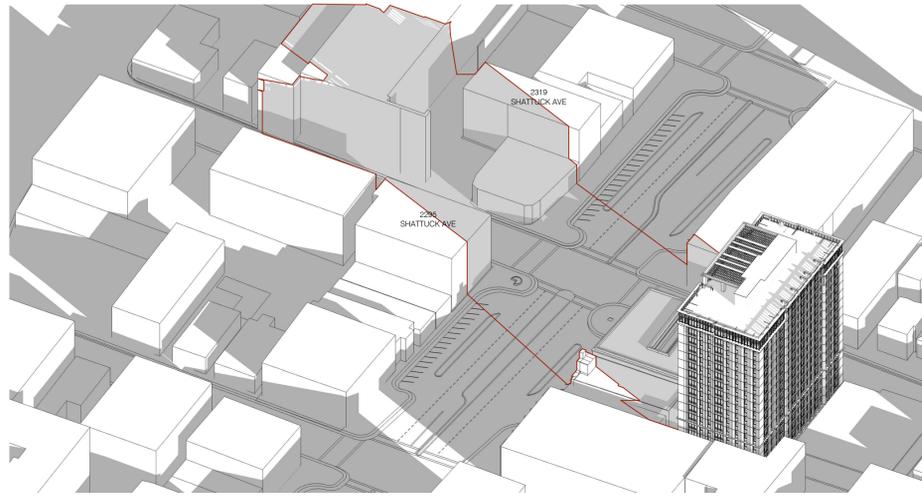
2 SHADOW STUDY AXONOMETRIC - AM
 N.T.S.



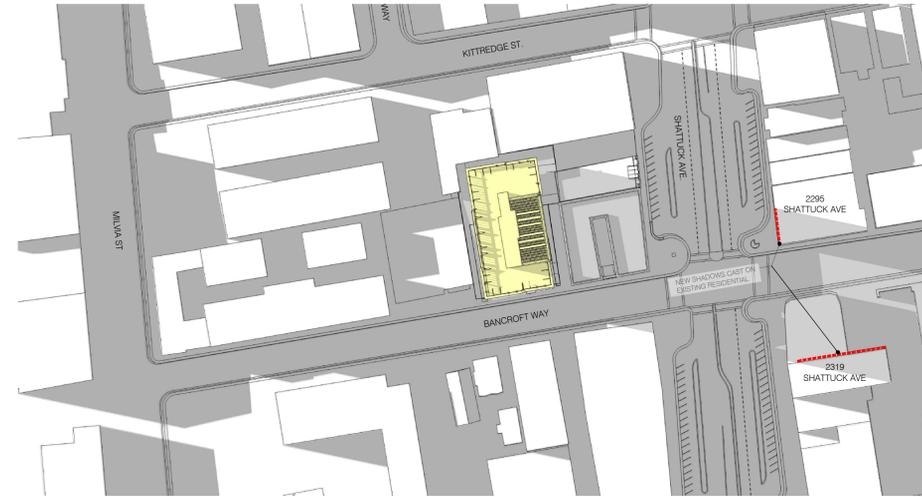
1 SHADOW STUDY - AM
 1:160 @ 11X17 1:80 @ 24X36

CURRENT
MAY 9TH:
2-HRS BEFORE SUNSET (PM)

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N.T.S.



5 SHADOW STUDY - PM
1:160 @ 11X17 1:80 @ 24X36

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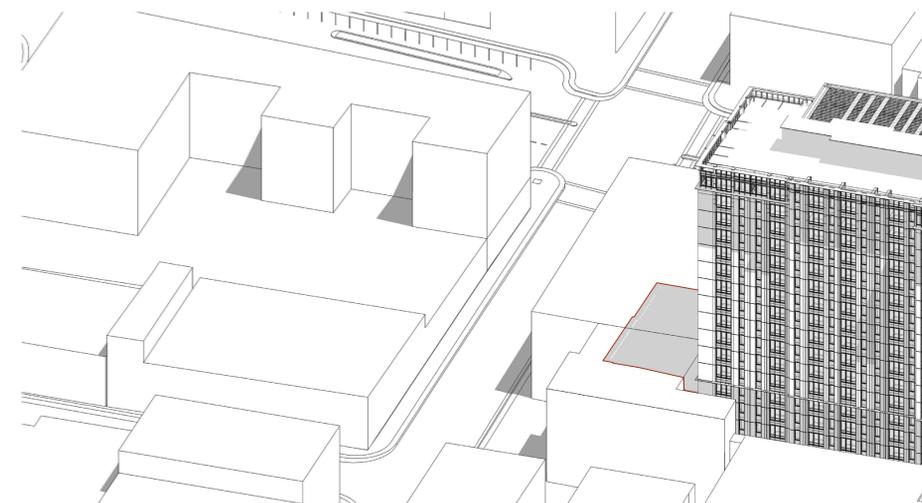
JOB: 2201

SHEET:
SHADOW STUDIES
MAY 9TH

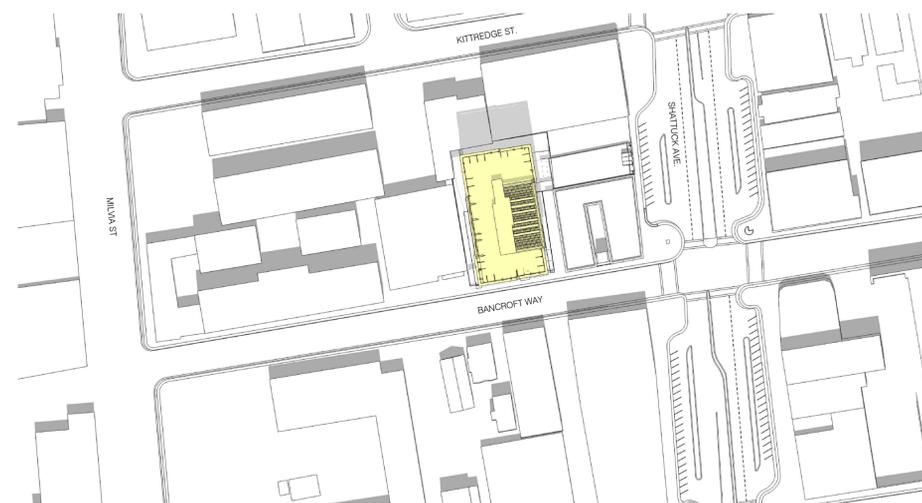
A0.4C

CURRENT
MAY 9TH:
NOON

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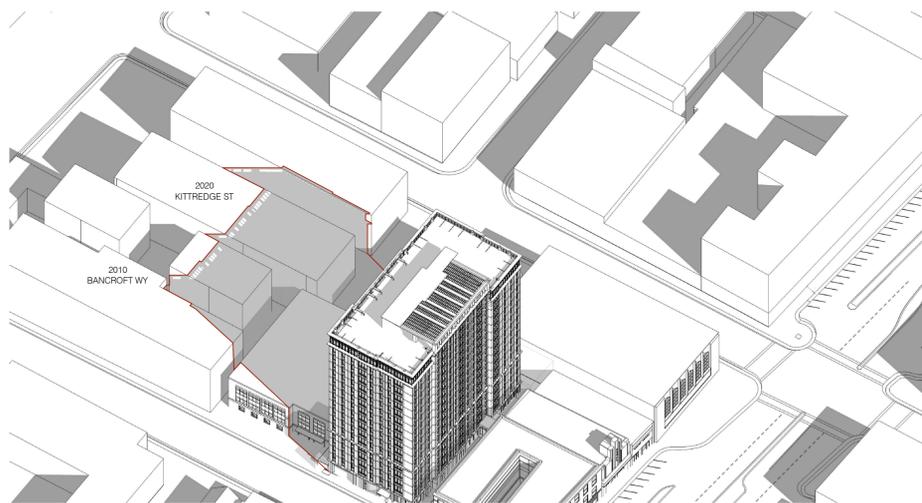
4 SHADOW STUDY AXONOMETRIC - NOON
N.T.S.



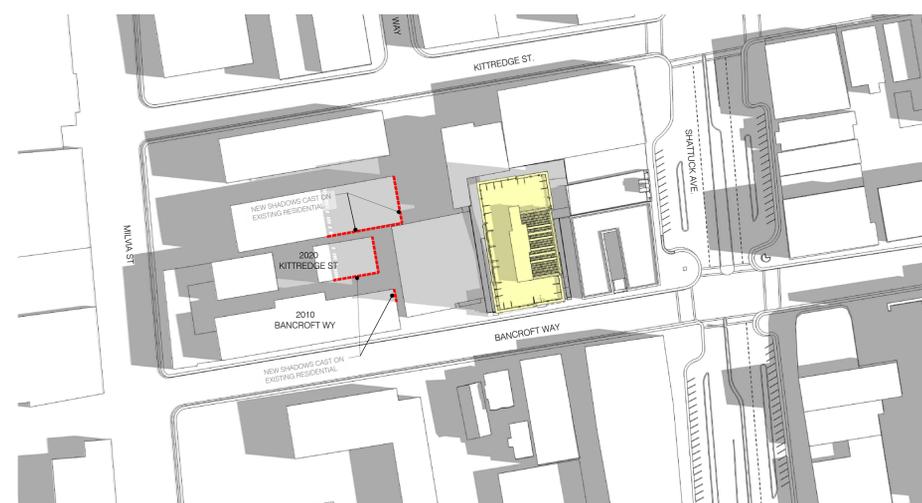
3 SHADOW STUDY - NOON
1:160 @ 11X17 1:80 @ 24X36

CURRENT
MAY 9TH:
2-HRS AFTER SUNRISE (AM)

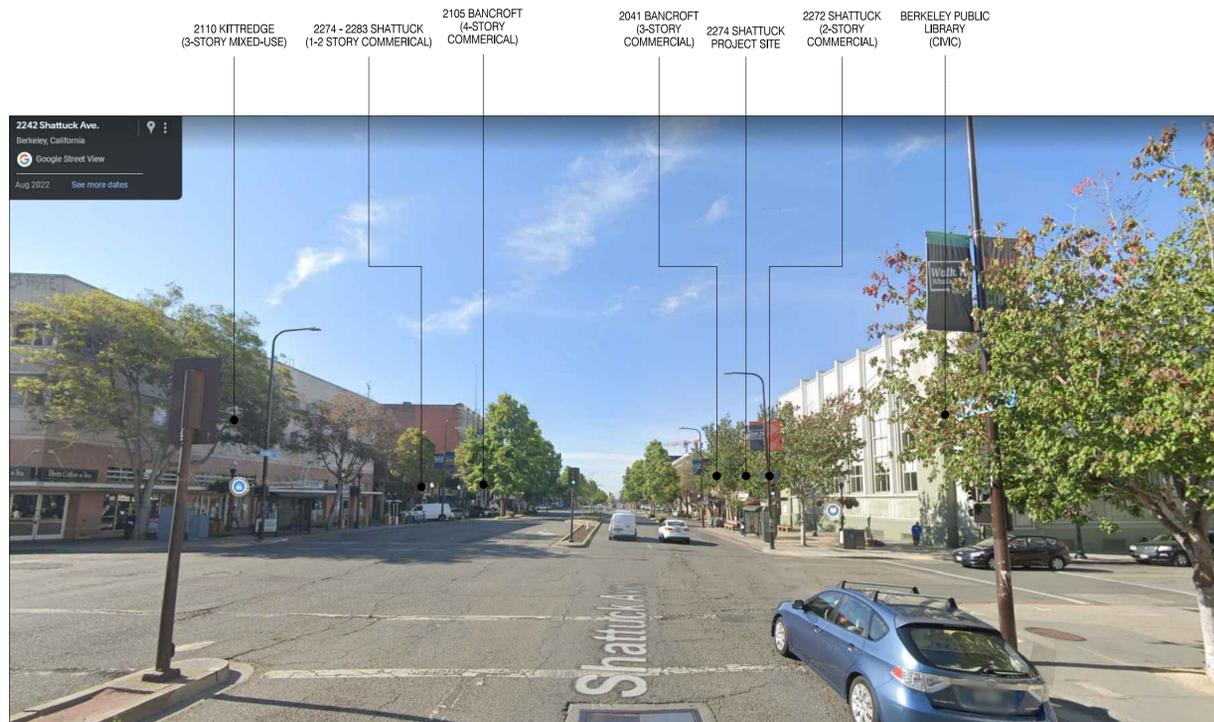
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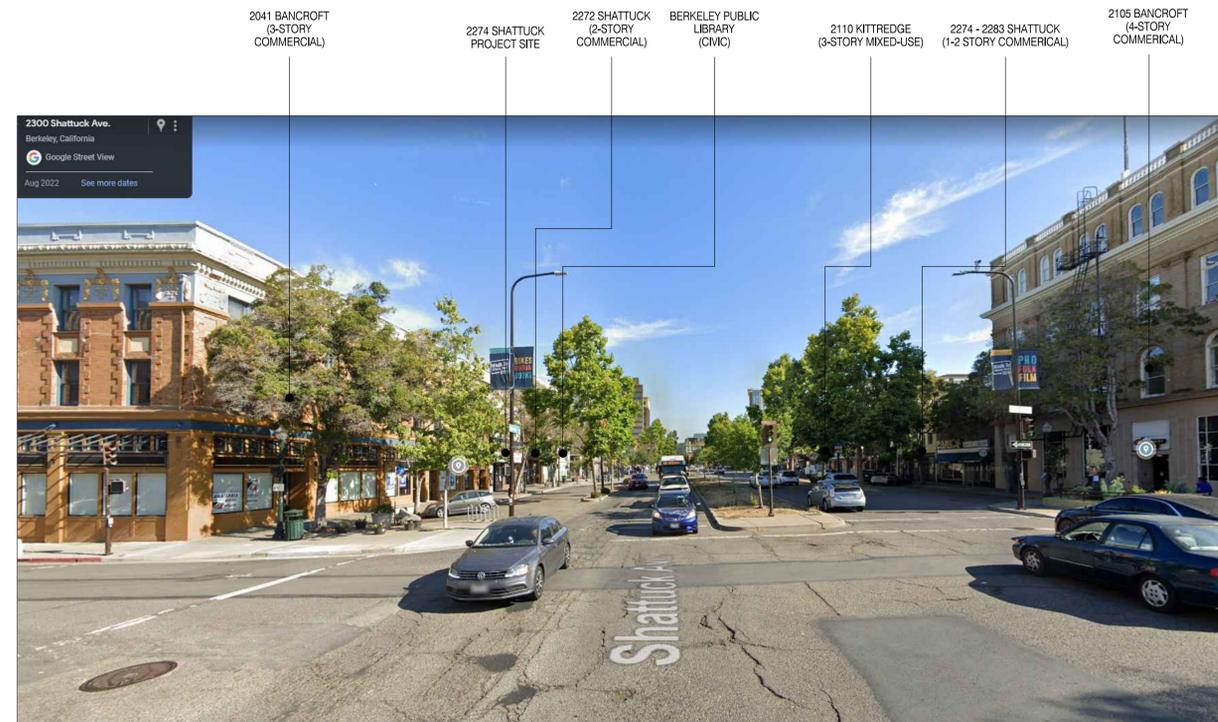
2 SHADOW STUDY AXONOMETRIC - AM
N.T.S.



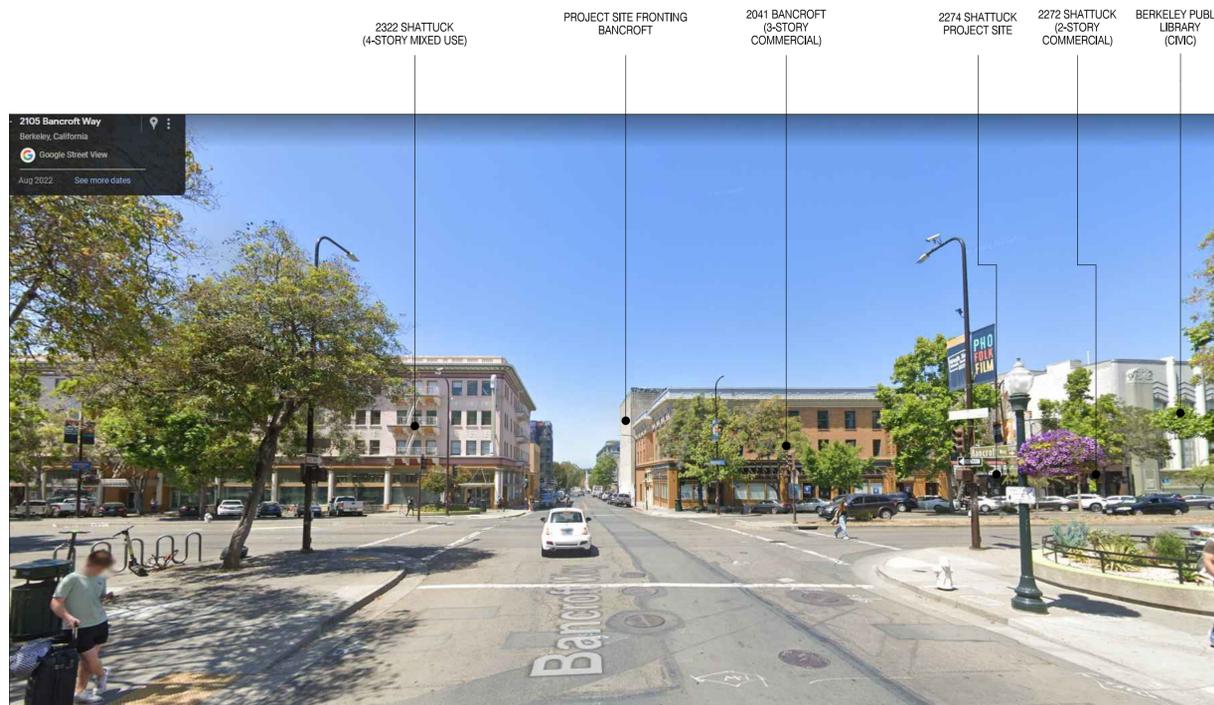
1 SHADOW STUDY - AM
1:160 @ 11X17 1:80 @ 24X36



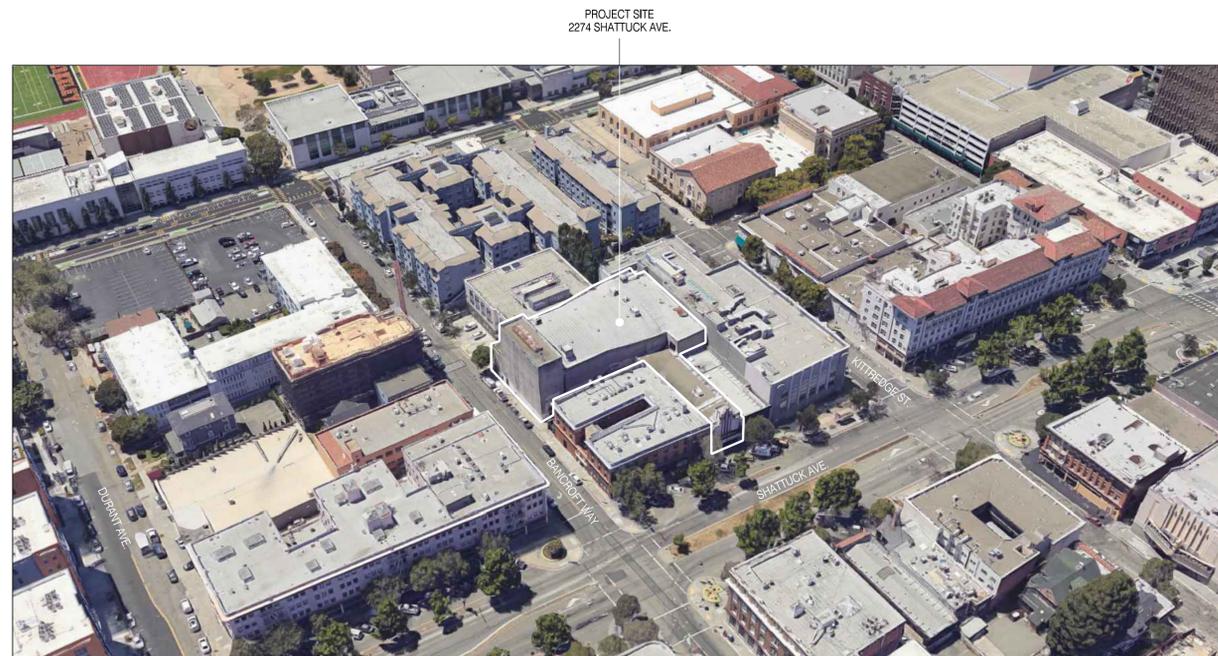
4 VIEW FROM SHATTUCK LOOKING SOUTH



2 VIEW FROM SHATTUCK LOOKING NORTH



3 VIEW FROM BANCROFT LOOKING WEST



1 GOOGLE EARTH BIRD'S EYE CONTEXT VIEW

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JOB: 2201

SHEET:

SITE CONTEXT PHOTOS

A0.5

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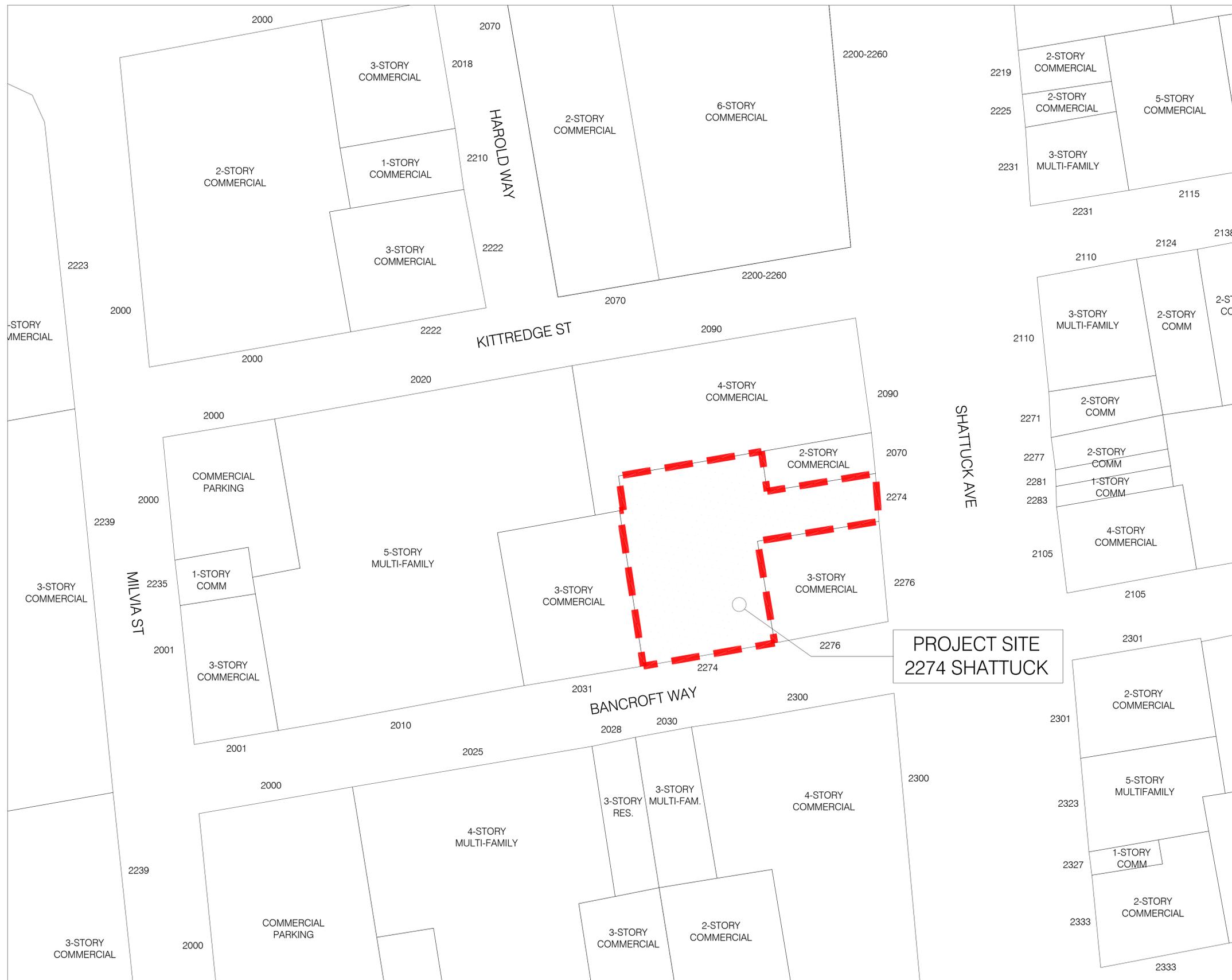
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JOB: 2201

SHEET:

VICINITY MAP

A0.6



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JOB: 2201

SHEET:
SURVEY

A1.0

LEGAL DESCRIPTION
THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE COUNTY OF ALAMEDA, CITY OF BERKELEY, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:
BEGINNING AT A POINT ON THE WESTERN LINE OF SHATTUCK AVENUE, DISTANT THEREON NORTH 9° 17' 30" WEST 136.00 FEET FROM THE INTERSECTION THEREOF WITH THE NORTHERN LINE OF SHATTUCK WAY, AS SAID WAY AND AVENUE ARE SHOWN ON THE MAP HERINAFTER REFERRED TO; RUNNING THENCE SOUTH 5° 17' 30" EAST ALONG SAID LINE OF SHATTUCK AVENUE, 36.00 FEET; THENCE SOUTH 80° 30' WEST 15.74 FEET; THENCE SOUTH 9° 30' EAST 100.00 FEET TO THE SAID NORTHERN LINE OF SHATTUCK WAY; THENCE SOUTH 80° 30' WEST ALONG SAID LINE OF SHATTUCK WAY 70.00 FEET; THENCE NORTH 9° 30' WEST 15.74 FEET; THENCE NORTH 80° 30' EAST 13.10 FEET TO THE CORNER COMMON TO LOT 3 AND 22, BLOCK 6 AS PER MAP HERINAFTER REFERRED TO; THENCE NORTH 81° 32' 30" EAST 61.81 FEET; THENCE SOUTH 9° 30' EAST 31.88 FEET; THENCE NORTH 80° 30' EAST 105.76 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOTS 4 AND 22, BLOCK 6, MAP ENTITLED, "SHATTUCK TRACT MAP NO. 2", FILED JULY 24, 1900, MAP BOOK 16, AT PAGE 10, ALAMEDA COUNTY RECORDS.

PARCEL ONE-A:
AN EASEMENT FOR INGRESS AND EGRESS AND FOR LIGHT AND AIR AS GRANTED IN THE DEED TO UNITED ARTISTS THEATERS OF CALIFORNIA, LTD., A CORPORATION, RECORDED MAY 5, 1931, BOOK 2016, AT PAGE 56, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT ON THE NORTHERN LINE OF SHATTUCK WAY, DISTANT THEREON SOUTH 80° 30' WEST 85.8 FEET FROM THE INTERSECTION THEREOF WITH THE WESTERN LINE OF SHATTUCK AVENUE, AS SAID AVENUE AND WAY ARE SHOWN ON THE MAP HERINAFTER REFERRED TO; RUNNING THENCE SOUTH 80° 30' WEST 10.00 FEET; THENCE NORTH 9° 30' WEST 100.03 FEET; THENCE NORTH 80° 30' EAST 100.00 FEET; THENCE SOUTH 9° 30' EAST 100.00 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT 22, BLOCK 6, "SHATTUCK TRACT MAP NO. 2", FILED JULY 24, 1900, MAP BOOK 16, AT PAGE 10, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:
SAD EASEMENT TO BE APPURTENANT TO PARCEL ONE HEREIN ABOVE DESCRIBED.

PARCEL TWO:
BEGINNING AT A POINT ON THE NORTHERN LINE OF SHATTUCK WAY, DISTANT THEREON WESTERLY 20.00 FEET FROM THE INTERSECTION THEREOF WITH THE LINE OF SHATTUCK AVENUE, AS SAID WAY AND AVENUE ARE SHOWN ON THE MAP HERINAFTER REFERRED TO; RUNNING THENCE NORTHERLY 81° 00' WEST TO SAID LINE OF SHATTUCK WAY 14.64 FEET; THENCE AT RIGHT ANGLES EASTERLY 2.50 FEET TO THE WESTERN BOUNDARY LINE OF LOT 4, BLOCK 6, AS PER MAP HERINAFTER REFERRED TO; THENCE AT RIGHT ANGLES NORTHERLY ALONG SAID WESTERN BOUNDARY LINE OF SAID LOT 4, 14.60 FEET; THENCE AT RIGHT ANGLES WESTERLY 2.90 FEET TO THE WESTERN LINE OF THE PROPERTY CONNECTED TO UNITED ARTISTS THEATERS OF CALIFORNIA, LTD., A CORPORATION, BY DEED RECORDED MAY 5, 1931, BOOK 2016, AT PAGE 56, ALAMEDA COUNTY RECORDS; THENCE SOUTH 9° 30' EAST 18.64 FEET TO THE NORTHERN LINE OF SHATTUCK WAY; THENCE WESTERLY ALONG SAID LINE OF SHATTUCK WAY 34.40 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOTS 4 AND 22, BLOCK 6, SHATTUCK TRACT MAP NO. 2, FILED JULY 24, 1900, MAP BOOK 16, AT PAGE 10, ALAMEDA COUNTY RECORDS.

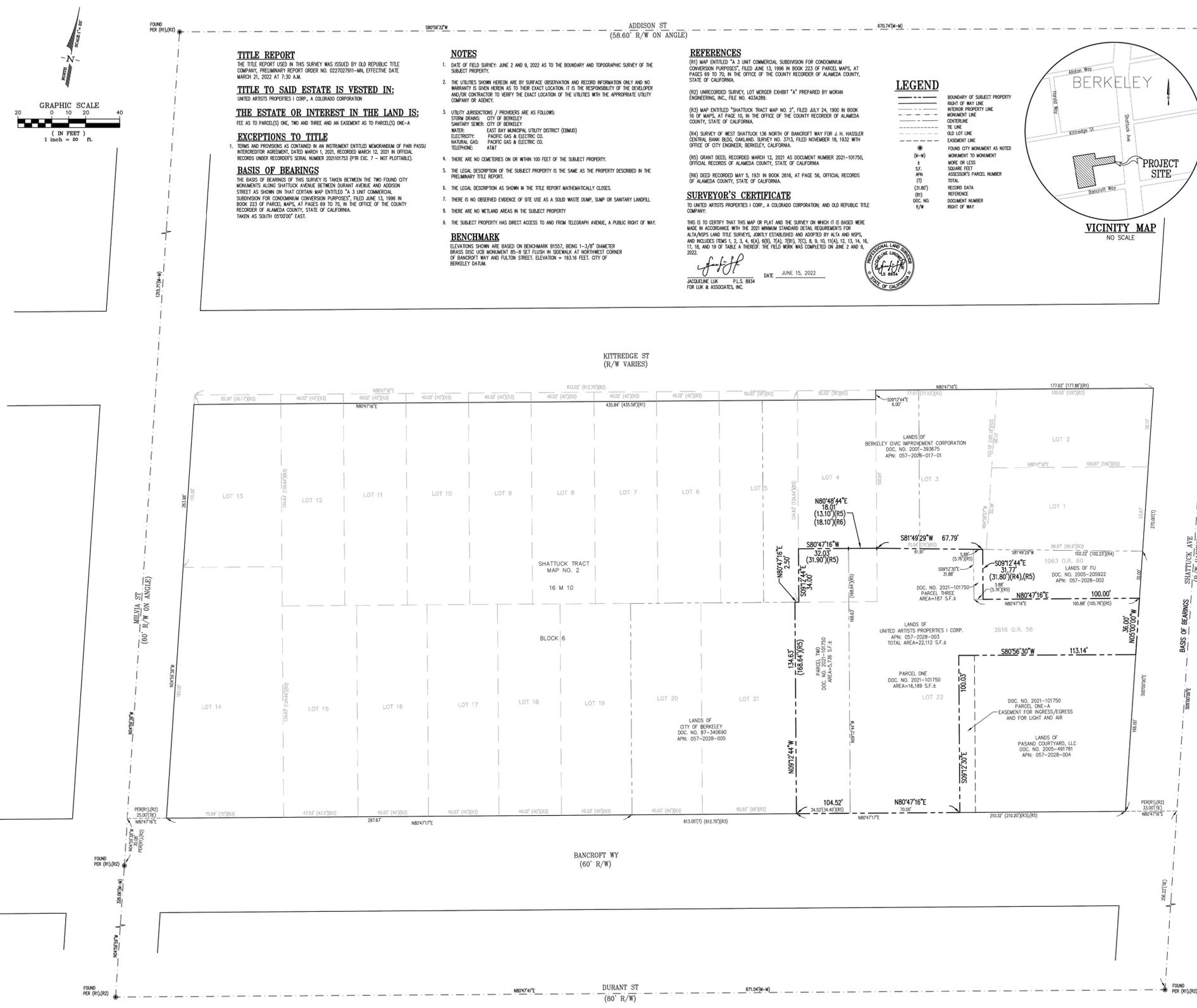
PARCEL THREE:
COMMENCING AT THE NORTHWESTERN CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY EILEEN A. WORSER TO HOMESTEAD LOAN ASSOCIATION OF BERKELEY, A CORPORATION BY DEED DATED MAY 8, 1905, RECORDED IN BOOK 1063 OF RECORDS, AT PAGE 10, ALAMEDA COUNTY RECORDS; THENCE SOUTH 9° 30' EAST ALONG THE WESTERN BOUNDARY LINE THEREOF 31.60 FEET TO THE NORTHWESTERN CORNER THEREOF; SAID CORNER BEING ON THE BOUNDARY LINE OF THAT CERTAIN PARCEL OF LAND CONVEYED BY A. O. DONOGH AND MARION E. DONOGH, HIS WIFE, TO UNITED ARTISTS THEATERS OF CALIFORNIA, LTD., A CORPORATION, BY DEED DATED APRIL 16, 1931, RECORDED IN BOOK 2016, PAGE 56, ALAMEDA COUNTY RECORDS; THENCE ALONG SAID BOUNDARY LINE SOUTH 80° 30' WEST 5.78 FEET TO A CORNER THEREOF; THENCE NORTHERLY ALONG SAID BOUNDARY LINE NORTH 9° 30' WEST 31.88 FEET TO A CORNER THEREOF ON LINE OF LOT 22, BLOCK 6, AS PER MAP HERINAFTER REFERRED TO; THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID LOT 22, 5.76 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT 22, BLOCK 6, SHATTUCK TRACT MAP NO. 2, FILED JULY 24, 1900, MAP BOOK 16, AT PAGE 10, ALAMEDA COUNTY RECORDS.

APN: 057-2028-003

- TABLE A NOTES**
- FOUND MONUMENTS ARE SHOWN ON THIS SHEET OF THE SURVEY.
 - THE STREET ADDRESS OF THE PROPERTY IS 2274 SHATTUCK AVENUE, BERKELEY, CA 94704
 - FLOOD ZONE DESIGNATION: THE PREMISES ARE LOCATED IN ZONE "X" (NON-SHADED) DEFINED AS "AREAS OF MINIMAL FLOOD RISK FOR FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 060005057, EFFECTIVE DATE: AUGUST 3, 2009.
 - THE TOTAL GROSS LAND AREA IS: 22,112 SQUARE FEET +/- OR 0.508 ACRES MORE OR LESS.
 - (A) ZONING REQUIREMENTS: PER THE CITY OF BERKELEY PLANNING AND ZONING DEPARTMENT, THE PROPERTY IS ZONED "C-DM" DEFINED AS "DOWNTOWN MIXED-USE DISTRICT".
REFERENCE FOR "C-DM" ZONING IS MADE HERE TO THE CITY OF BERKELEY CODE, CHAPTER 22A.04(L), REGARDING PROPERTY DEVELOPMENT STANDARDS, MINIMUM SETBACKS, BUILDING HEIGHT LIMITATION, AND PARKING REQUIREMENTS ARE AS FOLLOWS:
STREETS:
MINIMUM FRONT: 0 FEET
MINIMUM INTERIOR SIDE: 0 FEET
MINIMUM STREET SIDE: 0 FEET
MINIMUM REAR: 0 FEET
MAXIMUM HEIGHT: 60 FEET, 75 FEET WITH USE PERMIT
MINIMUM PARKING REQUIREMENTS: NONE REQUIRED
 - (A,B),(C) EXTERIOR DIMENSIONS AND SQUARE FOOTAGE OF BUILDING AT GROUND LEVEL, AND NUMBER OF STORES ARE SHOWN ON SHEET 2 OF THE SURVEY.
 - SUBSTANTIAL IMPROVEMENTS OBSERVED IN THE PROCESS OF CONDUCTING THE SURVEY ARE SHOWN.
 - THERE ARE NO PARKING SPACES LOCATED ON THE SUBJECT PROPERTY.
 - THERE ARE NO DIVISIONS OR PARTY WALLS LOCATED ON THE SUBJECT PROPERTY WITH RESPECT TO ADJOINING PROPERTIES.
 - (A) LOCATION OF UTILITIES EXISTING ON OR SERVING THE SURVEYED PROPERTY AS DETERMINED BY OBSERVED FINDINGS TOGETHER WITH FINDINGS FROM PLANS OBTAINED FROM UTILITY COMPANIES OR PROVIDED BY CLIENT ARE SHOWN ON SHEET 2.
 - GOVERNMENTAL AGENCY SURVEY-RELATED REQUIREMENTS ARE SHOWN.
 - NAMES OF ADJOINING OWNERS OF PLATTED LANDS ARE SHOWN ON THIS SHEET OF THE SURVEY.
 - DISTANCE TO THE NEAREST INTERSECTING STREET IS SHOWN ON THIS SHEET OF THE SURVEY.
 - THERE IS NO OBSERVABLE EVIDENCE OF CURRENT EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS.
 - THERE IS NO OBSERVED EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIRS.
 - THERE ARE NO OFFSITE EASEMENTS TO THE SUBJECT PROPERTY.
 - PROFESSIONAL LIABILITY INSURANCE IN THE AMOUNT OF \$200,000 IS HELD BY THE SURVEYOR.

ALTA/NSPS
LAND TITLE SURVEY
OF
2274 SHATTUCK AVENUE
CITY OF BERKELEY, ALAMEDA COUNTY, CALIFORNIA
JUNE 2022
PREPARED BY
LUK AND ASSOCIATES
CIVIL ENGINEER - LAND PLANNERS - LAND SURVEYORS
739 ALFRED NOBEL DRIVE
HERCULES, CALIFORNIA 94547
(510) 724-3388



ADDISON ST (58.60' R/W ON ANGLE)
KITTRIDGE ST (R/W VARIES)
MILVIA ST (60' R/W ON ANGLE)
SHATTUCK AVE (6' R/W VARIES)
BANCROFT WY (60' R/W)
DURANT ST (60' R/W)

LOT 7, LOT 8, LOT 9, LOT 10, LOT 11, LOT 12, LOT 13, LOT 14, LOT 15, LOT 16, LOT 17, LOT 18, LOT 19, LOT 20, LOT 21

SHATTUCK TRACT MAP NO. 2
BLOCK 6
16 M 10

LANDS OF BERKELEY CIVIC IMPROVEMENT CORPORATION
DOC. NO. 2005-293675
APN: 057-2028-017-01

LANDS OF UNITED ARTISTS PROPERTIES I CORP.
APN: 057-2028-003
TOTAL AREA=22,112 S.F.

LANDS OF CITY OF BERKELEY
DOC. NO. 97-340690
APN: 057-2028-005

LANDS OF PASAND COURTYARD, LLC
DOC. NO. 2005-491781
APN: 057-2028-004

LANDS OF FU
DOC. NO. 2005-205922
APN: 057-2028-002

PARCEL ONE
DOC. NO. 2021-101750
AREA=14,189 S.F.

PARCEL ONE-A
EASEMENT FOR INGRESS/EGRESS AND FOR LIGHT AND AIR

PARCEL TWO
DOC. NO. 2021-101750
AREA=7,923 S.F.

2616 O.R. 56

1063 O.R. 613

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2274 SHATTUCK

Berkeley, CA

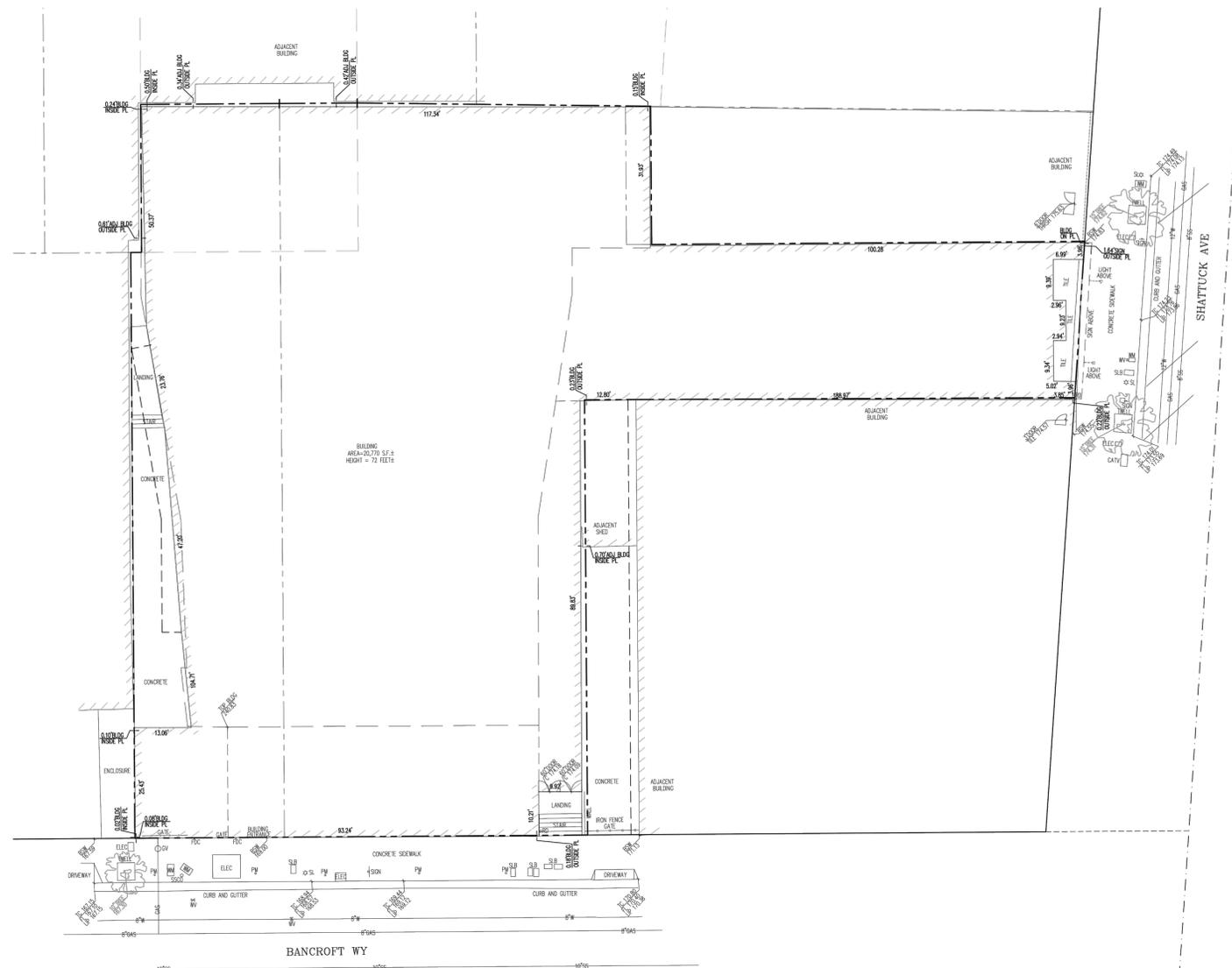
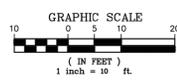
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JOB: 2201

SHEET:
SURVEY

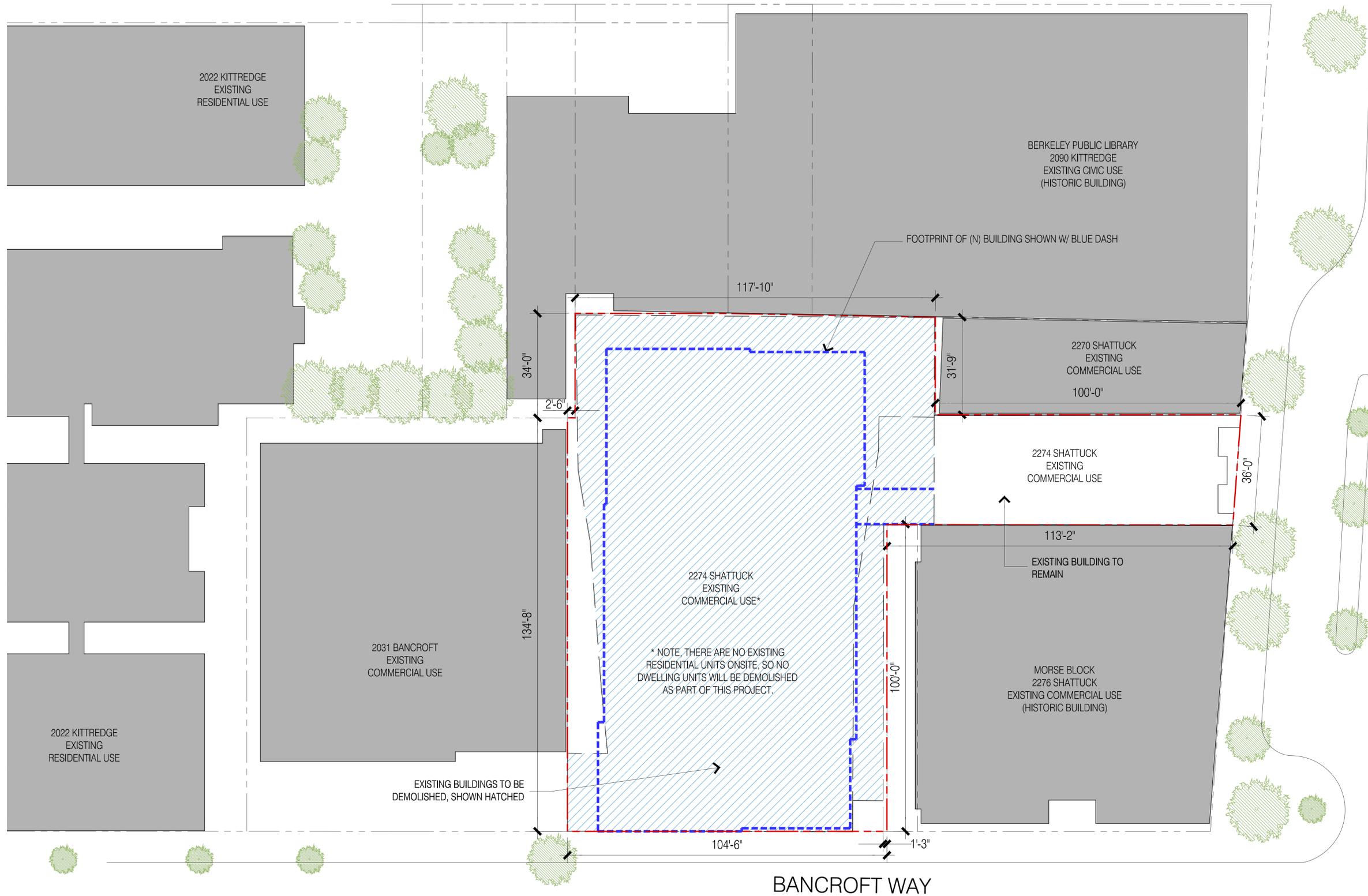
SYMBOLS	DESCRIPTION
---	BOUNDARY OF SUBJECT PROPERTY
---	RIGHT OF WAY LINE
---	INTERIOR PROPERTY LINE
---	MONUMENT LINE
---	OLD LOT LINE
---	TIE LINE
---	EASEMENT LINE
---	CENTERLINE
---	BUILDING LINE
W	WATER LINE
GAS	GAS LINE
SS	SANITARY SEWER LINE
SL	STREET LIGHT
PW	PARKING METER
GV	GAS VALVE
FDC	FIRE DEPARTMENT CONNECTOR
WM	WATER METER
ELEC	ELECTRIC BOX
TWELL	TREE WELL
SLS	STREET LIGHT BOX
SSOD	SANITARY SEWER CLEAN OUT
RD	ROOF DRAIN
WV	WATER VALVE
CATV	CABLE AND TELEVISION BOX
C	TOP OF CONCRETE ELEVATION
THRESH	THRESHOLD ELEVATION
TILE	TOP OF TILE ELEVATION
BSW	BACK OF SIDEWALK ELEVATION
TC	TOP OF CURB ELEVATION
FL	FLOW LINE ELEVATION
TOP BLDG	TOP OF BUILDING ELEVATION
TREE	TREE



ALTA/NSPS
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A1.1

KITTREDGE ST.



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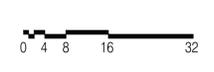
JOB: 2201

SHEET:

EXISTING SITE & DEMO PLAN

A2.0A

1 EXISTING SITE & DEMO PLAN
A2.0 1/32"=1'-0" @ 11x17 1/16"=1'-0" @ 24x36



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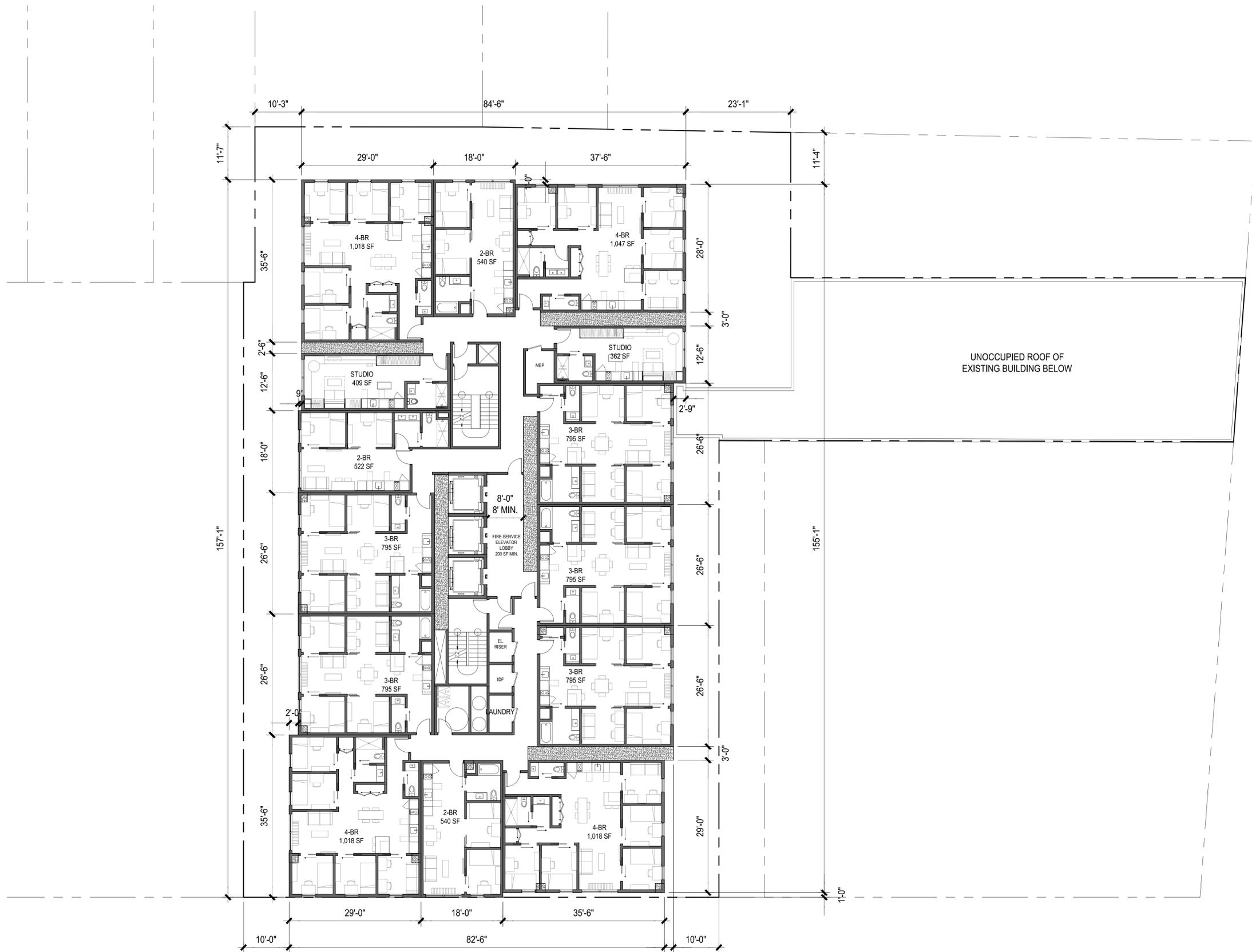
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JOB: 2201

SHEET:

LEVELS 2-16 FLOOR PLANS

A2.2



PLAN AT LEVELS 2-17

3/64"=1'-0" @ 11x17 3/32"=1'-0" @ 24x36



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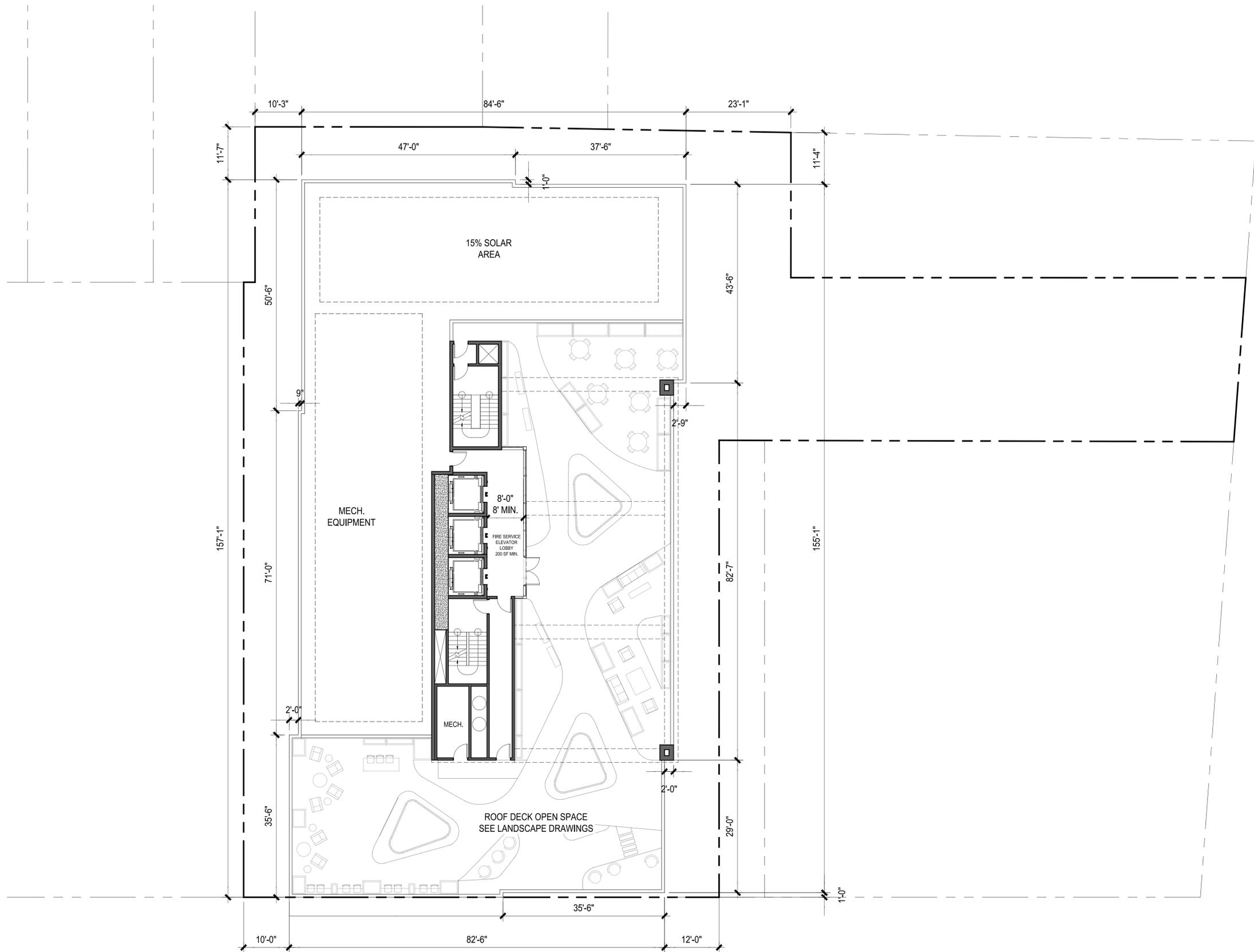
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JOB: 2201

SHEET:

ROOF DECK LEVEL FLOOR PLAN

A2.3



1 PLAN AT ROOF DECK
 3/64"=1'-0" @ 11x17 3/32"=1'-0" @ 24x36



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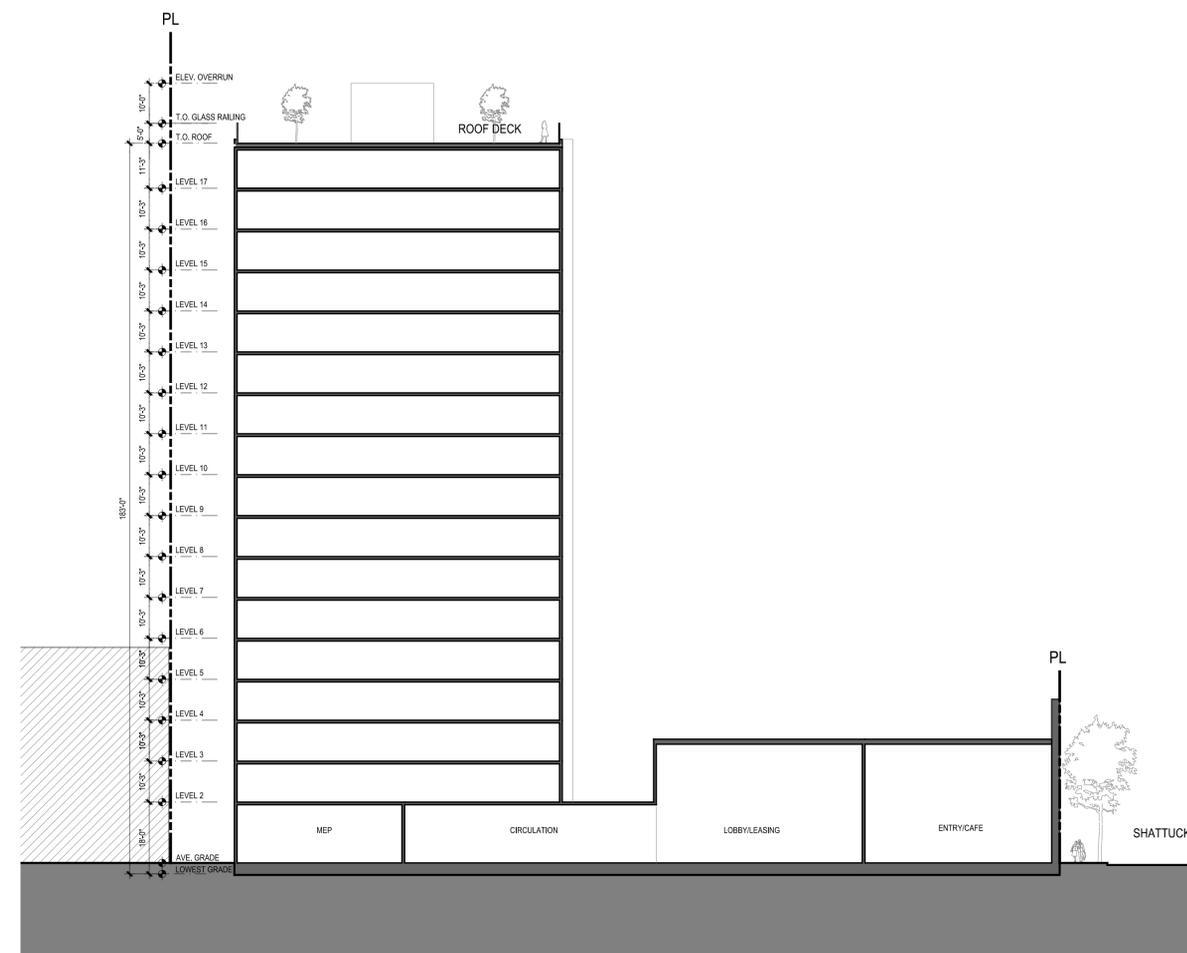
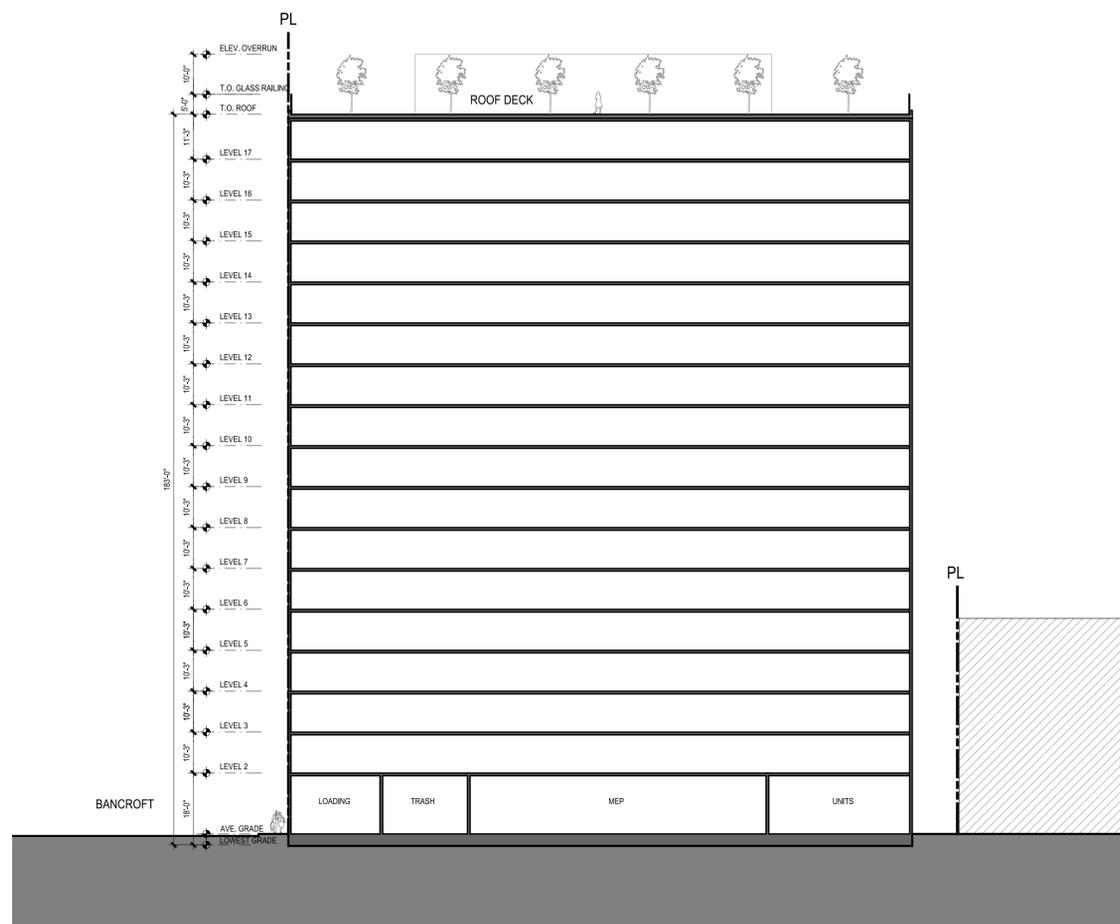
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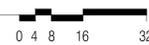
SHEET:

BUILDING SECTIONS

A3.0



2 N-S BUILDING SECTION
 3/128"=1'-0" @ 11X17 3/64" = 1'-0" @ 24X36



1 E-W BUILDING SECTION
 3/128"=1'-0" @ 11X17 3/64" = 1'-0" @ 24X36



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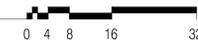
BUILDING ELEVATIONS

A3.1



1 EAST ELEVATION

3/64" = 1'-0" @ 11X17 3/32" = 1'-0" @ 24X36



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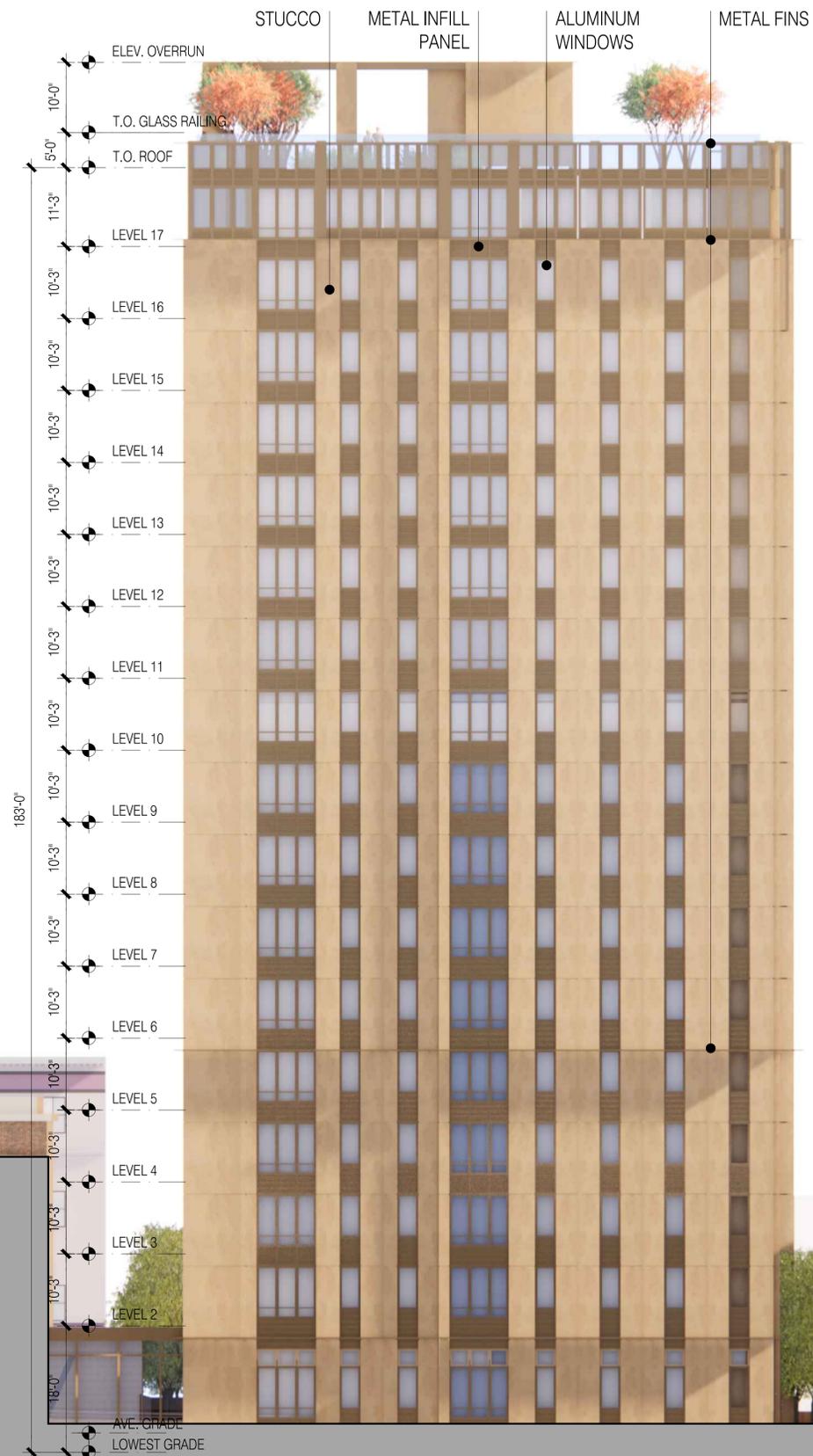
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JOB: 2201

SHEET:
BUILDING ELEVATIONS

A3.2



1 NORTH ELEVATION
 A3.2 3/64"=1'-0" @ 11X17 3/32" = 1'-0" @ 24X36 0 4 8 16 32

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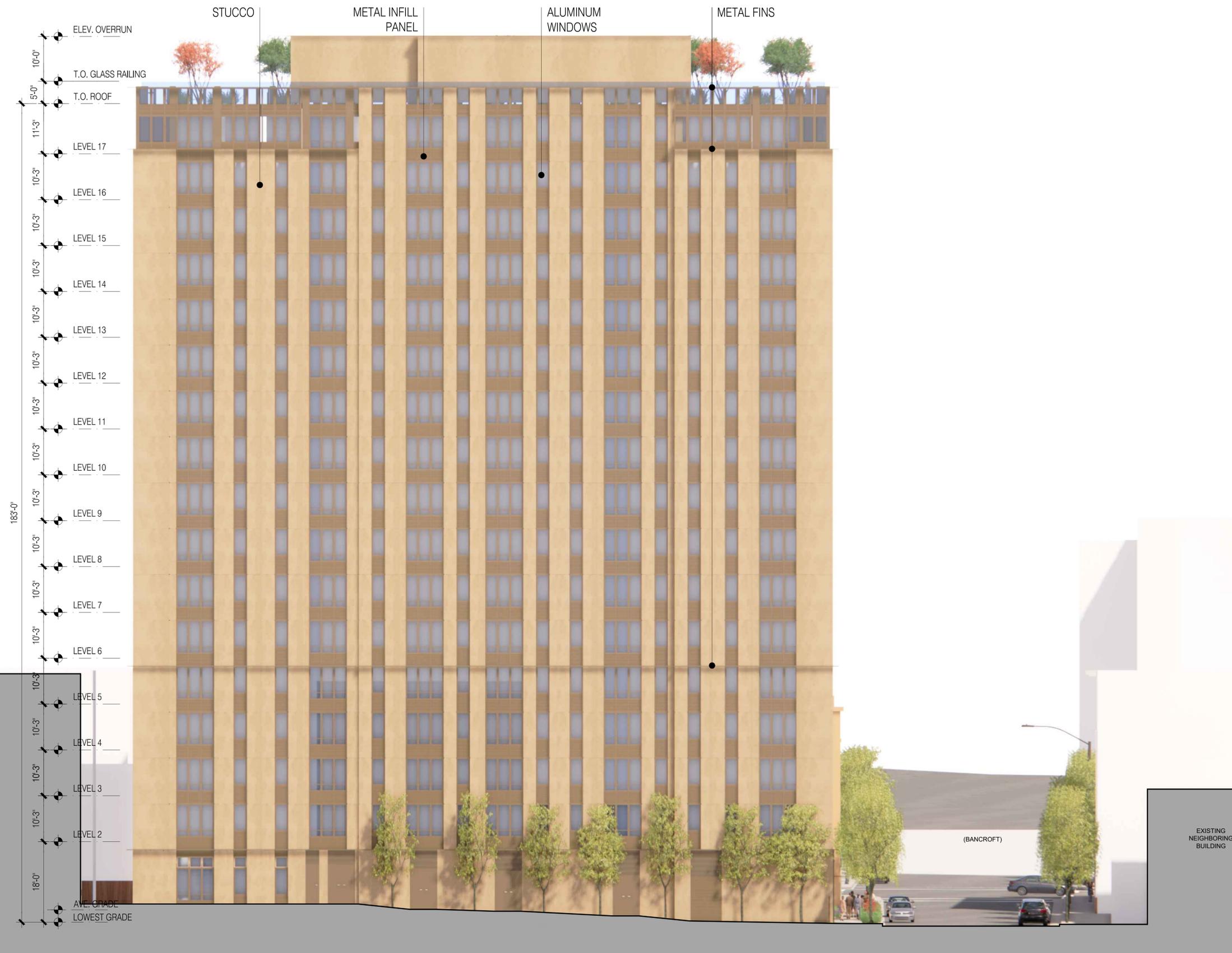
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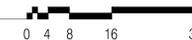
SHEET:
BUILDING ELEVATIONS

A3.3



1 WEST ELEVATION

3/64"=1'-0" @ 11X17 3/32" = 1'-0" @ 24X36



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SHEET:

BUILDING ELEVATIONS

A3.4



1 SOUTH ELEVATION

3/64"=1'-0" @ 11X17 3/32" = 1'-0" @ 24X36



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2020 KITTREDGE

2031 BANCROFT

2274 SHATTUCK
(FRONTAGE ON BANCROFT)
(SUBJECT PROPERTY)

2041 BANCROFT

SHATTUCK AVE.

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JOB: 2201

SHEET:

STREET STRIP ELEVATION

A3.5



STREET STRIP ELEVATION @ BANCROFT

" = 1'-0" @ 11X17 " = 1'-0" @ 24X36



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2322 SHATTUCK

BANCROFT WAY

2286-2278 SHATTUCK

2274 SHATTUCK
(SUBJECT PROPERTY)

2272 SHATTUCK

2090 KITTREDGE
(BERKELEY PUBLIC LIBRARY)

KITTREDGE STREET

2200-2240 SHATTUCK

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SHEET:

STREET STRIP
ELEVATION

A3.6



STREET STRIP ELEVATION @ SHATTUCK

" = 1'-0" @ 11X17 " = 1'-0" @ 24X36





4 SHATTUCK LOOKING SOUTH - AFTER



2 SHATTUCK LOOKING NORTH - AFTER



3 SHATTUCK LOOKING SOUTH - BEFORE



1 SHATTUCK LOOKING NORTH - BEFORE

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JOB: 2201

SHEET:

PHOTO CONTEXT VIEWS

A3.7



4 BANCROFT LOOKING EAST - AFTER



2 BANCROFT LOOKING WEST - AFTER



3 BANCROFT LOOKING EAST - BEFORE



1 BANCROFT LOOKING WEST - BEFORE

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JOB: 2201

SHEET:

PHOTO CONTEXT VIEWS

A3.8

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JOB: 2201

SHEET:

RENDERED
PERSPECTIVE

A3.9



1
-

CONCEPTUAL RENDERING - SHATTUCK LOOKING WEST

N.T.S.

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SHATTUCK**

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SHEET:

RENDERED
PERSPECTIVE

A3.10



1 CONCEPTUAL RENDERING - SHATTUCK ENTRY
- N.T.S.

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SHEET:

RENDERED
PERSPECTIVE

A3.10B



1 CONCEPTUAL RENDERING - CAFE INTERIOR
- N.T.S.

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JOB: 2201

SHEET:

RENDERED
PERSPECTIVE

A3.10C



1 CONCEPTUAL RENDERING - COURTYARD
- N.T.S.

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SHEET:

RENDERED
PERSPECTIVE

A3.10D



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JOB: 2201

SHEET:

RENDERED
PERSPECTIVE

A3.11



1
-

CONCEPTUAL RENDERING - BANCROFT LOOKING WEST

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SHEET:

RENDERED
PERSPECTIVE

A3.12



1 CONCEPTUAL RENDERING - BANCROFT ENTRY
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JOB: 2201

SHEET:

RENDERED
PERSPECTIVE

A3.13



1
-

CONCEPTUAL RENDERING - BANCROFT LOOKING EAST
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JOB: 2201

SHEET:

RENDERED
PERSPECTIVE

A3.14



1
-

CONCEPTUAL RENDERING - SHATTUCK LOOKING NORTH

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JOB: 2201

SHEET:

RENDERED
PERSPECTIVE

A3.15



1
-

CONCEPTUAL RENDERING - SHATTUCK LOOKING SOUTH

N.T.S.

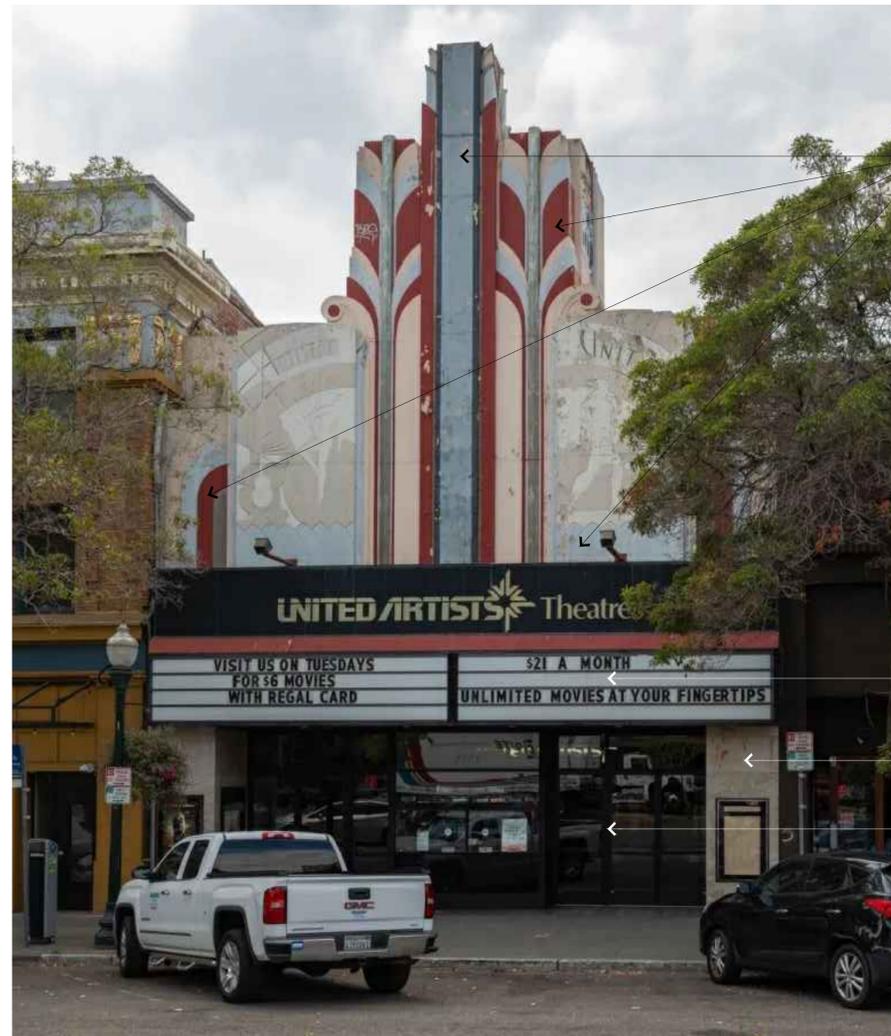
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REMOVE RECENT NON-HISTORIC PAINT VIA APPROVED METHODS THAT DO NOT DAMAGE THE EXISTING STUCCO

REMOVE RECENT NON-HISTORIC MARQUIS

REMOVE RECENT NON-HISTORIC STONE CLADDING

REMOVE RECENT NON-HISTORIC STOREFRONT

2 EXISTING FACADE CHANGES



EXISTING STUCCO FACADE, RESTORE TO EARLIER SIMPLE WHITE COLOR

NEW SIGNAGE

NEW ACCENT PAINT TO HIGHLIGHT EXISTING RELIEF SCULPTURES

NEW AWNING

NEW STOREFRONT SYSTEM, MATERIALS TO MATCH PROPOSED NEW BUILDING BEYOND

3 PROPOSED FACADE RESTORATIONS



~1932



~1968



~1974



~1980



~2023

1 EXAMPLE IMAGES OF PAST FACADE RENOVATIONS

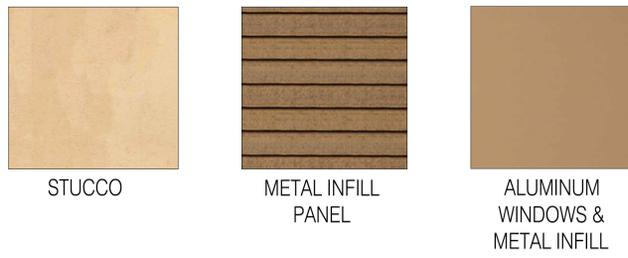
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HISTORIC FACADE RESTORATION

A4.0



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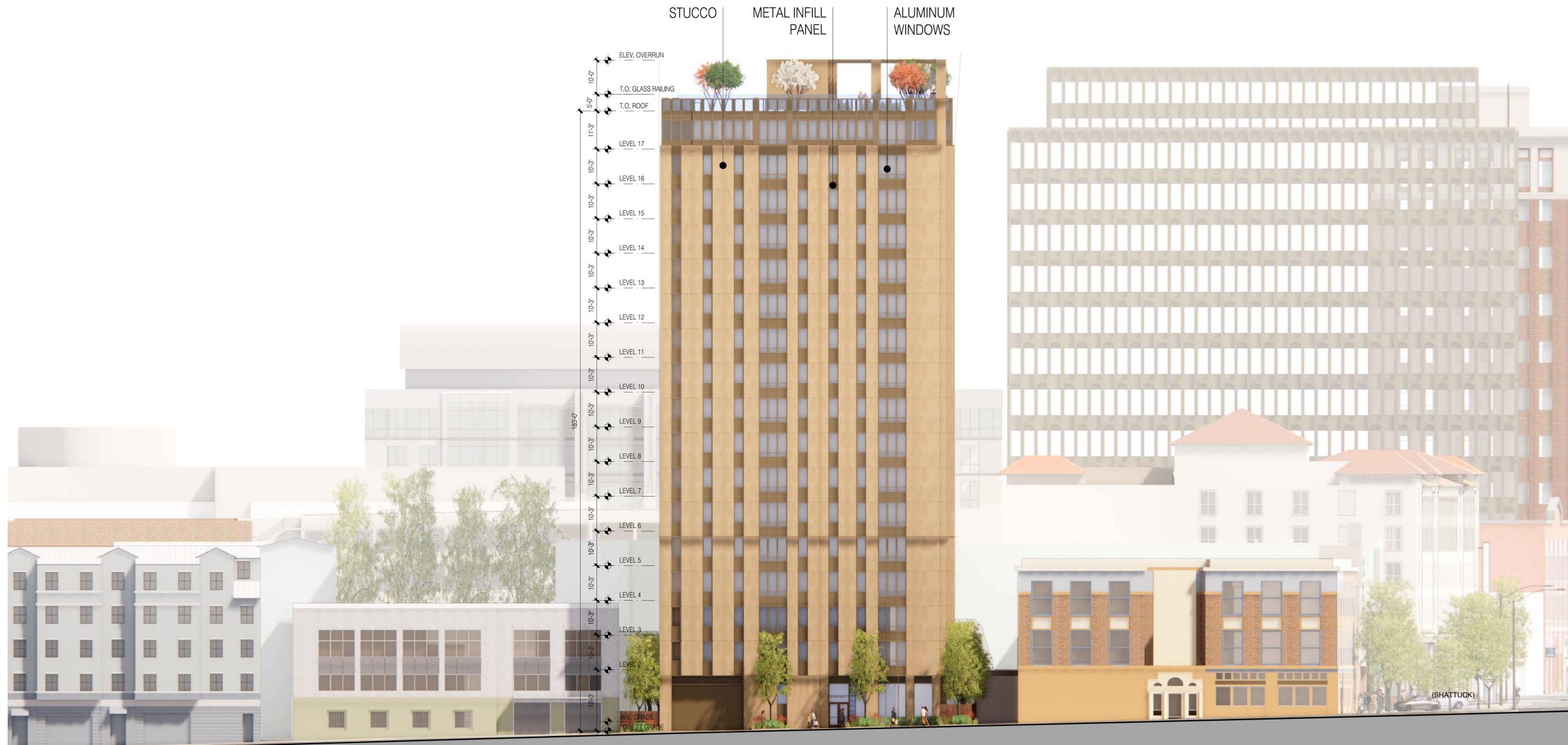
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SHEET:
BUILDING MATERIALS

MAT



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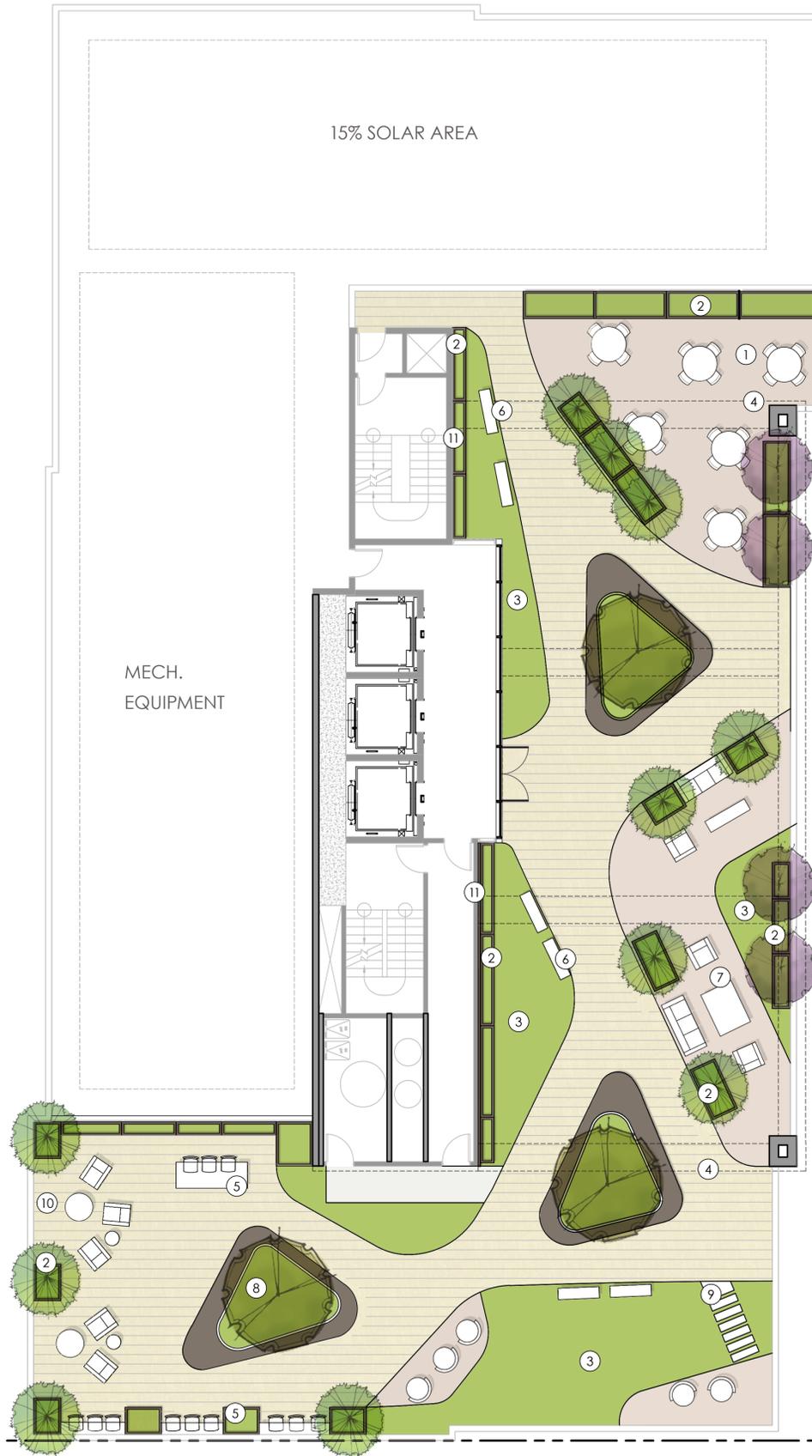
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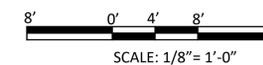
LANDSCAPE ROOF PLAN

L1.02



LEGEND

- ① STUDY AREA
- ② PREFAB RAISED PLANTER, TYP
- ③ LOW GREENROOF PLANTING
- ④ FRAME STRUCTURE ABOVE
- ⑤ BAR TABLE AND CHAIRS
- ⑥ BENCH, TYP
- ⑦ LOUNGE FURNITURE
- ⑧ RAISED PLANTER AND BENCH, TYP
- ⑨ STEPPERS
- ⑩ FLEXIBLE SEATING AND GATHERING AREA
- ⑪ GREEN SCREEN

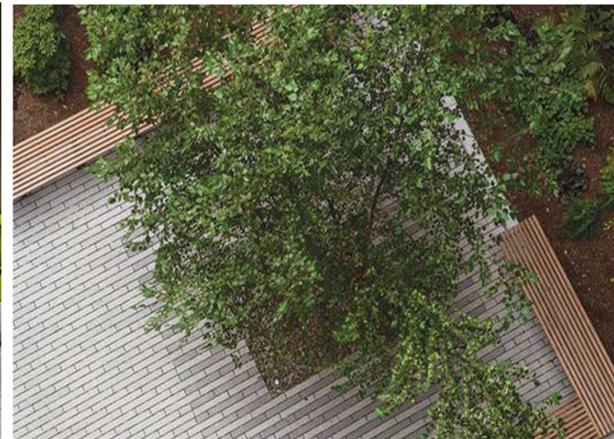




BENCH



CHAIRS



BENCH



FENCE

RAISED PLANTER

GROUND LEVEL

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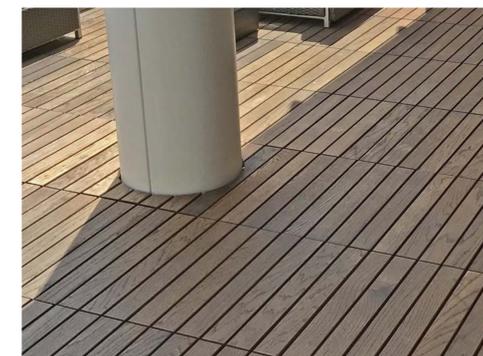
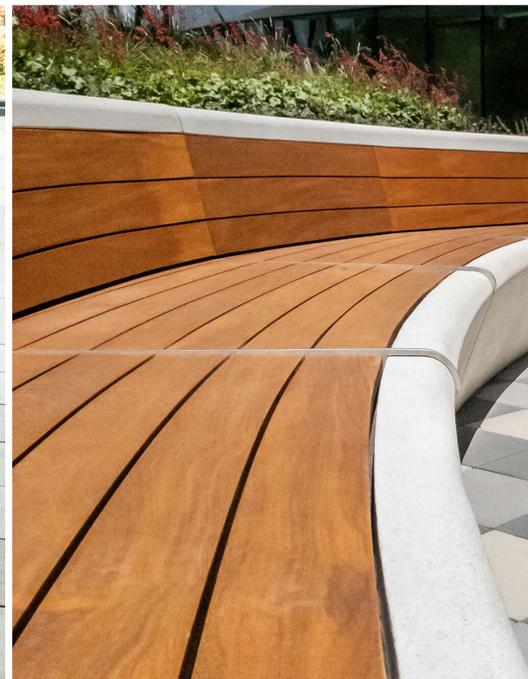
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TABLE AND CHAIRS



PREFABRICATED PLANTER AND BENCH



ROOF PAVERS AND TILES

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PRECEDENT IMAGES

ROOF GARDEN

L2.01

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SHEET:

PLANT IMAGES, NOTES AND CALCULATIONS

L3.01



TREES

 DENOTES BUTTERFLY POLLINATED SPECIES



GROUNDCOVER



SHRUBS



VINES

GENERAL PLANTING AND IRRIGATION NOTES

1. LANDSCAPE AND IRRIGATION PLANS SHALL COMPLY WITH THE CRITERIA OF THE CALIFORNIA MODEL WATER EFFICIENCY ORDINANCE AND APPLY THOSE CRITERIA FOR THE EFFICIENT USE OF WATER IN THE LANDSCAPE DESIGN PLAN.
2. LANDSCAPE AND IRRIGATION PLANS SHALL COMPLY WITH ALL APPLICABLE CITY CODES AND ORDINANCES.
3. ALL PLANTING AREAS SHALL BE TOP-DRESSED WITH A 3" LAYER OF ORGANIC, UN-DYED MULCH RECYCLED FROM LOCAL ORGANIC MATERIALS SUCH AS TREE TRIMMINGS, PLANT, OR CLEAN WOOD WASTE. COMPOST APPLICATION TO ACHIEVE A MINIMUM OF 6% ORGANIC MATTER IN SOIL COMPOSITION BASED ON MWEO SPECIFIED SOIL ANALYSIS RESULTS FOR THE SITE SOIL PER [CGBSC 4.304].
4. 50% OF ALL SHRUBS AND GROUNDCOVER SHALL BE A MINIMUM OF 5-GALLON SIZE OR LARGER.
5. IRRIGATION SYSTEM IS TO BE A FULLY AUTOMATIC WEATHER-BASED SYSTEM USING LOW FLOW DRIP AND BUBBLER SYSTEM.
6. STREET TREES SHALL BE TIED INTO IRRIGATION SYSTEM.
7. 75% OF ALL PLANTS PROPOSED ARE NATIVE AND WILD-LIFE SUPPORTING.
8. PLANT SELECTION AND DESIGN TO COMPLY WITH BAY-AREA FRIENDLY BASICS LANDSCAPE CHECKLIST.

IRRIGATION SYSTEM DESIGN INTENT

1. THIS PLAN SHALL COMPLY WITH THE REQUIREMENTS OF THE STATE OF CALIFORNIA'S MODEL WATER EFFICIENT LANDSCAPE ORDINANCE (MWEO), CITY OF BERKELEY, AND EAST BAY MUNICIPAL UTILITY DISTRICT (EBMUD) WATER DISTRICT.
2. THE IRRIGATION SYSTEM SHALL BE DESIGNED TO PROVIDE THE MINIMUM AMOUNT OF WATER NECESSARY TO SUSTAIN GOOD PLANT HEALTH.
3. THE IRRIGATION SYSTEM IS TO BE A FULLY AUTOMATIC, WEATHER-BASED SYSTEM USING RAIN SENSOR, LOW FLOW DRIP, BUBBLER DISTRIBUTION, AND ROTOR WITH MATCHED PRECIPITATION RATE NOZZLES DESIGNED FOR HEAD-TO-HEAD COVERAGE.
4. ALL SELECTED COMPONENTS SHALL BE PERMANENT, COMMERCIAL GRADE, SELECTED FOR DURABILITY, VANDAL RESISTANCE AND MINIMUM MAINTENANCE REQUIREMENT, INSTALLED BELOW-GRADE, AND DESIGNED FOR 100% COVERAGE.
5. THE SYSTEM SHALL INCLUDE A MASTER CONTROL VALVE, RAIN SENSOR AND FLOW SENSING CAPABILITY CONNECTED TO THE IRRIGATION CONTROLLER WHICH WILL SHUT DOWN ALL OR PART OF THE SYSTEM IF LEAKS ARE DETECTED.
6. THE IRRIGATION SYSTEM SHALL BE DESIGNED TO DELIVER WATER TO HYDROZONES BASED ON MOISTURE REQUIREMENTS OF THE PLANT GROUPING.
7. COLOR CODED HYDROZONE LANDSCAPING HYDROZONE MAP WITH GROUPING AND COLLOCATING PLANTING MATERIAS BY WUCOLS WATER USE CATEGORY VL, L, M, OR H, PER [CGBSC 4.304], TO BE PROVIDED IN PERMIT DRAWINGS.
8. RAIN SENSOR AND CONTROLLER LOCATION TO BE PROVIDED IN PERMIT DRAWINGS.

LANDSCAPE AREA CALCULATION:

	LANDSCAPE AREA
LEVEL 1:	2,559 SF
ROOF LEVEL:	1,525 SF
TOTAL:	4,084 SF (69%)

STORMWATER TREATMENT AREA:

REQUIRED STORMWATER TREATMENT AREA= 4% OF THE ROOF AREA (16810 SF) = 672 SF
PROPOSED STORMWATER TREATMENT AREA= 762 SF

BIKE PARKING CALCULATIONS:

(1) COMMERCIAL BIKE PARKING STALL
(16) SHORT TERM RESIDENTIAL BIKE PARKING STALLS
TOTAL SHORT TERM BIKE PARKING STALLS REQUIRED: 17 STALLS
TOTAL SHORT TERM BIKE PARKING STALLS PROVIDED: 18 STALLS (9 BIKE RACKS)

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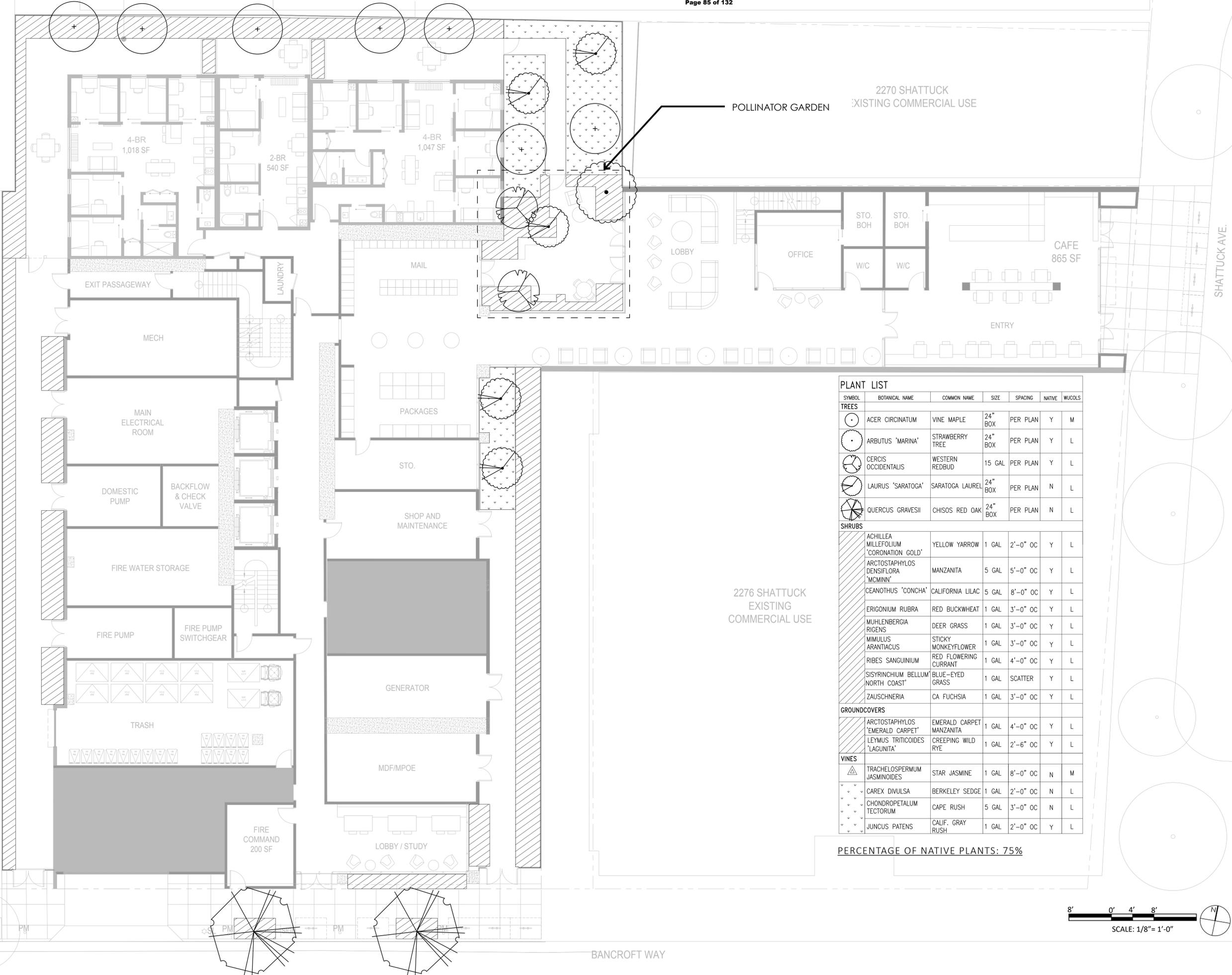
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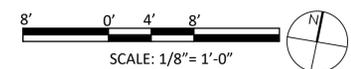
PRELIMINARY PLANTING PLAN,
GROUND FLOOR

L4.01



SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	NATIVE	WUCOLS
TREES						
●	ACER CIRCINATUM	VINE MAPLE	24" BOX	PER PLAN	Y	M
●	ARBUTUS 'MARINA'	STRAWBERRY TREE	24" BOX	PER PLAN	Y	L
●	CERCIS OCCIDENTALIS	WESTERN REDBUD	15 GAL	PER PLAN	Y	L
●	LAURUS 'SARATOGA'	SARATOGA LAUREL	24" BOX	PER PLAN	N	L
●	QUERCUS GRAVESII	CHISOS RED OAK	24" BOX	PER PLAN	N	L
SHRUBS						
■	ACHILLEA MILLEFOLIUM 'CORONATION GOLD'	YELLOW YARROW	1 GAL	2'-0" OC	Y	L
■	ARCTOSTAPHYLOS DENSIFLORA 'MCMINN'	MANZANITA	5 GAL	5'-0" OC	Y	L
■	CEANOTHUS 'CONCHA'	CALIFORNIA LILAC	5 GAL	8'-0" OC	Y	L
■	ERIGONIUM RUBRA	RED BUCKWHEAT	1 GAL	3'-0" OC	Y	L
■	MUHLENBERGIA RIGENS	DEER GRASS	1 GAL	3'-0" OC	Y	L
■	MIMULUS ARANTIACUS	STICKY MONKEYFLOWER	1 GAL	3'-0" OC	Y	L
■	RIBES SANGUINIUM	RED FLOWERING CURRANT	1 GAL	4'-0" OC	Y	L
■	SISYRINCHIUM BELLUM 'NORTH COAST'	BLUE-EYED GRASS	1 GAL	SCATTER	Y	L
■	ZAUSCHNERIA	CA FUCHSIA	1 GAL	3'-0" OC	Y	L
GROUNDCOVERS						
■	ARCTOSTAPHYLOS 'EMERALD CARPET'	EMERALD CARPET MANZANITA	1 GAL	4'-0" OC	Y	L
■	LEYMUS TRITICOIDES 'LAGUNITA'	CREEPING WILD RYE	1 GAL	2'-6" OC	Y	L
VINES						
▲	TRACHELOSPERMUM JASMINOIDES	STAR JASMINE	1 GAL	8'-0" OC	N	M
▼	CAREX DIVULSA	BERKELEY SEDGE	1 GAL	2'-0" OC	N	L
▼	CHONDROPETALUM TECTORUM	CAPE RUSH	5 GAL	3'-0" OC	N	L
▼	JUNCUS PATENS	CALIF. GRAY RUSH	1 GAL	2'-0" OC	Y	L

PERCENTAGE OF NATIVE PLANTS: 75%



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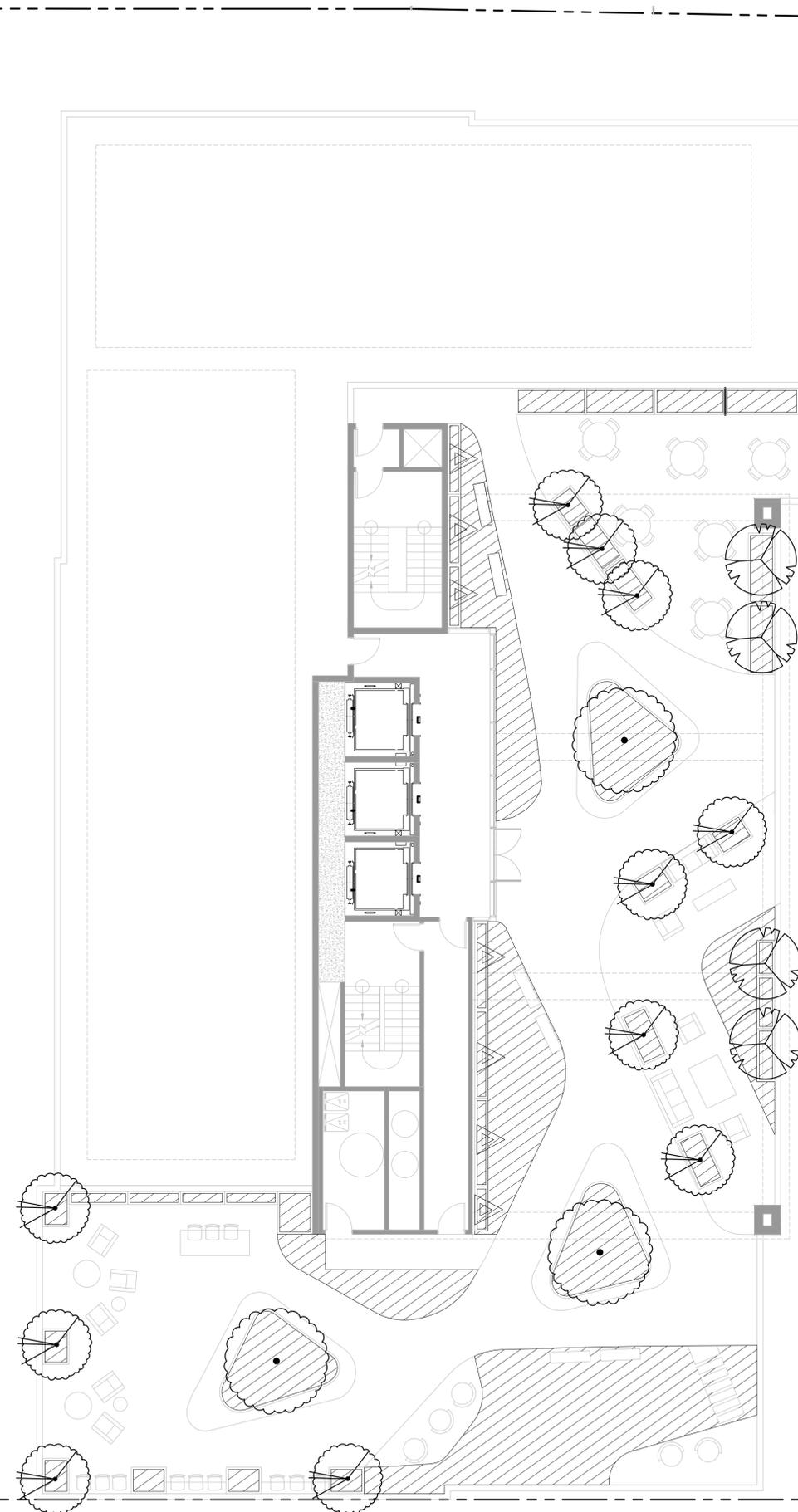
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PRELIMINARY PLANTING PLAN,
ROOF PLAN

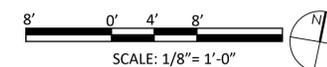
L4.02



PLANT LIST

SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	NATIVE	WUCOLS
TREES						
●	ACER CIRCINATUM	VINE MAPLE	24" BOX	PER PLAN	Y	M
●	ARBUTUS 'MARINA'	STRAWBERRY TREE	24" BOX	PER PLAN	Y	L
●	CERCIS OCCIDENTALIS	WESTERN REDBUD	15 GAL	PER PLAN	Y	L
●	LAURUS 'SARATOGA'	SARATOGA LAUREL	24" BOX	PER PLAN	N	L
●	QUERCUS GRAVESII	CHISOS RED OAK	24" BOX	PER PLAN	N	L
SHRUBS						
●	ACHILLEA MILLEFOLIUM 'CORONATION GOLD'	YELLOW YARROW	1 GAL	2'-0" OC	Y	L
●	ARCTOSTAPHYLOS DENSIFLORA 'MCMINN'	MANZANITA	5 GAL	5'-0" OC	Y	L
●	CEANOTHUS 'CONCHA'	CALIFORNIA LILAC	5 GAL	8'-0" OC	Y	L
●	ERIGONIUM RUBRA	RED BUCKWHEAT	1 GAL	3'-0" OC	Y	L
●	MUHLENBERGIA RIGENS	DEER GRASS	1 GAL	3'-0" OC	Y	L
●	MIMULUS ARANTIACUS	STICKY MONKEYFLOWER	1 GAL	3'-0" OC	Y	L
●	RIBES SANGUINIUM	RED FLOWERING CURRANT	1 GAL	4'-0" OC	Y	L
●	SISYRINCHIUM BELLUM 'NORTH COAST'	BLUE-EYED GRASS	1 GAL	SCATTER	Y	L
●	ZAUSCHNERIA	CA FUCHSIA	1 GAL	3'-0" OC	Y	L
GROUNDCOVERS						
●	ARCTOSTAPHYLOS 'EMERALD CARPET'	EMERALD CARPET MANZANITA	1 GAL	4'-0" OC	Y	L
●	LEYMUS TRITICOIDES 'LAGUNITA'	CREEPING WILD RYE	1 GAL	2'-6" OC	Y	L
VINES						
▲	TRACHELOSPERMUM JASMINOIDES	STAR JASMINE	1 GAL	8'-0" OC	N	M
▼	CAREX DIVULSA	BERKELEY SEDGE	1 GAL	2'-0" OC	N	L
▼	CHONDRPETALUM TECTORUM	CAPE RUSH	5 GAL	3'-0" OC	N	L
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PERCENTAGE OF NATIVE PLANTS: 75%



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PRELIMINARY IRRIGATION PLAN - GROUND FLOOR

L5.01

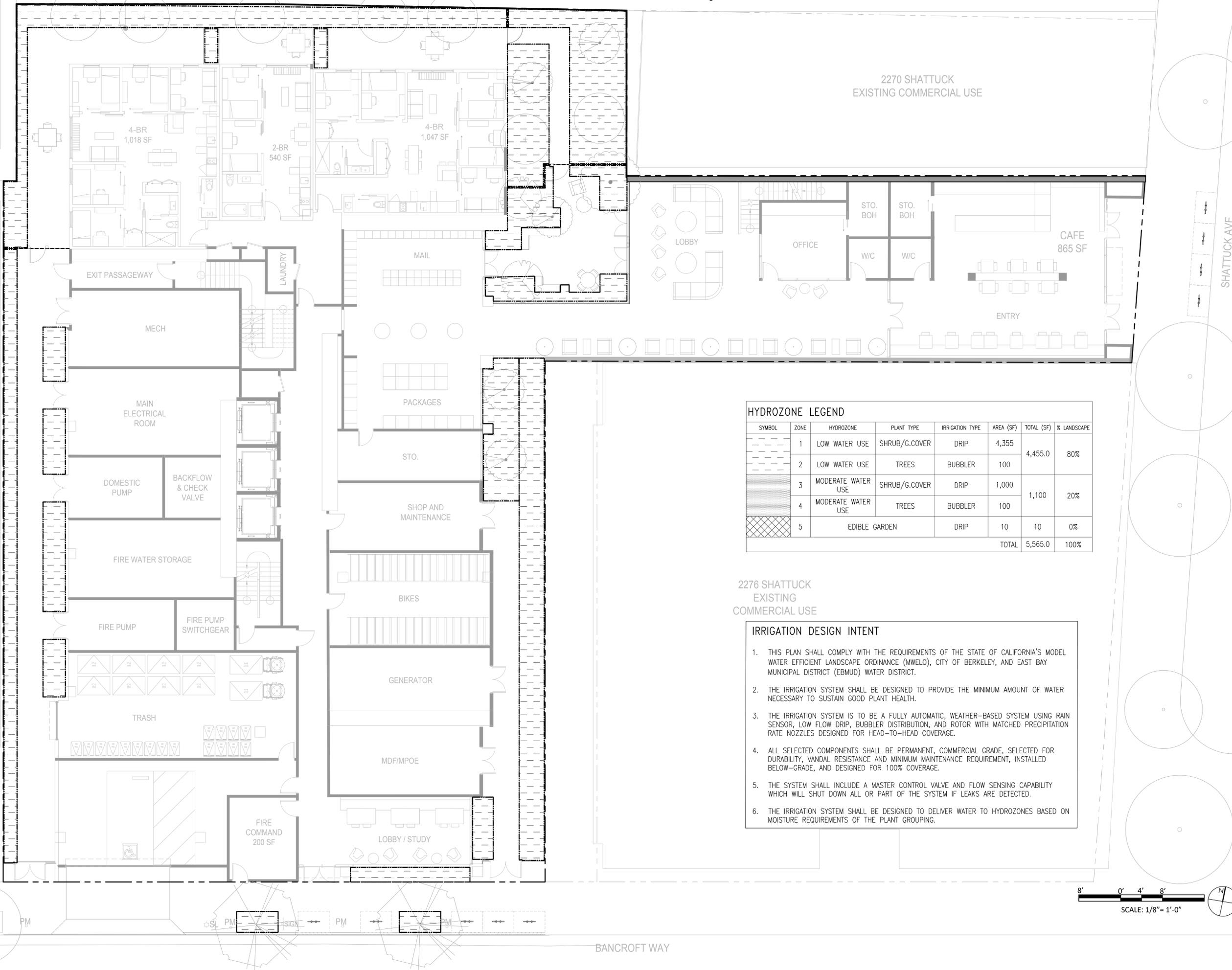
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EXISTING COMMERCIAL USE

HYDROZONE LEGEND							
SYMBOL	ZONE	HYDROZONE	PLANT TYPE	IRRIGATION TYPE	AREA (SF)	TOTAL (SF)	% LANDSCAPE
[Symbol]	1	LOW WATER USE	SHRUB/G.COVER	DRIP	4,355	4,455.0	80%
[Symbol]	2	LOW WATER USE	TREES	BUBBLER	100		
[Symbol]	3	MODERATE WATER USE	SHRUB/G.COVER	DRIP	1,000	1,100	20%
[Symbol]	4	MODERATE WATER USE	TREES	BUBBLER	100		
[Symbol]	5	EDIBLE GARDEN		DRIP	10	10	0%
					TOTAL	5,565.0	100%

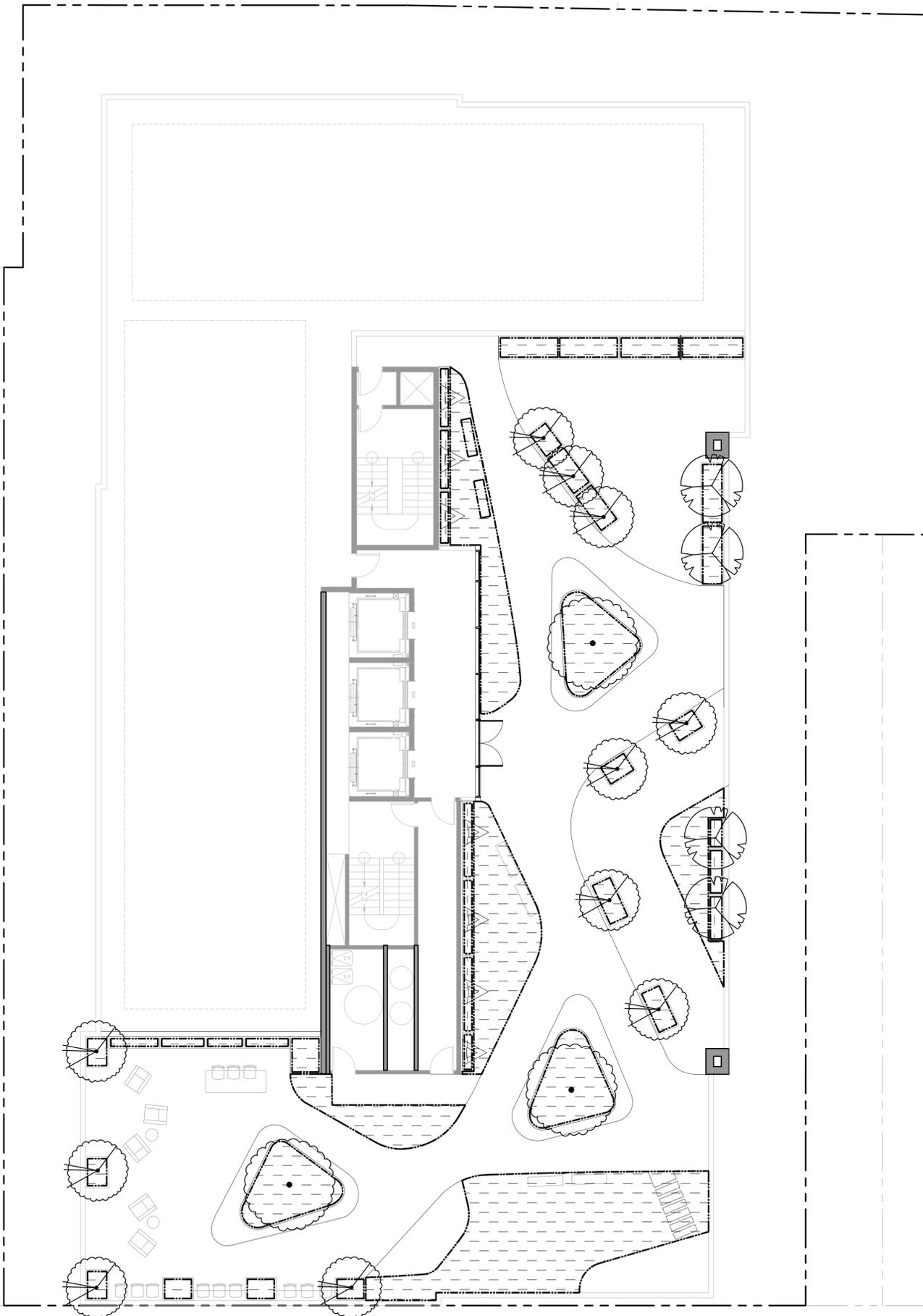
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EXISTING
COMMERCIAL USE

IRRIGATION DESIGN INTENT

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6. THE IRRIGATION SYSTEM SHALL BE DESIGNED TO DELIVER WATER TO HYDROZONES BASED ON MOISTURE REQUIREMENTS OF THE PLANT GROUPING.



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HYDROZONE LEGEND							
SYMBOL	ZONE	HYDROZONE	PLANT TYPE	IRRIGATION TYPE	AREA (SF)	TOTAL (SF)	% LANDSCAPE
[Horizontal Hatching]	1	LOW WATER USE	SHRUB/G.COVER	DRIP	4,355	4,455.0	80%
[Vertical Hatching]	2	LOW WATER USE	TREES	BUBBLER	100		
[Diagonal Hatching]	3	MODERATE WATER USE	SHRUB/G.COVER	DRIP	1,000	1,100	20%
[Cross-hatch]	4	MODERATE WATER USE	TREES	BUBBLER	100		
[Stippled]	5	EDIBLE GARDEN		DRIP	10	10	0%
					TOTAL	5,565.0	100%

HYDROZONE INFORMATION TABLE								
REFERENCE ANNUAL ET ₀ FOR:		OAKLAND (NEAREST LOCATION, WUCOLS)			41.8			
ET ADJUSTMENT FACTOR	0.55	ET ADJ FACTOR PER MWEO & CALGREEN: 0.80= EXISTING NON-REHABILITATED LANDSCAPE, 0.65= SCHOOL 0.55= RESIDENTIAL, 0.45= NON-RESIDENTIAL		SLA ADDITIONAL WATER ALLOWANCE (1.0-ETAF)	0.45			
HYDROZONE	WUCOLS IV PLANT FACTOR (PF)	IRR METHOD D RIP & BUBBLER: 0.81 SPRAY & ROTOR: 0.75	IRRIGATION EFFICIENCY (IE)	ETAF ₂ (PF/IE)	LANDSCAPE AREA (SQ FT)	ETAF ₂ x AREA	ESTIMATED TOTAL WATER USE (ETWU)	
1	0.3	D	0.81	0.37	4355	1612.96	41801.55	
2	0.3	B	0.81	0.37	100	37.04	959.85	
3	0.3	D	0.81	0.37	1000	370.37	9598.52	
4	0.6	B	0.81	0.74	100	74.07	1919.70	
-	0	D	.81	0.00	0	0.00	0.00	
-	0	D	.81	0.00	0	0.00	0.00	
					TOTAL	5555.00	2094.44	54,279.62
SPECIAL LANDSCAPE AREAS					1	10	10.00	259.16
					0	0	0.00	0.00
					TOTAL	10	10.00	259.16
TOTAL LANDSCAPE AREA (LA + SLA)					5,565.00			
TOTAL ETWU				TOTAL ETWU ALL AREAS (SLA AND REGULAR LA)		TOTAL ETWU		
MAWA				[(ANNUAL ETO)(0.62 CONVERSION FACTOR) [(ET ADJUSTMENT FACTOR)(TOTAL LANDSCAPE AREA) + (1-ETAF)*SLA]]		79,439.02		
AVERAGE ETAF				SUM(ETAF ₂ X AREA) / TOTAL AREA (AVERAGE ETAF AS DESIGNED, EXCLUSIVE OF SLA _s)		0.38		
SITEWIDE ETAF				TOTAL ETAF X AREA / TOTAL LANDSCAPE AREA (INCLUDES SLA _s)		0.38		

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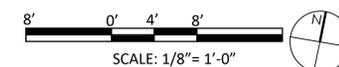
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SHEET:

PRELIMINARY IRRIGATION PLAN - ROOF PLAN

L5.02





ROBIN R. BARAL
SENIOR COUNSEL
DIRECT DIAL (916) 491-3052
DIRECT FAX (916) 491-3085
E-MAIL rbaral@hansonbridgett.com

March 4, 2024

VIA EMAIL

Sharon Gong
Senior Planner
City of Berkeley Planning Department
1947 Center Street, 3rd Floor
Berkeley, CA 94704

Re: 2274 Shattuck Avenue – AB 1633 Notice of CEQA Exemption

Dear Ms. Gong:

As you know, our office represents the applicant team for the proposed mixed-use project at 2274 Shattuck Avenue ("Project"). In accordance with Assembly Bill 1633 ("AB 1633"),¹ we request that the City find the Project exempt from review under the California Environmental Quality Act ("CEQA") pursuant to the "Class 32" exemption for Infill Development Projects,² as well as the "Class 31" exemption for Historical Resource Restoration/Rehabilitation.³

Substantial evidence supports the application of both the Class 32 and Class 31 exemptions for this Project, as documented in the technical reports submitted with the Project application and concurrently with this letter. Moreover, substantial evidence supports that no exceptions to the exemptions apply.⁴ We therefore request that the City find the Project exempt from CEQA under Class 32 as well as Class 31, as those exemptions are now mandated by the Housing Accountability Act ("HAA"),⁵ within the next 90 days.

AB 1633 makes CEQA exemptions mandatory under the Housing Accountability Act for eligible high-density infill residential projects.

AB 1633 amended the HAA as of January 1, 2024, to require that cities find certain high-density infill residential projects, such as this Project, exempt from CEQA. AB 1633 redefines an unlawful disapproval of a housing development project under the HAA (for eligible projects) to now include "*any* instance in which a local agency... fails to make a determination of whether the project is exempt from [CEQA] or commits an abuse of discretion as defined in [the HAA]."⁶

¹ Gov. Code § 65589.5

² 14 Cal. Code Reg. § 15332

³ 14 Cal. Code Reg. § 15331

⁴ 14 Cal. Code Reg. § 15300.2(c) and (f)

⁵ Gov. Code § 65589.5(h)(6)(D)

⁶ *Id.*

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AB 1633 also amended the HAA to include a new statutory definition of "abuse of discretion" as follows: "'abuse of discretion' means the conditions set forth [by AB 1633] are satisfied, but the local agency does not determine that the project is exempt from [CEQA]."⁷ The legislature therefore expressly modified the standard of review under CEQA to *require that* cities find eligible, high-density infill residential projects such as this one exempt in *any* instance in which there is substantial evidence to support a CEQA exemption and lack of exception.⁸ As a result, an unlawful denial or abuse of discretion now occurs, for eligible high-density infill residential projects, if (1) an applicant provides substantial evidence that the project is eligible for a CEQA exemption and there are no exceptions to the exemption, but (2) the agency fails to find the project exempt.⁹ The legislature therefore revised the substantial evidence standard to establish that an HAA violation occurs if a city fails to make a *mandatory* AB 1633/CEQA exemption finding for eligible infill projects.

AB 1633 requires that the City find this Project exempt within 90 days.

By rewriting the substantial evidence standard to favor housing production, the legislature intended that AB 1633 CEQA exemption findings be made promptly – i.e., within 90 days after the submission of this notice.¹⁰ The HAA allows cities to extend the 90-day deadline by an additional 90 days. An extension, however, is only authorized if "necessary to determine if there is substantial evidence in the record that the housing development project is eligible for the exemption."¹¹ In this case, the applicant has provided all of the reports and studies needed to support the exemption. The reports submitted concurrently with this letter constitute substantial evidence to support all of the necessary findings for the Class 32 and Class 31 CEQA exemptions. As such, there is no legal basis or need for the City to peer review or provide additional studies to document the Class 32 and Class 31 CEQA exemptions for this Project.

The applicant therefore requests that the City promptly find that the Project is exempt under both the Class 31 and Class 32 CEQA exemptions, and that no exceptions to these exemptions apply. We request that this decision be made within the next 30-60 days but in no case should the determination require more than 90 days for this Project.

This Project meets all of the requirements for a mandatory Class 32 CEQA exemption.

Project Description

Trachtenberg Architects is the applicant for this Project, which proposes to construct a 214,082 square-foot mixed-use project at 2274 Shattuck Avenue, at the corner of Shattuck Avenue and Bancroft Way. The project sponsor is 2274 Shattuck QOZB, LLC (Panoramic Interests). The Project is located on the east side of Shattuck Avenue, with frontage on Shattuck Avenue and the north side Bancroft Way. The Project entails renovation of the commercial frontage on Shattuck Avenue, and renovations to the interior foyer and lobby, with a café and repurposed commercial space that celebrates the site's prior use as a theater. The ground floor and roof will include open space and other amenities for Project residents. The subdivided theater space will be demolished to facilitate the construction of 227 housing units. The units will be diverse in

⁷ Gov. Code § 65589.5(h)(6)(D)(ii)(I)

⁸ Gov. Code § 65589.5(h)(6)(D)(i)(IV)

⁹ Gov. Code § 65589.5(h)(6)(D)(i)(IV)

¹⁰ Gov. Code § 65589.5(h)(6)(D)(i)(V)(ia)

¹¹ *Id.* subd. (h)(6)(D)(i)(V)(ic)

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size, consisting of 32 studios, 49 two-bedrooms, 80 three-bedrooms, and 66 four-bedrooms. In accordance with state density bonus law, 23 of those units will be reserved for very-low income households earning no more than 50% of the area median income (AMI) for Alameda County.

The following reports support the findings for the Class 32 CEQA exemption: (1) Traffic Impact Analysis, 2274 Shattuck Avenue Project, Abrams Associates, dated August 9, 2023 (**Attachment 1**); (2) 2274 Shattuck Avenue Historic Resources Evaluation Memorandum, West Coast Architectural History, dated December 7, 2023 (**Attachment 2**); (3) 2274 Shattuck Avenue Project Impacts Analysis Memorandum, Left Coast Architectural History, dated March 1, 2024 (**Attachment 3**); (4) Air Quality Impacts Analysis for the 2274 Shattuck Avenue Mixed Use Project in Berkeley, California, FirstCarbon Solutions, dated March 1, 2024 (**Attachment 4**); (5) Noise Impact Analysis for the 2274 Shattuck Avenue Mixed Use Project in Berkeley, California, FirstCarbon Solutions, dated March 1, 2024 (**Attachment 5**), and (6) Water Quality Impact Analysis for the 2274 Shattuck Avenue Mixed Use Project in Berkeley, California, FirstCarbon Solutions, dated March 1, 2024 (**Attachment 6**). The Historic Resources Evaluation and Project Impact Analysis also support the findings for the Class 31 CEQA exemption.

AB 1633 Eligibility Criteria

The HAA requires the Project to meet the following criteria in order to qualify for a mandatory CEQA exemption:

1. The Project cannot be on an environmentally sensitive site or a site subject to certain environmental hazards;
2. The Project must be on a legal parcel, in an urbanized area that is also a transit priority area, low vehicle miles traveled area, or amenity-rich area;
3. The density of the housing development project must meet or exceed 15 dwelling units per acre; and
4. There must be substantial evidence in the record that the Project qualifies for an exemption and is not subject to any exceptions.

As detailed below, the Project satisfies each criterion and is therefore subject to a mandatory Class 32 CEQA exemption under AB 1633. In other words, this Project meets all requirements imposed by the state legislature to facilitate expedited review under the HAA for high-density residential infill projects. The applicable findings, backed by substantial evidence as detailed below, demonstrate that this Project is categorically exempt under CEQA, and that a decision to the contrary would constitute an unlawful denial under the HAA.¹²

1. The Project is not located on an environmentally sensitive site and it is not subject to certain environmental hazards.

AB 1633 requires the Project to not be located on any site that is environmentally sensitive, subject to certain environmental hazards, or within a very high fire hazard severity zone.¹³ The following environmentally sensitive sites and hazards must be avoided: (A) coastal zones;

¹² Gov. Code § 65589.5(h)(6)(D)(i)

¹³ See Gov. Code § 65589.5(h)(6)(D)(i)(I), citing Gov. Code § 65913.4(a)(6)(A)-(C) and (E)-(K)

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(B) prime farmland; (C) wetlands; (D) hazardous waste sites; (E) earthquake fault zones; (F) flood hazard areas; (G) regulatory floodways; (H) conservation lands; (I) habitat for protected species; (J) conservation easements; and (K) very-high fire severity zones. As detailed below, the Project site does not contain any of these characteristics.

A. The Project is not in the Coastal Zone.

AB 1633 applies to projects that are generally not located in an area of the Coastal Zone.¹⁴ The "Coastal Zone" is the land and water area along the entire the California Coast that generally extends 1,000 yards from the mean high tide line of the sea, and is identified on a detailed map adopted by the Coastal Commission.¹⁵ The City of Berkely is not within the Coastal Zone, as documented in **Attachment 7** attached to this letter.

B. The Project is not located on prime farmland.

AB 1633 applies to projects that are not (i) located on prime farmland or farmland of statewide importance, as defined by the United States Department of Agriculture and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or (ii) zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.¹⁶ It should be abundantly clear that the existing site is not located on prime farmland or farmland of statewide importance, and is not otherwise zoned for agricultural protection. Substantial evidence to support this finding is provided by reference to the Department of Conservation's Important Farmland Finder Map, where the Project site is identified as Urban and Built Up Land. (See **Attachment 7**).¹⁷

C. The Project site is not located in a wetland.

AB 1633 applies to projects that are not located on federally designated wetlands.¹⁸ The Project site is an infill, urbanized location that has no water features. Accordingly, the U.S. Fish & Wildlife Service has determined the site does not contain any potential for wetlands or aquatic resources.(See National Wetlands Inventory in **Attachment 7**).¹⁹

¹⁴ See, e.g., Gov. Code, §§ 65913.4(a)(6)(A)(ii) ["An area of the coastal zone that is not subject to a certified local coastal program or certified land use plan."]; 65913.4(a)(6)(A)(iv) ["In a parcel within the coastal zone that is not zoned for multifamily housing."]; 65589.5 (h)(6)(D)(i)(I)(ia); 65913.4(a)(6)(A).)

¹⁵ Pub. Res. Code § 30103.

¹⁶ Gov. Code, §§ 65589.5(h)(6)(D)(i)(I)(ia); 65913.4(a)(6)(B).

¹⁷ California Department of Conservation, California Important Farmland Finder [<https://maps.conservation.ca.gov/DLRP/CIFF/>], last accessed on February 21, 2024

¹⁸ Gov. Code, §§ 65589.5 (h)(6)(D)(i)(I)(ia); 65913.4(a)(6)(C)

¹⁹ See U.S. Fish and Wildlife Service, National Wetlands Inventory <https://www.fws.gov/wetlands/>, last accessed on February 21, 2024

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D. The Project is not located on a hazardous waste site.

AB 1633 generally applies to projects that are not located on the "Cortese List" or on hazardous waste sites designated by the Department of Toxic Substances Control ("DTSC").²⁰ The Project site is not listed on either of these lists and is not located on a hazardous waste site.²¹

E. The Project is not located in a fault zone.

AB 1633 applies to projects that are not located "[w]ithin a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law."²² The Project is not located within a delineated earthquake fault zone on an official map published by the United States Geologic Service ("USGS") (see **Attachment 7**).²³

F. The Project is not located in a special flood hazard area or regulatory floodway.

AB 1633 applies to projects that are not located "[w]ithin a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency ("FEMA") in any official maps published by [FEMA],"²⁴ and to projects that are not located "[w]ithin a regulatory floodway as determined by [FEMA] in any official maps published by [FEMA]. The Project is not located in a special flood hazard area²⁵ or regulatory floodway²⁶ as determined by FEMA (see **Attachment 7**).

G. The Project site is not identified in a natural resource protection plan.

AB 1633 applies to projects that are not located on land identified for conservation in (i) an adopted natural community conservation plan under the California Fish and Game Code, (ii) a habitat conservation plan pursuant to the federal Endangered Species Act, or (iii) another adopted natural resource protection plan.²⁷ The Project is located on an urban, infill site in Downtown Berkeley. It is not located in an adopted natural community conservation plan,

²⁰ Gov. Code, §§ 65589.5 (h)(6)(D)(i)(I)(ia); 65913.4(a)(6)(E); 65962.5; Health and Safety Code § 78760. Note that certain sites on the Cortese List may still be eligible under AB 1633, however those provisions do not apply here as this site is not on the Cortese List.

²¹ DTSC, Hazardous Waste and Substance Site List,

https://www.envirostor.dtsc.ca.gov/public/search?cmd=search&reporttype=CORTESE&site_type=CSITES,FUDS&status=ACT,BKLG.COM&reporttitle=HAZARDOUS+WASTE+AND+SUBSTANCES+SITE+LIST+%28CORTESE%29, last accessed on February 21, 2024.) The Cortese list as of February 21, 2024, is incorporated by reference into the project's administrative record of proceeding

²² Gov. Code §§ 65589.5 (h)(6)(D)(i)(I)(ia); 65913.4(a)(6)(F)

²³ See USGS, U.S. Quaternary Faults Map <https://www.usgs.gov/programs/earthquake-hazards/faults>, last accessed on February 21, 2024

²⁴ Gov. Code §§ 65589.5(h)(6)(D)(i)(I)(ia); 65913.4(a)(6)(G)

²⁵ See FEMA, National Flood Hazard Layer Viewer <https://www.fema.gov/flood-maps/national-flood-hazard-layer>, last accessed on February 21, 2024

²⁶ *Id.*

²⁷ Gov. Code §§ 65589.5 (h)(6)(D)(i)(I)(ia); 65913.4(a)(6)(I)

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habitat conservation plan or any other adopted natural resource protection plan (see **Attachment 7**).²⁸

H. The Project site is not habitat for protected species.

AB 1633 applies to projects that are not located on habitat for candidate, sensitive, or special status species as identified under the federal Endangered Species Act, the California Endangered Species Act, or the Native Plant Protection Act.²⁹ The Project site is located in the urban landscape of Downtown Berkeley and has no value as habitat for any listed species.

I. The Project site is not under a conservation easement.

AB 1633 applies to projects that are not located on lands under conservation easement.³⁰ The Project site is in an entirely urbanized infill location, and accordingly is not encumbered by any conservation easement (see **Attachment 7**).³¹

J. The Project is not located in a Very High Fire Hazard Severity Zone.

AB 1633 applies to projects that are not located within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection.³² The Project is not located in a very high fire hazard severity zone (see **Attachment 7**).³³

2. The Project is located on a legal parcel, in an urbanized area as defined by AB 1633.

AB 1633 applies to a housing development project "located on a legal parcel or parcels within an urbanized area" that meets at least one of the following criteria:

- (ia) The housing development project is located within one-half mile walking distance to either a high-quality transit corridor or a major transit stop;
- (ib) The housing development project is located in a very low vehicle travel area; or
- (ic) The housing development project is proximal to six or more of the following amenities pursuant to subclause (IV) of clause (ii) as of the date of submission of the project application:

²⁸ California Department of Fish and Wildlife, California Natural Community Conservation Plans (August 2023); see also Federal Conservation Plans of West Coast <https://www.fisheries.noaa.gov/west-coast/habitat-conservation/habitat-conservation-plans-west-coast>, last accessed on February 21, 2024

²⁹ Gov. Code §§ 65589.5(h)(6)(D)(i)(I)(ia); 65913.4(a)(6)(J)

³⁰ Gov. Code §§ 65589.5 (h)(6)(D)(i)(I)(ia); 65913.4(a)(6)(K)

³¹ (See California Natural Resources Agency, California Conservation Easement Database [<https://data.cnra.ca.gov/dataset/california-conservation-easement-database>];

<https://databasin.org/datasets/65202ded0d40478a847f019630950570/>], last accessed on February 21, 2024

³² Gov. Code, § 65589.5(h)(6)(D)(i)(I)(ia)

³³ See Dept. of Forestry and Fire Protection <https://osfm.fire.ca.gov/what-we-do/community-wildfire-preparedness-and-mitigation/fire-hazard-severity-zones/fire-hazard-severity-zones-maps>, last accessed on February 21, 2024

(IV) "Proximal" to an amenity means either of the following:

(ia) Within one-half mile of either of the following amenities:

(Ia) A bus station.

(Ib) A ferry terminal.

(ib) Within two miles of any of the following amenities:

(Ia) A supermarket or grocery store.

(Ib) A public park.

(Ic) A community center.

(Id) A pharmacy or drugstore.

(Ie) A medical clinic or hospital.

(If) A public library.

(Ig) A school that maintains a kindergarten or any of grades 1 to 12, inclusive

(id) Parcels that are developed with urban uses adjoin at least 75 percent of the perimeter of the project site or at least three sides of a four-sided project site. For purposes of this clause, parcels that are only separated by a street or highway shall be considered to be adjoined.³⁴

Although only required to meet one of the four "urbanized area" scenarios, the Project meets all four, as the Project is:

- Located within a transit priority area designated by the City of Berkeley, which means it is within 1/2-mile from a rail station and/or 1/4-mile from bus stops with service at least every 15 minutes. This is supported by the transit priority area map included in the City's VMT Criteria and Thresholds guidance, which establishes that the Project site is within 1/2-mile from a rail station or 1/4-mile from bus stops with service at least every 15 minutes. (See **Attachment 7**.)
- Located in a very low vehicle travel area. A "very low vehicle travel area" means an urbanized area, as designated by the United States Census Bureau, where the existing residential development generates vehicle miles traveled ("VMTs") per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita. (Gov. Code, § 659159(o)(9).) The City defines low-VMT areas based on the results of the Alameda County Transportation Commission model, and depicts these areas in the map included

³⁴ Gov. Code §65589.5 (h)(6)(D)(i)(II)

in Exhibit I. The areas shaded green are those identified as "Low VMT Areas," where "VMT per capita ... is 15% lower than the baseline regional average."³⁵ The Project is located in a Low VMT Area (see **Attachment 7**).

- Located proximal to the following amenities:
 - Numerous bus stops;
 - Within one mile of a supermarket or grocery store (Trader Joe's);
 - Within one mile of a public park (Martin Luther King Jr. Civic Center Park and Ohlone Park);
 - Within one mile of a community center (Multicultural Community Center);
 - Within one mile of a pharmacy or drugstore (CVS pharmacy);
 - Within one mile of a public library (Berkeley Public Library);
 - Within one mile of a school that maintains a kindergarten or any of grades 1 to 12, inclusive (Washington Elementary School).
- Located in an urban area, on a property surrounded on all sides by urban uses.

The Project therefore meets all of the urbanized criteria for a mandatory CEQA exemption.

3. The Project's density qualifies under AB 1633.

AB 1633 applies to projects that meet or exceed 15 dwelling units per acre.³⁶ Here, the Project proposes 227 dwelling units on 0.51 acres, resulting in a density of more than 440 dwelling units per acre.

4. Substantial evidence establishes that the Project is exempt under Class 32 and Class 31, and there are no applicable exceptions.

A. Substantial evidence supports the Class 32 exemption.

The Class 32 exemption applies to infill development projects that are (a) consistent with the applicable general plan and zoning designation, (b) on a site smaller than five acres and substantially surrounded by urban uses with no potential value as habitat for endangered, rare or threatened species, and where (c) approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality, and (d) the site can be adequately served by all required utilities and public services.³⁷

³⁵ City of Berkeley VMT Criteria and Thresholds, June 29, 2020, p. 7 and attachments <https://berkeleyca.gov/sites/default/files/2022-02/VMT-Criteria-and-Thresholds.pdf>, last accessed on February 21, 2024.

³⁶ Gov. Code § 65589.5(h)(6)(D)(i)(III)

³⁷ 14 Cal. Code Reg. § 15332

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Here, the City has already conclusively established that the Project is consistent with the applicable general plan and zoning standards, given that no notice or other documentation was provided to the applicant within 30 days after the City deemed the zoning application complete.³⁸ The site is approximately one-half acre and, as noted above, has no potential habitat value.

The applicant submitted a traffic report with the zoning application to confirm that the Project meets the City's local VMT threshold and is screened from further review due to its location within a transit priority area. Concurrently submitted with this letter are additional reports confirming that the Project will not result in impacts related to air quality, noise and water quality.

B. Substantial evidence supports the Class 31 exemption.

While the Class 32 exemption is sufficient for clearing this Project from environmental review, the Class 31 exemption also applies here. Class 31 "consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings."³⁹ The Historic Resources Evaluation recently conducted for the Project site, and submitted as part of the zoning application, establishes the remaining historical context of the Project site. The Project Impact Analysis (PIA) analyzes the Project in connection with the site's historical context and with the proposed Shattuck Avenue Downtown Historic District. The PIA concludes that the Project will not cause a significant impact on any historical resources. In connection with that finding, the PIA establishes that implementation of the Project will be consistent with the Secretary of Interior's Standards for Rehabilitation pursuant to the SOI Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, & Reconstructing Historic Buildings (1995, rev. 2017).

C. Substantial evidence supports the finding that no exceptions may be found to the Class 32 or Class 31 CEQA exemptions for this Project.

Under CEQA, an exception may prohibit the application of a categorical exemption if the Project (a) is located in an environmentally sensitive area; (b) causes cumulative impacts due to successive projects implemented of the same type, in the same place; (c) causes a significant impact due to unusual circumstances; (d) causes damage to scenic resources within a state scenic highway; (e) is on the "Cortese List" of hazardous sites; or (f) causes a substantial adverse change in the significance of a historical resource.⁴⁰

None of these exceptions apply here. The Project is located in Downtown Berkeley, and does not contain environmentally sensitive features, as the building envelope is virtually coextensive with the entire parcel. There are no cumulative impacts resulting from the City's implementation of the Downtown Area Plan, which the City adopted for the purpose of *reducing* environmental impacts, such as vehicle-miles traveled, by locating higher density housing near high-quality public transit and near the University of California, Berkeley campus. There are no unusual circumstances associated with this Project, as it proposes a high-quality mixed-use development in the Downtown Berkeley core area, consistent with the goals of the Downtown

³⁸ Gov. Code § 65589.5(j)(2)(A)(i)

³⁹ 14 Cal. Code Reg. § 15331

⁴⁰ 14 Cal. Code Reg. § 15300.2

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Area Plan. The site will cause no impacts to scenic resources within a state scenic highway (to the extent this criterion even applies after the enactment of SB 743), and the site is not located on the Cortese List. With regard to historical resources, the PIA submitted concurrently with this letter confirms that the Project will not have an impact on any mandatory or potential historical resources, and that implementation of the Project will be consistent with the SOI Standards for Rehabilitation. Given the project's eligibility for a Class 31 exemption, and the findings in the PIA, the Project cannot legally be deemed to have a significant impact on historical resources.

As a result, substantial evidence in the zoning application, materials submitted concurrently with this letter, and the record of proceedings as a whole supports the finding that there are no impacts to historical resources, unusual circumstances, nor any other exceptions that could apply to the Class 31 and Class 32 exemptions for this Project.

In summary, this Project meets all of the criteria under the HAA to qualify as an eligible high-density residential infill project subject to an expedited CEQA exemption under AB 1633.

Given the mandatory effect of the HAA as to this Project, the applicant requests that the City find that the Project is subject to the Class 32 and Class 31 CEQA exemptions and that there are no applicable exceptions to these exemptions. While up to 90 days may be allowed for this decision, the applicant respectfully requests that a decision be made sooner, if possible. As noted above, there is no basis that would justify the City in needing an additional 90 days to respond, given that there is no basis for seeking a peer review of the submitted studies, or preparing additional studies to support the Class 32 exemption.

Thank you for considering this request and please do not hesitate to contact me if you have any questions regarding the applicability of the mandatory Class 32 and Class 31 CEQA exemptions under AB 1633 for this Project.

Very truly yours,



Robin R. Baral
Senior Counsel

cc: Farimah Brown, City Attorney
Anne Hersch, Planning Manager
Client

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January 13, 2025

Mark Numainville, Berkeley City Clerk
Adena Ishii, Mayor
and Members of the Berkeley City Council

Subject: Appeal of Use Permit #ZP2023-0079

Mr. Numainville, Mayor Ishii, and Councilmembers:

On behalf of unincorporated association Save the UA Berkeley, I appeal the Zoning Adjustments Board decision of December 12, 2024. ZAB approved Use Permit #ZP2023-0079 for the project at 2274 Shattuck Avenue. Despite the project's substantial proposed demolition of the historic 1932 Berkeley United Artists movie theater, ZAB relied on a categorical exemption from CEQA. In compliance with the ZAB approval, this appeal is being filed before 5 p.m. on January 13, 2025.

As I have not appeared before this Council for many years, by way of brief re-introduction my law practice has focused on CEQA issues for over 40 years in matters often involving historic resources. These include academic, legislative, administrative, and judicial forums. Some of the fifty published cases in which I have represented CEQA petitioners in trial and appellate courts include *Sierra Club v. County of Fresno*, *Friends of the San Mateo College Gardens v. San Mateo County Community College District*, *Berkeley Hillside Preservation v. City of Berkeley*, *Sierra Club v. San Joaquin LAFCO*, and *Friends of Sierra Madre v. City of Sierra Madre*, at the California Supreme Court, and *Save the Capitol, Save the Trees v. California Department of General Services*, *Preservation Action Council of San Jose v. City of San Jose*, *Pocket Protectors v. City of Sacramento*, *Protect Niles v. City of Fremont*, and *Stanislaus Natural Heritage Project v. County of Stanislaus*, at the Courts of Appeal.

As the Council knows, CEQA review is of particular importance when projects substantially impact historic resources, many of which are adaptively reused after analysis of feasible mitigation measures and alternatives. While fundamental project objectives may often be achieved while avoiding significant impacts, no CEQA analysis at all occurs when projects proceed via categorical exemption. For this project, for example, there was no consideration of potential alteration to provide substantial housing without significant demolition — such as a ground level expansion or a steel frame structure rising high above the theater — as there was no CEQA process.

To ensure review of options for mitigation measures or alternatives when appropriate, specific *exceptions* apply to categorial exemptions, including one that applies here:

CEQA Guidelines, § 15300.2 (f):

Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

AB 1633 does not exempt CEQA compliance for this project under the facts. Under state law, UA Berkeley qualifies as a “mandatory” historic resource vis-à-vis its intact listing in the California Register of Historical Resources. (Public Resources Code, § 21084.1.) The ZAB approval of the use permit accurately recites the undisputed fact that the theater structure is a historic resource. Its California Register listing and eligibility for the National Register of Historic Places remain undisturbed by actions of the City’s Landmarks Preservation Commission, and the State of California formally recognizes that the historic status encompasses more than the façade.

The substantial demolition of UA Berkeley would cause a substantial adverse change in its historic significance. Save the UA Berkeley will reference expert evidence before ZAB that the historic resource exemption *exception* cited above applies, without contrary substantial evidence, and that this appeal should be granted.

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Save the UA Berkeley
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Other grounds for appeal include that the categorical exemption is not consistent with the Downtown Plan as required, including policies for protection and expansion of historic theaters that specifically reference UA Berkeley. Further, as the project description relied upon in ZAB's review is not finite or stable, it is inadequate for consideration for categorical exemption, per the applicant's recent public assertions that the application will be substantially modified.

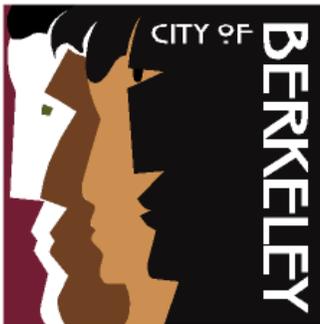
Save the UA Berkeley also asserts a potential due process violation in the ZAB proceedings based on a representation in a letter to ZAB on December 10, 2024 (Supplemental Communications, #6); to wit: "the City approved the Class 32 categorical exemption in October of 2024 *after deliberation by the City Council* and in consultation with the City Attorney." (Italics added.) To the best of appellant's knowledge there has been no public review before any City Council deliberation regarding the subject categorical exemption. It appears that ZAB was also not provided with all relevant City reports from architectural historians regarding the UA Berkeley.

Save the UA Berkeley looks forward to presenting its appeal.

Thank you.

Sincerely,


Susan Brandt-Hawley



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
DECEMBER 12, 2024

2274 Shattuck Avenue

Use Permit #ZP2023-0079 to demolish the commercial building (preserving and renovating the front façade and lobby), and construct a 17-story (183 feet, plus 5-foot parapet), 214,032-square-foot, mixed-use residential building with 227 dwelling units (including 23 Very Low-Income Density Bonus qualifying units), and one ADA parking space.

I. Background

A. Land Use Designations:

- General Plan: DT – Downtown; Downtown Area Plan
- Zoning: C-DMU (Corridor) – Downtown Mixed-Use Commercial District – Corridor Sub-Area

B. Zoning Permits Required:

- Use Permit under BMC Section 23.326.070(A) to demolish a non-residential building
- Use Permit under BMC Section 23.204.020(A) to construct a new mixed-use residential development
- Use Permit under BMC Section 23.204.020(A) to construct dwelling units
- Use Permit under BMC Section 23.204.030(B)(1) to create new floor area of 10,000 square feet or more
- Use Permit under BMC Section 23.204.130(E)(1) to exceed the maximum building height limit, up to 75 feet (plus 5-foot parapet, by right)
- Use Permit under BMC Section 23.04.130(E)(3)(b) to modify front and side setback requirements
- Administrative Use Permit under BMC Section 23.304.050(A) to exceed building height limits with rooftop architectural elements which exceed the maximum height limit for the district

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

- Concession – none.

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- Waiver of BMC Section 23.04.130(E)(1) to exceed building height limits – to be 183 feet to roof (plus 5-foot parapet, by right), where 75 feet is the limit (plus 5-foot parapet by right)
- Waiver of BMC Section 23.204.130(E)(3)(b) to waive front and side setback minimums
- Waiver of BMC Section 23.204.130(E)(3) to increase front setback maximum to 7-foot, 1 inch, where 5 feet maximum is required, at 0-20-foot building height;
- Waiver of BMC Section 23.204.130(E)(3)(b)(i) to exceed 120 feet in width in diagonal measurement above 120 feet in height – to be 178 feet, 9 inches in width, where 120 feet is required
- Waiver of BMC Section 23.204.130(E)(4) to reduce the usable open space requirement – to provide 7,737 square feet, where 18,160 square feet is required
- Waiver of BMC Section 23.322.090(A) to provide 72 long term residential bicycle parking, where 210 is required

D. The California Environmental Quality Act (CEQA) Exemption Determination: Pursuant to Government Code Section 65589.5, it is staff's determination that the project is categorically exempt under Section 15332 ("Infill Development Projects") of the CEQA Guidelines.

E. Project Recommendation: Approve Use Permit #ZP2023-0079, pursuant to BMC Section 23.406.040(D).

F. Parties Involved:

- Applicant Isaiah Stackhouse, 2421 Fourth St., Berkeley, CA 94710
- Property Owner 2274 Shattuck QOZB, LLC, C/O JP Walsh, 2539 Telegraph Avenue, Suite 101, Berkeley CA 94704

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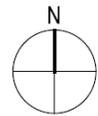
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Figure 1: Zoning Map



Legend

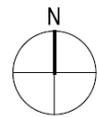
-  AC Transit Bus Route
- C-DMU: Downtown Mixed-Use District
 - Core: C-DMU Core Sub-Area
 - Buffer: C-DMU Buffer Sub-Area
 - Corridor: C-DMU Corridor Sub-Area
 - Outer Core: C-DMU Outer Core Sub-Area



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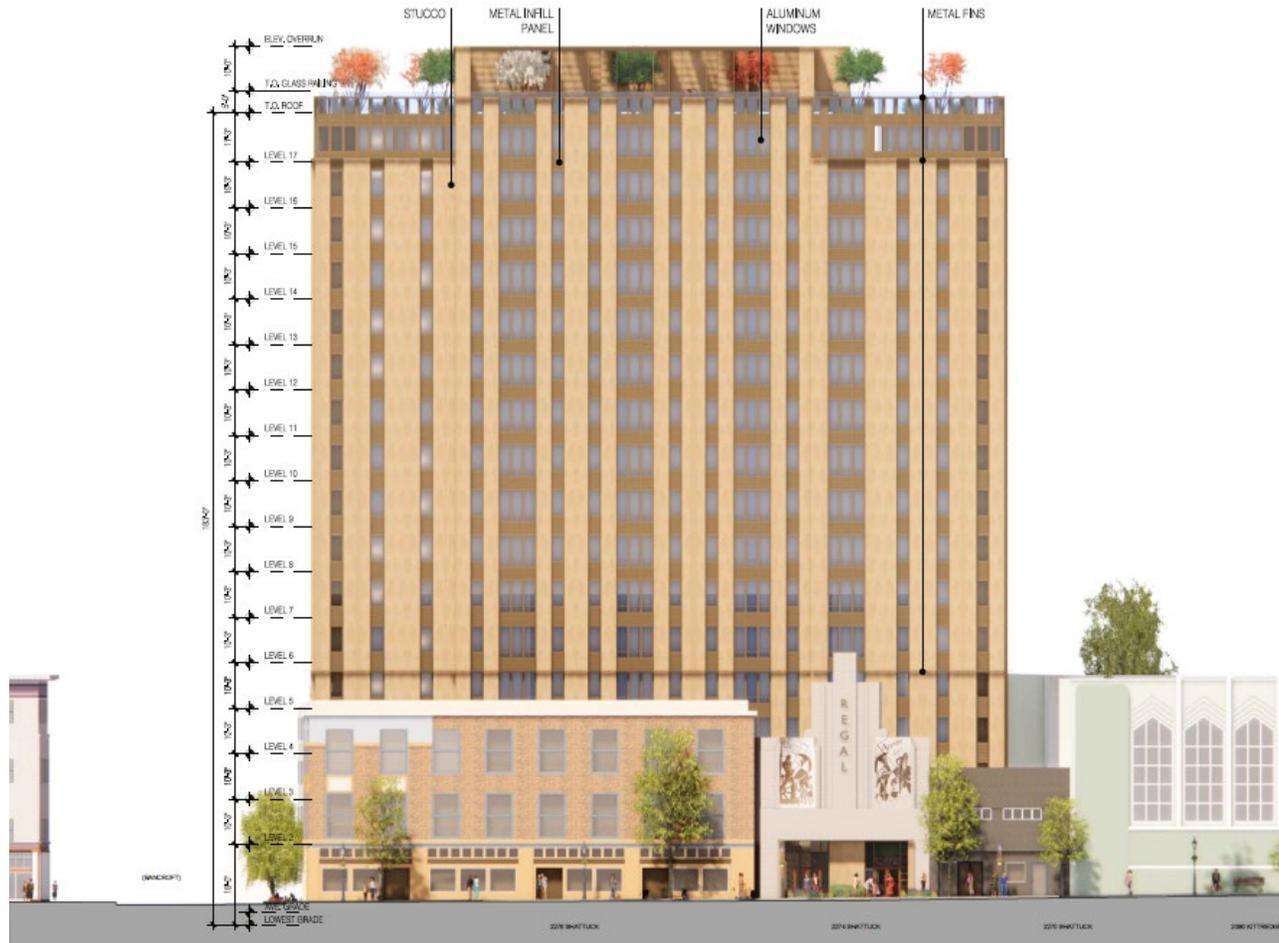
Figure 2: Aerial View of Site



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Figure 3: Shattuck Avenue Street (East) Elevation



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Figure 4: Bancroft Way (South) Elevation



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Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		United Artists Theater (closed)	C-DMU Corridor Sub-Area	DT
Surrounding Adjacent Properties	North	Government (Berkeley Public Library, Main Branch, City Landmark) / Restaurant	C-DMU Corridor Sub-Area	
	East	Commercial (Tupper and Reed, Hezlett's Silk Store, City Landmarks) / Mixed-use Commercial (retail and offices, Masonic Temple City Landmark)	C-DMU Outer Core Sub-Area	
	Southeast	Mixed-use Commercial (retail and offices, Morse Block Building City Landmark)	C-DMU Corridor Sub-Area	
	West	Government (Berkeley Public Library)	C-DMU Buffer Sub-Area	
	South	Multi-family Residential (Broad House and Broad Apartment Building City Landmarks)/ Commercial (Corder Building City Landmark)	C-DMU Buffer / Corridor Sub-Area	

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Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee & Affordable Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. & 66,617-N.S.)	No	These fees apply to projects with more than 7,500 square feet of net new non-residential gross floor area. The project provides no net new non-residential gross floor area. Therefore, the project is not subject to these fees.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	Yes	The project vested policies in place at the time of submittal of an SB 330 Preliminary Application on November 29, 2022 and is therefore subject to this section. ^a To meet the requirements of BMC Section 22.20.065, the project will include 23 Very Low-Income units. The remainder of the mitigation will be paid in fee to the Housing Trust Fund. Prior to the finalizing the affordable unit Regulatory Agreement (prior to Certificate of Occupancy), affordable units in the building will be designated in floor plans to ensure distribution per BMC Section 22.20.065 requirements, and additional affordable in-lieu units may be added by the applicant to reduce the fee further.
Alcohol Sales/Service	No	The project is not proposing any alcohol sales or service.
Bird Safe Buildings (BMC Section 23.304.150)	No	The project was vested under the Housing Crisis Act of 2019 prior to the July 27, 2023 effective date of the ordinance, and therefore these provisions do not apply.
Coast Live Oaks	No	There are no oak trees on the project site.
Creeks	No	The project site is not within a creek buffer.
Density Bonus	Yes	The project would provide 23 Very Low-Income units, or 15 percent of the 151 Base Project units, and qualifies for a 50 percent density bonus, or 76 bonus units, under Government Code Section 65915. See Section III.B for discussion.
Green Building Score	Yes	The project is designed to achieve a Leadership in Energy and Environmental Design (LEED) - Gold (or equivalent) rating. The project is proposing GreenPoint Rated Silver certification, which is equivalent to LEED Gold.
Hard Hats (BMC Chapter 13.107)	No	The project was vested under the Housing Crisis Act of 2019 prior to the January 1, 2024 effective date of the ordinance, and therefore these provisions do not apply. ^a

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Characteristic	Applies to Project?	Explanation
Historic Resources	Yes	The project would involve the demolition of all but the front façade and lobby of the existing United Artists movie theater, which is listed in the California Register of Historical Resources. See Section IV.C for discussion of Landmarks Preservation Commission action, and Section V.A for Environmental Review.
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 VI.A 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 VI.B of this report for additional discussion on the sections of SB 330 that apply to the project.
Public Art on Private Projects (BMC Chapter 23.316)	Yes	The project is subject to the Percentage for Public Art on Private Projects Ordinance. The applicant is electing to provide pay the in-lieu fee (equal to 8% of total building permit valuation) to comply.
Rent Controlled Units	No	The project involves the demolition of non-residential structures and no rent-controlled units would be demolished.
Residential Preferred Parking (RPP)	No	The site is located in RPP zone "I". 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	No	The project site is not located in an area susceptible to liquefaction, as shown on the State Seismic Hazard Zones map. ^c No further study is required.
Soil/Groundwater Contamination	No	The project site is located within the City's Environmental Management Area. The project site is not listed on the Cortese List. ^d The applicant submitted a Phase I report which found no evidence of Recognized Environmental Conditions on the site. The applicant also submitted a Water Quality Impact Analysis, which concluded that the project would result in less than significant impacts to water quality after incorporation of the City's Standard COAs, compliance with the federal and State regulations, and compliance with City's plans, policies, and regulations. Standard Conditions of Approval related to hazardous materials would apply to the project.

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Characteristic	Applies to Project?	Explanation
Transit	Yes	The project site is served by multiple bus lines (local, rapid, and Transbay) that operate along Shattuck Avenue, one-half block west of the site and is two blocks away from the Downtown Berkeley Bay Area Rapid Transit (BART) Station.
<p>Notes:</p> <p>a. Project vested under SB 330 on/before April 1, 2023, prior to effective date of new inclusionary housing requirements and is therefore subject to the Affordable Housing Mitigations in BMC 22.20.065 that was in effect at the time of vesting.</p> <p>b. Government Code Section 65589.5(h)(2) "Housing development project" means a use consisting of any of the following: (A) residential units only, (B) mixed-use developments consisting of residential and nonresidential uses in which at least two-thirds of the square footage is designated for residential use, and (C) transitional or supportive housing.</p> <p>c. California Department of Conservation. DOC Maps: Geologic Hazards. Available: https://maps.conservation.ca.gov/geologichazards/</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
November 29, 2022 (vesting date)	SB 330 Preliminary Application complete
June 2, 2023	SB 330 Use Permit Application submitted
January 4, 2024	Use Permit Application deemed complete
February 1, 2024	Demolition Referral and Landmark Initiation Meeting at LPC
March 4, 2024	Assembly Bill 1633 Notice received from Applicant supporting CEQA Categorical Exemption
October 4, 2024	CEQA Categorical Exemption determination by staff – Class 32 Categorical Exemption "In-Fill Development Projects"
November 26, 2024	Public hearing notices mailed/posted
December 12, 2024	ZAB Hearing

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Table 4: Development Standards

C-DMU Standards, Corridor Sub-Area		Existing	Change	Proposed	Permitted/Required	
Lot Area (sq. ft.)		22,112	--	22,112	n/a	
Gross Floor Area (s.f.)		23,289	+190,743	214,032	n/a	
Commercial Floor Area (s.f.)		23,289	-22,424	865	n/a	
FAR		1	+8.7	9.7	n/a	
Dwelling Units		n/a	+227	227	n/a	
Bedrooms		n/a	+634	634	n/a	
Building Height ¹	Maximum	72'	+111'	183' (plus 5' parapet)	40' min./60' max. (75' max. w/use permit, 5' max. parapet by right)	
	Stories	2	+15	17	n/a	
Building Setbacks ²	Front (Shattuck) ³	0'	--	0' to 7'-1"	0'-5' (bldg. ht.≤20')	
		0'	--	0'	0' (bldg. ht.>20' ≤75')	
		n/a	--	121'-4"	15' (bldg. ht.>65') ⁴	
	Front (Bancroft)	0'	--	0'	0' (bldg. ht.≤20')	
		0'	--	0'	5' (bldg. ht.>20' ≤75')	
	Interior Side (north)	0'-65' from frontage	0'	--	0'	0' (bldg. ht.≤75')
		>65' from frontage	n/a	n/a	n/a	5' (bldg. ht.>75' ≤120')
	Interior Side (west)	0'-65' from frontage	0'	+10'	10'	15' (bldg. ht.>120')
		>65' from frontage	0'	+10'-3"	10'-3"	0' (bldg. ht.≤20')
	Interior Side (east)	0'-65' from frontage	1'-3"	+8'-9"	10'	5' (bldg. ht.>75' ≤120')
		>65' from frontage	1'-3"	+8'-9"	10'	15' (bldg. ht.>75')

¹ A use permit to allow height up to 75 feet (is included in the Base Project for the calculation of the density bonus, and is not a requested waiver. Additional height beyond 75 feet is being requested as a waiver.

² The use permit to allow modified front and side setbacks below 75 feet building height is included in the Base Project for the calculation of the density bonus, and is not a requested waiver. Setback reductions above 75' are being requested as waivers.

³ The existing theater marquee (to be preserved) overhangs approximately 18" into the right-of-way.

⁴ Per BMC 23.204.130(E)(3)(d)(iv), "For lots with frontage on the Shattuck Avenue right-of-way south of Durant Avenue, a new building shall be set back 15 feet from the Shattuck Avenue property line where the building exceeds 65 feet in height".

█ = Waiver requested to modify the district standard.

Abbreviations: s.f.= square feet; d.u.=dwelling unit; min.=minimum; max.=maximum; n/a = not applicable; % = percent; bldg. ht.=building height; ft = feet ('); in. = inches (")

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Table 4: Development Standards (Continued)

C-DMU Standards, Corridor Sub-Area			Existing	Change	Proposed	Permitted/Required
Building Setbacks ²	Interior Side (south)	0'-65' from frontage	0' n/a n/a	-- n/a n/a	0' n/a n/a	0' (bldg. ht.≤75') 5' (bldg. ht.>75' ≤120') 15' (bld1g. ht.>120')
		>65' from frontage	0' 0' n/a	-- -- n/a	0' 0' 0'	0' (bldg. ht.≤20') 5' (bldg. ht.>20' ≤75') 15' (bldg. ht.>75')
	Diagonal Dimension (above 120' height)	n/a	n/a	178'-9"	120' max. (bldg. ht.>120')	
Lot Coverage (%)			94	-20	74	n/a
Usable Open Space (s.f.)			n/a	n/a	7,737	18,160 min. (80 s.f./d.u.)
Privately Owned Public Open Space (s.f.)			n/a	n/a	17	17 min. (1 s.f./50 s.f. of commercial)
Parking	Commercial (865 sq. ft.)		0	--	1	0 min.*
	Residential		n/a	n/a	0	0 min./114 max. (0.5 spaces/du max.)
	Carshare		n/a	n/a	n/a	n/a
	Total		0	--	1	0 min./114 max.
Bicycle Parking	Commercial - Short Term (865 sq. ft.)		0	--	2	1 (1 space/2,000 s.f. commercial)
	Residential - Long Term (313 bedrooms)		n/a	n/a	72	210 min. (1 space/3 bedrooms)
	Residential - Short Term (313 bedrooms)		n/a	n/a	16	16 min. (1 space/40 bedrooms, or 2)
	Total		0	n/a	72/18 (long term/short term)	210/17 min. (long term/short term)
<p>² The use permit to allow modified front and side setbacks below 75 feet building height is included in the Base Project for the calculation of the density bonus, and is not a requested waiver. Setback reductions above 75' are being requested as waivers. * Pursuant to Assembly Bill 2097, no parking is required for residential or commercial uses on a site located within ½-mile of public transit.</p> <p>█ = Waiver requested to modify the district standard. Abbreviations: s.f.= square feet; d.u.=dwelling unit; min.=minimum; max.=maximum; n/a = not applicable; % = percent; bldg. ht.=building height; ft = feet ('); in. = inches (")</p>						

II. Project Setting

A. Neighborhood/Area Description: The project site is located on the west side of Shattuck Avenue and north side of Bancroft Way, within the Downtown Mixed-Use District (C-DMU), Corridor Sub-Area, as identified in the City's Downtown Area Plan (DAP). The project site is surrounded by commercial, residential, institutional and mixed-use commercial/residential buildings ranging in height from one to five stories. Directly north is the Berkeley Public Library Main Branch, a City Landmark. Along Shattuck Avenue to the east are one- and two-story retail and restaurant uses, and a four-story, mixed commercial (retail and office) building. To the southeast, at the northeast corner of Shattuck and Bancroft is three-story, mixed commercial (retail and office) building, also known as the Morse Block Building, a City Landmark. To the west is a three-story, public library administrative building. To the south are residential buildings known as the Broad House and the Broad Apartment Building City Landmarks, Further southeast at the southwest corner of Shattuck and Bancroft, is a four-story commercial building known as the Corder Building City Landmark. (See Figure 1: Zoning Map and Figure 2: Aerial View.)

The project site is served by multiple bus lines (local, rapid, and Transbay) that operate along its frontage on Shattuck Avenue, and is two blocks away from the Downtown Berkeley Bay Area Rapid Transit (BART) Station, the University of California at Berkeley Shuttle, and a bike share station at the Shattuck Avenue and Center Street intersection.

B. Site Conditions/Background: The project site is associated with the address 2274 Shattuck Avenue and Assessor's Parcel Number 57-2028-3. The 22,112-square-foot (0.51-acre) project site is an irregular, L-shaped parcel that has a 36-foot frontage on Shattuck Avenue and a 104-foot, 6-inch frontage on Bancroft Way. The site is occupied by a 23,289-square-foot, movie theater (United Artists (UA) Theater) that was originally constructed in 1932 and operated until its closure in February 2023. The UA Theater is listed on the California Register of Historical Resources (CRHR), and was designated a City Landmark in March 2024. (See section IV.C for discussion).

III. Project Description

A. Proposed Project Details:

The project proposes to demolish the commercial building (UA Theater) on the landmarked site, and construct a mixed-use residential building that utilizes the State Density Bonus, with the following main components:

- Preservation and renovation of the UA Theater Shattuck façade and theater lobby
- 17 stories, 183 feet in height, plus 5-foot parapet
- 227 dwelling units – 32 studios, 49 two-bedroom, 80 two-bedroom, 66 four-bedroom
- 634 bedrooms total
- 23 Very Low Income (VLI) units

- 7,737 square feet of usable open space – ground-floor common space, private patios, roof deck
- 72-space bike room and 18 short-term bike parking spaces
- 865-square-foot, ground-floor café

B. Base Project and Density Bonus: By committing to provide 23 VLI units, the project is eligible for a density bonus under Government Code Section 65915. Under the City’s density bonus procedures, the Base Project was calculated to have 151 units, as the maximum allowable density for the site.¹ The Base Project has an average unit size of 917 square feet in a seven-story building. Twenty-three VLI units, or 15 percent of the Base Project, qualifies the project for a 50 percent density bonus or 76 bonus units. The resulting proposed project would be a 17-story building with 227 units, with an average unit size of 922 square feet (see Table 5: Density Bonus).

Table 5: Density Bonus – Government Code 65915

Base Project Units*	Qualifying Units	Percent Density Bonus	Number of Density Bonus Units*	Proposed Project Units
151	23 VLI (15 percent of BP)	50 percent	76 max. (50 percent x 151)	227
*Per Government Code 65915(q), all unit calculations are rounded up to the nearest whole number.				

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting the use permit application to the City on June 2, 2023, the applicant installed yellow Proposed Development Project signs at the project site.

On April 25, 2023 a virtual neighborhood outreach meeting was held by the applicant. Eleven members of the public attended and discussed questions about the lack of affordable housing in the City and the impact of the project to the downtown area, including questions on: the preservation of the entire historic movie theater building (as opposed to only the façade and lobby), the preservation of a downtown arts culture, the building design, construction impact, excessive building height and massing, empty storefronts, a decrease in quality of life, and inadequate parking.

Numerous letters and emails were received by staff during the application review period from individuals and organizations with concerns for the loss of the UA Theater building as a cultural and historic resource, the loss of movie theaters in the downtown, and

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

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arguing for rehabilitation of the building into a live performance venue. All correspondence received by staff during project review can be found at this link:

<https://aca.cityofberkeley.info/CitizenAccess/Default.aspx>

Click on Zoning tab; enter permit number #ZP2023-0079; click on the "Record Info" drop down menu; click on Attachments for a list of all application materials.

On November 26, 2024, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations., and to interested neighborhood organizations, and posted notices within the neighborhood in three locations. On December 2, 2024, two email correspondence and on December 4, 2024, one email correspondence was received by staff, expressing opposition to the demolition of the UA Theater and support for the rehabilitation of the building into a live performance venue.

No further communications regarding the project were received as of the writing of this staff report.

B. Design Review Committee:

This project proposes development in a non-residential zoning district; therefore, it is subject to review by Design Review Committee (DRC) pursuant to BMC Section 23.406.070(B)(1). The project was referred to the DRC for Preliminary Design Review on November 21, 2024. The DRC provided a favorable recommendation to ZAB with the following conditions and recommendations for Final Design Review (FDR) [VOTE (6-0-0-1) Kahn: recused]:

Recommendations

- Look at color palette at FDR; look for more contrast between the theater and the tower as this may highlight the theater.
- Consider more symmetry in the tower, with additional details to add interest and some asymmetry.
- Consider more reference in the tower to the theater structure.
- Look carefully at the Shattuck façade, including the blank horizontal band.
- Landmark Designation 'features to be preserved' should guide restoration.
- Consult an architectural historian to identify the original colors of the Landmark façade and consider colors that reference that palette.
- Interior of the landmarked building should be more open for more visual connection to the sidewalk.
- Consider the historic character of the interior space when finalizing the ground floor design.
- Consider an alternate location for building signage at FDR; building identification should come down to the horizontal band.
- Consider more transparency at the Shattuck entrance.
- Further develop the design of the tower façade; the shoulders, the parapet, and some wall and window ratios may need further refinement.

- Further develop the trellis design on the roof deck for shade and design consistency.
- Bird-safe glazing is recommended wherever possible, but at least at upper levels.
- Parking space on Bancroft is not recommended unless needed for an accessible space.
- Pollinator plants recommended at the front entry.
- Consider shading when selecting plants in the courtyard.
- Recommend that the applicant work closely with the Library Staff.
- Recommend that any public art be seen from the sidewalk.
- Consider a larger commercial space on Shattuck, and the main residential entry being on Bancroft.
- Recommending historic plaque on the Shattuck facade, consistent with LPC direction.

C. Landmarks Preservation Commission:

The existing building, known as the United Artists Theater, was constructed in 1932. In 2004, the building was found to be eligible for the National Register of Historic Places (NAHP) through survey evaluation. In 2006, the existing building was listed in the CRHR and determined eligible for the NAHP by a consensus through the Section 106 process. In 2015, the City's Shattuck Avenue Commercial Corridor Historic Context and Survey concluded that the subject building is located in a potential Historic District and serves as a contributor to the district.² Regal Cinemas, which inhabited the UA Theater, ceased operations in February 2023.

Because the project involves demolition of a commercial building over 40 years in age, the proposed demolition was referred to the Landmarks Preservation Commission (LPC) pursuant to BMC Section 23.326.070(C). In addition, a Landmark Initiation Application (LMIN2023-0003) was submitted on December 6, 2023. The LPC reviewed the demolition referral and the landmark initiation concurrently at a meeting on February 1, 2024.

On February 1, 2024, the LPC reviewed the demolition referral and Landmark Initiation Application and designated the building a City Landmark, with the following distinguishing features to be preserved and restored: the upper portion of the Shattuck Avenue building façade in relation to the overall height and massing of the façade, and the architectural and decorative features of the upper portion of the Shattuck Avenue building façade. The Notice of Decision (NOD) was issued and was effective on March 20, 2024.

The project's SB 330 Preliminary Application vested the site's historical resource status on November 29, 2022. The SB 330 Preliminary Application serves to vest for the project the policies, standards, and fees that are in effect at the time that it is complete. This includes the determination of whether the site is an historic site, which shall remain valid during the pendency of the housing development project for which the application was made.³ The preliminary application vested the site's status at the time – it was not a local historic

² The Historic District was never officially established by the City Council.

³ Pursuant to Government Code Section 65913.10(a).

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resource (City Landmark). Therefore, the LPC and the City are prohibited by state law from denying the project or imposing conditions related to cultural or historic resources protections on the project after the date on which the SB 330 Preliminary Application was complete. Although the site is currently a designated City Landmark, the requirements that typically apply do not apply to the project.

The project's impact on cultural resources under CEQA is not affected by the LPC determination. See Section V for a discussion of CEQA.

V. CEQA Categorical Exemption

On October 4, 2024, staff determined that the project is categorically exempt from the provisions of CEQA under Section 15332 ("Infill Development Projects") of the CEQA Guidelines, pursuant to Assembly Bill (AB) 1633. (See Attachment 1, Exhibit A.) AB 1633, which became effective on January 1, 2024, revised a provision in the Housing Accountability Act (HAA, Government Code Section 65589.5) that allows developers to file a petition to enforce the HAA's protections where a local agency fails to make a determination that the project is exempt from CEQA when it is eligible for the exemption.

The project applicant filed an AB 1633 Notice with the City on March 4, 2024 and attached technical reports that supported the project's eligibility for a Class 32 Categorical Exemption from CEQA and the inapplicability of any Exceptions to the exemption (CEQA Guidelines, Section 15300.2). (See Attachment 3.) Submitted technical reports included the following: Traffic Impact Analysis, Historic Resources Evaluation, Project Impacts Analysis, Air Quality Impacts Analysis, Noise Impact Analysis, and Water Quality Impact Analysis. All technical reports were peer reviewed by a CEQA consultant, and were revised or supplemented for adequacy.

Upon review of all evidence on the record, staff determined that the project would meet all of the requirements of the Class 32 Infill 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 would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
5. The site can be adequately served by all required utilities and public services.

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Further, staff determined that the project would not result in a substantial adverse change to the historical resource because it would preserve and rehabilitate the main character defining feature of the historical resource (the Art Deco upper façade on Shattuck Avenue). Thus, staff determined that the project would not meet the criteria for the historical resource exception to the use of a categorical exemption [CEQA Guidelines Section 15300.2(f)].⁴ Staff also determined that none of the other exceptions in Section 15300.2 apply to the project – (a) Location, (b) Cumulative Impact, (c) Significant Effect, and (d) Scenic Highways.

Staff issued an AB 1633 Determination Letter on October 4, 2024 with the determination that the project is exempt under the Class 32 Infill Exemption. 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. The deadline for the City's decision on the project was extended the by written mutual agreement with the applicant to the December 12, 2024 ZAB hearing. The ZAB must approve or disapprove the project at this hearing.

VI. Issues and Analysis

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

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

The project is a “housing development project” consisting of a 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 and/or Administrative Use Permits⁵ to allow building height over the district limit and rooftop architectural projections above the height limit, 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

⁴ CEQA Guidelines Section 15300.2(f). “Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.”

⁵ 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.”

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with respect to those units without basing its decision on the written findings under Section 65589.5(j), above.

As shown in Table 4, Development Standards, the project complies with the zoning standards. The project includes Use Permits or Administrative Use Permits to modify standards to represent the maximum allowable density on the site. There are no objective criteria in the permit findings; therefore, the project still complies with the HAA. The ZAB has the discretion to approve, deny or modify the request according to the zoning findings, provided the action does not reduce the project density or effectively deny the project by making it infeasible, unless the ZAB is also able to make the required findings for denial set forth under Section 65589.5(j), above.

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

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

1. **Government Code 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 December 12, 2024 ZAB Hearing represents the third public hearing for the proposed project since the project was deemed complete. The application must be approved or disapproved at tonight’s hearing. See Section VI.B.3 for details. One hearing must be reserved for a potential appeal to the City Council.

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

As discussed in Section IV.C, the United Artists Theater building at 2274 Shattuck Avenue is an historic resource that is on the CRHR, is eligible for listing on the NAHP, and was designated a City Landmark on March 20, 2024. The building was not a City Landmark (local historic resource) at the time that the project's SB 330 Preliminary Application was complete on November 29, 2022. The City determined the project to be exempt from environmental review under CEQA, despite the presence of an historic resource, because the project would preserve and rehabilitate the main character defining feature of any historical resource. Standard conditions of approval have also been included to halt work if any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

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 California Environmental Quality Act. Staff determined that the project was categorically exempt from CEQA review (under Class 32, CEQA Guidelines, Section 15332, "Infill Development Project") on October 4, 2024. The 60-day deadline for the City's decision on the project was extended by written mutual agreement with the applicant to the December 12, 2024 ZAB hearing. The application must be approved or disapproved at tonight's hearing.

C. Density Bonus Waivers and Concessions: The project is entitled to three concessions (or incentives), under Government Code Section 65915(d) for providing at least 15 percent of total units to very low-income households, and an unlimited number of waivers, under Section 65915(e).

1. **Concessions:** A concession or incentive is a modification of a zoning code requirement that results in identifiable and actual cost reductions to provide for affordable housing costs. The applicant is requesting no concessions for the project.
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. Waivers for height (maximum height and rooftop projections), front and side setbacks, diagonal width, private (usable) open space, and long-term bicycle parking are requested. The waivers are requested because they are necessary to physically accommodate the additional 76 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.

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

Although proposed demolition of the majority of the existing movie theater building would replace the existing commercial building with a mixed-use residential building that would reduce the amount of commercial floor area on the site, the project would not be materially detrimental to the commercial needs and public interest of the neighborhood because the movie theater business had ceased operations in February 2023, and the new project would contain a ground-floor café to bring more services to residents and workers in the vicinity. The project would also provide a significant amount of new housing to the neighborhood and the City at large. The existing structure to be demolished is a 23,289-square-foot movie theater. This commercial use would be replaced by an 865-square-foot café and 227 new residential units, including 23 very low-income affordable units. The demolition is required in order to allow the proposed mixed-use residential project to be built. The proposed development would be compatible with the C-DMU District purposes and the adjacent permitted uses, as discussed in the Section VII, Other Considerations.

In addition, if demolishing a non-residential building more than forty years old, the demolition may be allowed if the LPC, upon review, does not recommend against granting the permit. The LPC reviewed the demolition referral for the project and did not recommend against the demolition permit.

VII. Other Considerations (Zoning and Land Use Considerations)

The following analyses of conformance with district purposes, the Downtown Area Plan (adopted 2012), 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 VI.A for discussion of the HAA. All permits are subject to the C DMU District permit findings and General Non-Detriment findings discussed in sections VII.A and VII.B.

A. Findings for Use Permits in C-DMU District: Pursuant to BMC Section 23.204.130(l), in order to approve any Use Permit in the district, the Board must make the findings that the proposed use or structure:

1. *Is compatible with the purposes of the district:*

The purpose of the C-DMU Downtown Mixed-Use District is to implement the vision and goals of the Downtown Area Plan (DAP). Summarized below are the principal goals of the DAP that are applicable to the project, in each of the main areas of concentration: Environmental Sustainability and Access, Land Use, Housing and Community Health and Services, Economic Development, Historic Preservation and Urban Design, and Streets and Open Space.

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

The project would be a high-density development in proximity to regional transit, shops and amenities, and would provide more housing in the Downtown to increase access to local services and amenities by foot, by bicycle and via transit, while promoting public transit as an efficient and attractive choice through its location and through its Transportation Demand Management measures and other associated Conditions of Approval. The project is designed to achieve GreenPoint Rated Silver certification, which is equivalent to LEED Gold, and satisfies this DAP requirement. The project would also comply with the State’s Model Water Efficient Landscape Ordinance (MWELo), and would feature a number of native plant species in its landscape palette.

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

The mixed-use residential project, which includes 23 VLI units, would add affordable housing to the Downtown area. The rehabilitated movie theater front façade and café (repurposed from a theater lobby) would contribute to the area’s vitality, livability, sustainability, and character. New street trees and landscaping along Bancroft Way would add to the cultivation of the Downtown as an attractive residential neighborhood.

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

The project will involve construction of a mixed-use residential building with a total of 227 dwelling units, including 23 VLI units. The project would expand the supply of affordable housing and contribute to a thriving, livable, diverse residential neighborhood with a mix of supportive uses in Downtown.

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

The project would introduce 227 new residential units, in a mix of unit sizes – studio, two-bedroom and four-bedroom units – and 23 very low-income units to the neighborhood, to help broaden the range of household incomes in the area and contribute to diversifying housing opportunities for households of different ages, incomes, varying sizes, and abilities in the Downtown, while preserving the character of the Downtown Historic neighborhood through the rehabilitation of the UA Theater façade.

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

The 2274 Shattuck building, also known as the United Artists Theater, is an historic resource listed in the CRHR and was found to be eligible for NAHP designation, as well as a contributor to the Shattuck Avenue Commercial Corridor Historic District.⁶

⁶ The Historic District was never officially established by the City Council.

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The LPC designated the building a City Landmark in February 2024, with the upper portion of the Shattuck Avenue building façade as the distinguishing features to be preserved and restored (see Section IV.C for discussion). The project proposes to demolish the entire building, excepting the Shattuck Avenue façade and theater lobby, which would be rehabilitated and repurposed.

The DRC evaluated the project design's consistency with DAP Design Guidelines and its impact to the Shattuck Avenue Downtown Historic District, and conditioned the project approval to provide further design refinements at FDR, in order to enhance compatibility of building design with the Downtown District.

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

The project would include new street trees along Bancroft Way and 7,737 square feet of private open space in the form of private patios, ground-floor common space and a roof deck for residents, that would comply with the State's MWEL0 requirements. In addition, the project would be required to contribute to the Streets and Open Space Improvement Plan (SOSIP) fund via Condition of Approval.

2. *Is compatible with surrounding uses and buildings.*

Uses on properties surrounding the project site include retail, the Berkeley Public Library, restaurants, retail and offices, and multi-family residential. The project features primarily a multi-family residential use with a ground-floor café, a similar mixture of uses that already exists on the site and in the vicinity. Thus, the project would not introduce new land uses that do not already exist in the Downtown, and would further the vision and goals of the DAP. The DRC approved the project with conditions for further design refinement, and deemed the project consistent with DAP design guidelines.

B. General Non-Detriment Finding: BMC Section 23.406.040 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 consistent with all applicable C-DMU District standards and qualifies for concessions and waivers for the listed district standards granted pursuant to State Density Bonus, Government Code, Section 65915.

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2. **Shadows:** According to the shadow studies submitted for the project (see Attachment 2, Project Plans – Sheets A0.4A through A0.4C), new shadow impacts would occur: a) in the summer months in the hours after sunrise on the residential buildings at 2120 Bancroft Way and 2020 Kittredge Street to the west, and in the hours before sunset on the mixed-use residential buildings at 2295 and 2319 Shattuck Avenue to the east; and b) in the winter months in the hours after sunrise on the residential buildings at 2020 Kittredge Street to the west, and in the hours before sunset on the mixed-use residential building at 2231 Shattuck Avenue to the east. All other new shadows would impact commercial buildings in the vicinity. The extent of the new shadow impact from the project on the site's adjacent areas would not be unreasonable for a development in the dense, downtown district Corridor Sub-Area that allows building heights up to 60 feet by right (75 feet with use permit), with 0 to 5-foot setbacks from property lines, by right.

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. The proposal would include a waiver for additional height beyond the district height limits to accommodate the density bonus units (see Section VI.C for a discussion of waivers) and allow a 183-foot-tall, 17-story building. Overall, the shadow impacts from the project would be reasonable and not detrimental.

3. **Non-Detriment:** 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.

C. Administrative Use Permit for Architectural Projections to Exceed Height Limit: BMC Section 23.304.050(A) requires an Administrative Use Permit for roof-top projections, such as mechanical penthouses, elevator equipment rooms or stair towers, that would exceed the maximum height limit. Such projections are limited to no more than 15 percent of the average floor area of all of the building's floors and cannot be used as habitable space or for commercial purposes. The project would include mechanical and staircase/elevator penthouses and an architectural frame totaling 1,891 square feet on the roof that would extend 15 feet over the roof height. These areas represent 15 percent of the 12,659-square-foot average of all the floor areas. The total area of rooftop projections does not exceed the limit of 15 percent of the average floor area, and are therefore permissible.

D. Use Permit to Reduce Setbacks: Pursuant to BMC Section 23.204.130(E)(3), the ZAB may approve a permit to modify setbacks upon finding that the modifications will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.

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The project requests reduced side setback (65 feet from the front) above 20 feet in building height in the Base Project. The findings in this section are not applicable to reduced setbacks above 75 feet building height that are requested waivers in the proposed Density Bonus project. The setback encroachment in the Base Project would result in a minimal contribution to new shadow impact relative to the increase in shadow impact from the Density Bonus project height and reduced setbacks that are requested as waivers. See section VII.B for shadow study analysis. Thus, the setback reduction the Base Project would not unreasonably limit solar access.

A wind study was not provided to satisfy this finding. However, wind studies have been prepared for projects in the vicinity that are much taller and have similar setback reductions, and which can be used for reference analysis. A Wind and Comfort Impact Analysis was prepared in March, 2022 for an approved use permit at 2190 Shattuck, a site that is two blocks to the north of the subject site, for a 25-story building proposal with 0 to 5-foot setbacks up to 268 feet in height, that concluded that the building would not cause significant additional wind impact on the street level at Shattuck Avenue and Allston Way. Staff believes that the proposal at 2274 Shattuck Avenue for a 17-story building with similar setback reductions up to 183 feet in height, would also result in insignificant changes to wind patterns on the sidewalk at the site along Shattuck Avenue or Bancroft Way.

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

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7-A Neighborhood Quality of Life, Action: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
4. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

Staff Analysis: The project would reinforce the City's effort to redevelop underutilized sites in a way that would increase the quality of the built environment and provide new housing and commercial opportunities. The project would further improve the neighborhood character and quality of life by increasing existing street level activity and bringing in new residents and new business patrons along a major commercial and transit corridor.

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5. Policy LU-23–Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.

Staff Analysis: The project would help to encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, the university, jobs, and basic goods and services. Multiple transit lines operate along the Shattuck Avenue frontage and the Downtown Berkeley BART station, which has connecting service throughout the Bay Area, is located two blocks from the project site.

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

Staff Analysis: The project would provide 23 VLI units in addition to increasing the City’s housing supply by adding a total of 227 new dwelling units in close proximity to the university and transit.

7. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)

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

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

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

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

The project would be consistent with the aforementioned goals and policies of the Downtown Area Plan. The project is for a 227-unit high density, mixed-use building that

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provides 23 dwelling units for very low-income households and a ground-floor café. The project is located close to other commercial uses, shopping and restaurants, and in proximity to multiple modes of public transit.

VII. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2023-0079, pursuant to BMC Section 23.406.040(D) subject to the attached Findings and Conditions (Attachment 1).

Attachments:

1. Findings and Conditions
 - a. Exhibit A: AB 1633 CEQA Exemption Determination Letter, dated October 4, 2024
2. Project Plans, received December 8, 2023
3. AB 1633 Letter from Applicants, dated March 4, 2024

For attachments to the letter, go to the link:

<https://aca.cityofberkeley.info/CitizenAccess/Default.aspx>

Click on Zoning tab; enter permit number #ZP2023-0079; click on the "Record Info" drop down menu; click on Attachments for a list of all application materials.

4. Downtown Area Plan MMRP
5. Notice of Public Hearing
6. Comment Letters Received: Stillwater, Zephyr, and Bowden.

Staff Planner: Sharon Gong, sgong@cityofberkeley.info, (510) 981-7429



Administrative Record

This attachment is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley's Website
<http://www.berkeleyca.gov>

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL
ZAB APPEAL: 2274 SHATTUCK AVENUE, USE PERMIT #ZP2023-0079**

The public may participate in this hearing by remote video or in-person.

Notice is hereby given by the City Council of the City of Berkeley that on April 22, 2025 at 6:00 p.m. a public hearing will be conducted to consider an appeal against a decision by the Zoning Adjustments Board approval of Use Permit #ZP2023-0079, to demolish the commercial building (preserving and renovating the front façade and lobby), and construct a 17-story (183 feet, plus 5-foot parapet), 214,032-square-foot, mixed-use residential building with 227 dwelling units (including 23 Very Low-Income Density Bonus qualifying units), and one ADA parking space.

The hearing will be held on April 22, 2025 at 6:00 p.m. in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

For further information, please contact Sharon Gong, Principal Planner, at (510) 981-7429 or SGong@berkeleyca.gov.

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of April 14, 2025. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

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

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at (510) 981-6900 or clerk@berkeleyca.gov for further information.

Mailed by: April 8, 2025

Noticed Pursuant To: Berkeley Municipal Code Section 23.404.040(B), Public Hearing Notice

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ATTACHMENT 7

I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on April 14, 2025.

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Mark Numainville, City Clerk

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

*If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage prior to the public hearing.*