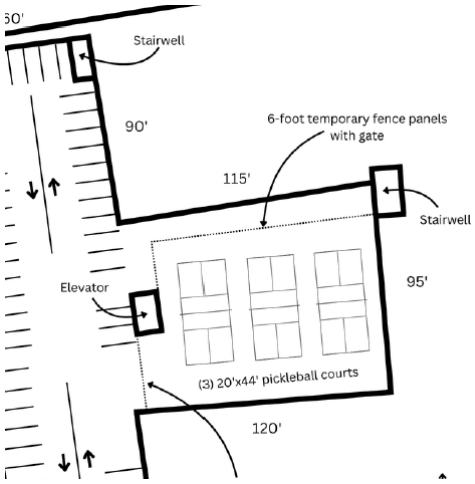
Zoning Adjustments Board Staff Report

ZP2025-0040 **Use Permit for a Project at 2061 Allston Way** **December 11, 2025**



Quick Facts

Applicant: Jim Jenkins; Neighborhood Pickleball

Property Owner: First Shattuck LLC

Project Address: 2061 Allston Way

Site Size: 7,900 sq. ft.

GP Land Use: Downtown

Zoning: C-DMU Core

CEQA: Categorically Exempt pursuant to Section 15301 ("Existing Facilities") of the CEQA Guidelines

Date Submitted: April 23, 2025

Date Deemed Complete: May 27, 2025

Project Planner: Joshua Muller

Project Description:

The applicant is seeking approval to establish and operate a commercial recreation outdoor pickle ball court by removing 35 parking spaces and replacing with three pickle ball courts to the top level of an existing parking garage.

Zoning Permits Requested:

A Use Permit Public Hearing is required for the following permits:

1. **Establish New Use.** BMC Section 23.204.040(A), **"Use-Specific Permit Requirements and Regulations"** to establish an outdoor commercial recreation facility of any size within the C-DMU District.

Staff Recommendation:

Staff recommends that ZAB determine the project is exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities") and approve ZP2025-0040 pursuant to Section 23.406.040 (E) (1-5) "**Findings for Approval**" and subject to the attached Findings and Conditions of Approval.

ZONING MAP (not to scale)

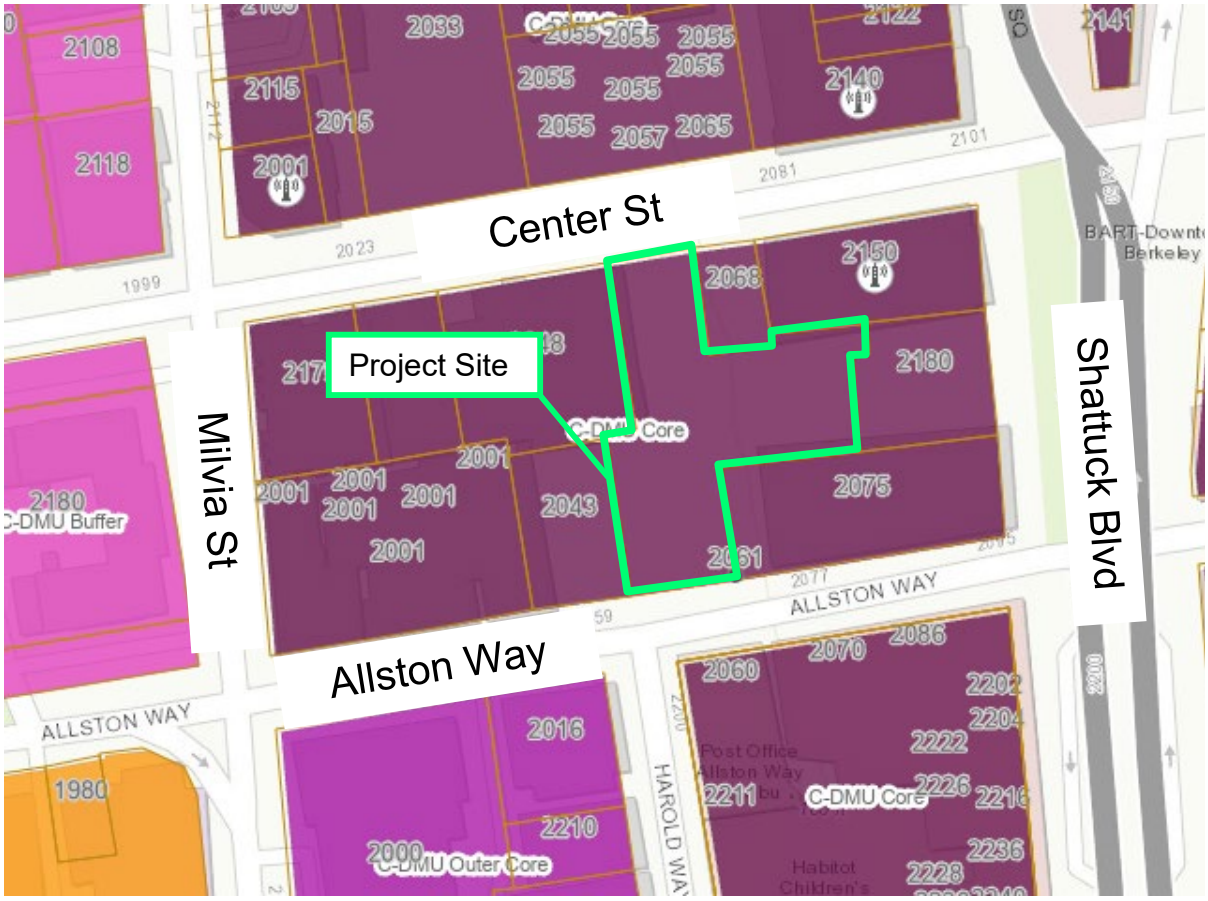
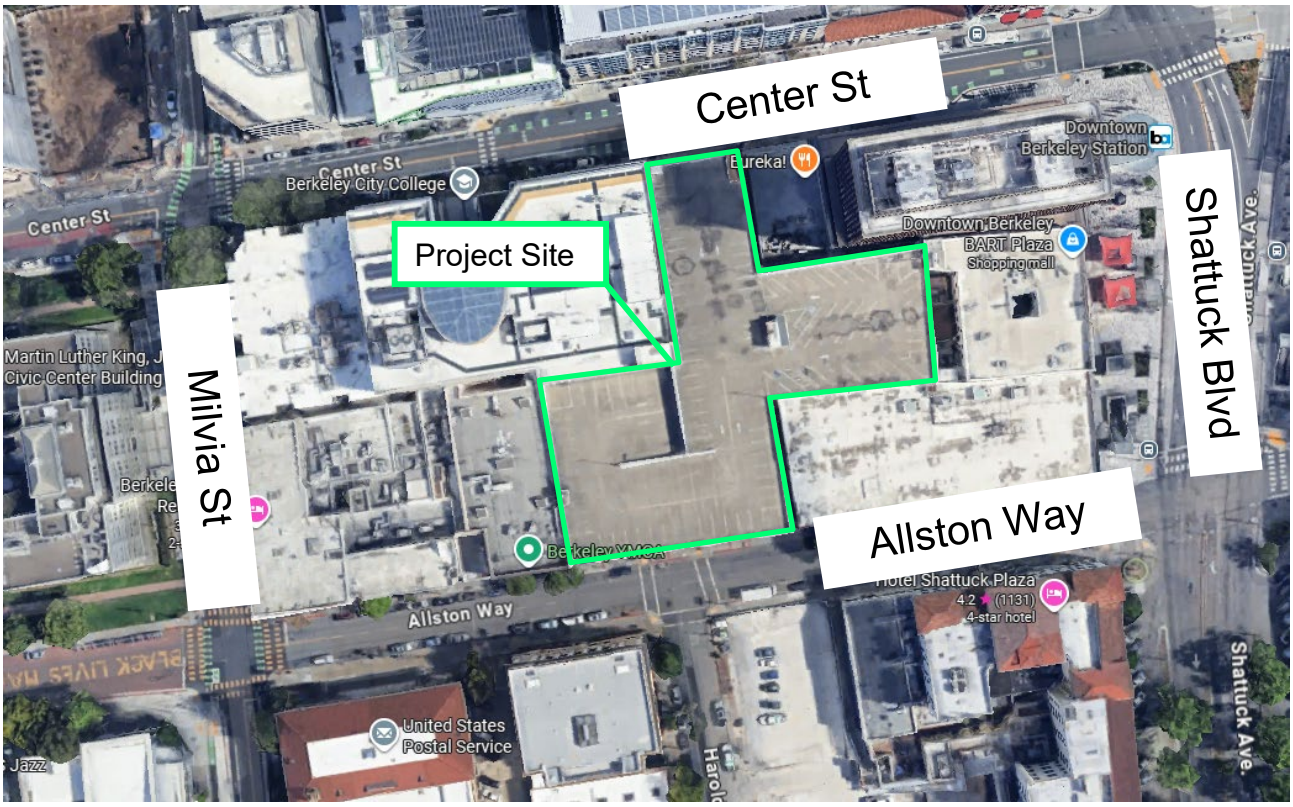


Figure 1: Vicinity and Zoning Districts Map

Comparison of Adjacent Properties			
Vicinity	**GP Land Use**	**Zoning**	**Current Use**
North	Downtown	Downtown Mixed Use (C-DMU) Core	Mixed-Use Residential
South	Downtown	Downtown Mixed Use (C-DMU) Core	Educational and Vacant
East	Downtown	Downtown Mixed Use (C-DMU) Core	Commercial and Retail
West	Downtown	Downtown Mixed Use (C-DMU) Core	Educational and Community Recreation Facility

AERIAL (not to scale)



STREET ELEVATION FROM ALLSTON (not to scale)

BACKGROUND

Subject Site

The subject site is located on an irregularly shaped through lot that fronts onto Center Street and Allston Way. The site is located within the Core subarea of the Downtown Mixed-Use (C-DMU) District. The property site is adjacent to a diverse range of uses, including multi-family residential, commercial and office, and educational. The adjacent structures range from one story to eight stories. The project site is located in an area where multiple modes of public transportation are available, including local and Transbay AC Transit bus lines. The site is less than a quarter mile from the Downtown Berkeley BART station.

Site History

The project site is 2061 Allston Way (Assessor's Parcel Number 57-2026-12-3). 2061 Allston Way is a flat irregularly shaped lot approximately 31,056 square feet large. The lot contains a six-story parking garage. Additionally, the ground floor of the garage contains a variety of commercial spaces along the Allston Way frontage.

ANALYSIS

Project Scope

The proposed project includes the installation of three pickleball courts by removing 35 existing parking spaces (approximately 7,900 square feet) on the eastern portion of the sixth-floor parking deck. The courts would be regulation-sized and would be installed with water-based primer and water-based multi-layer acrylic paint for concrete surfaces. The playing nets would be freestanding with a wheeled base system. There would also be approximately 360 linear feet of 6-foot freestanding fencing along the perimeter of the project area, specifically along the edges of the parking garage walls. The fencing would be made of galvanized steel and would also feature a 12-foot sliding gate along the western side of the low and a 4-foot-wide gate on the northern side by the existing stairs. The vertical components of the project, including the nets and fencing surrounding the courts, would be free-standing and not be permanently installed to the structural components of the garage.

The courts would accommodate 12 players at one time and a total peak occupancy of 16-20 individuals at any given time. The courts would operate between 9:00am to 2:00pm and 4:00pm to 8:00pm on the weekdays and from 9:00am to 4:00pm on the weekends. Playing times would use pre-scheduled programming, including member reservations, private lessons, and small-group clinics. The courts do not propose any additional lighting and would use the existing lighting installed on the top floor of the garage.

Findings

Draft findings for approval can be found in Attachment 2 to the staff report.

Environmental Review

As the project does not propose any permanent above-grade construction or improvements to the existing parking garage, staff has determined the project is categorically exempt pursuant to Section 15301 – "Existing Facilities" of the California Environmental Quality Act (CEQA).

POLICY CONSISTENCY

General Plan Consistency

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

1. **Policy LU-1 Community Character:** Maintain the character of Berkeley as a special, diverse, unique place to live and work.
2. **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.
3. **Policy OS-6 New Open Space and Recreational Resources:** Create new open space and recreational resources throughout Berkeley.
4. **Policy ED-10 The Downtown Economy:** Continue to diversify, revitalize and promote the Downtown as the civic, cultural, commercial, and entertainment center of Berkeley.

Staff Analysis: The project would provide a new recreational facility within the Downtown district, a neighborhood with limited parks and open space. By using an underutilized portion of an existing parking garage, the project would minimize the impacts of constructing a new permanent facility and would use existing facilities to accommodate additional recreational activities for Downtown residents. The project site is located in a dense mixed-use district with multiple transit connections nearby, which would augment the commercial and recreational uses present for residents and mitigate any traffic impacts created from the new use

Downtown Area Plan Consistency

The Downtown Area Plan contains several policies applicable to the project, including the following:

1. **Policy ES-3.1: Land Use.** Encourage development with high intensities close to transit, and encourage a mix of uses that allows most needs to be met on foot
2. **Policy ES-6.2: Adaptive Reuse.** Encourage adaptive reuse of older buildings
3. **Policy LU-1.1: Downtown Uses.** Encourage uses that allow people who live, work and learn in Downtown to meet daily needs on foot.
4. **Policy ED-1.4: Rehabs & Reuse.** Encourage the rehabilitation and reuse of existing buildings

Staff Analysis: The project would establish a new commercial use within the core subarea of Downtown Berkeley and in the vicinity of multiple transit modes and dense residential housing. The project would be located on the top floor of an existing parking garage that is currently underutilized and would provide an additional recreational use for people who live, work and learn in Downtown to use the facility without a private automobile.

RECOMMENDATION

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

1. **FIND** that the project is categorically exempt from the provisions of the CEQA pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"); and
2. **APPROVE** ZP2025-0040 pursuant to Section 23.406.040(D) and subject to the attached Findings and Conditions (see Attachment 2).

Attachments

1. Table 1-3: Project Chronology, Special Characteristics, Development Standard
2. Draft Findings and Conditions of Approval
3. Downtown Area Plan Mitigation, Monitoring and Reporting Plan (MMRP)
4. Applicant Statement and Project Plans, received August 25, 2025
5. Notice of Public Hearing

Attachment 1

Table 1-3: Project Chronology, Special Characteristics, Development Standards

Table 1: Project Chronology

Date	Action
January 11, 2025	Application Submitted
May 27, 2025	Application deemed complete
November 25, 2025	Public hearing notices mailed/posted
December 11, 2025	ZAB hearing

Notes:
a. Application processing reflects the project compliance review after the application is deemed complete. Submittals are reviewed within 30 days of receipt, pursuant to the Permit Streamlining Act.

Table 2: Special Characteristics

Characteristic	Applicability	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This project would use existing floor area of a parking garage, and therefore these fees do not apply to this project.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable / Inclusionary Housing Requirements (BMC Chapter 23.328)	No	The project is not a housing development project, as defined in BMC 23.328.020[a], and therefore is not subject to the City's affordable and inclusionary housing requirements.
Alcohol Sales/Service	No	The project is not proposing any alcohol sales or service with this permit.
Bird Safe Buildings (BMC Section 23.304.150)	No	The project does not propose any windows or other transparent or reflective surfaces.
Coast Live Oak Trees (BMC Chapter 6.52)	No	There are no Coast Live Oak (*Quercus agrifolia*) trees on the project site.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30 feet of the project site.
Hard Hats (BMC Chapter 13.107)	No	Due to the scope of work for the project, these provisions do not apply.
Historic Resources	No	The project does not propose any permanent above-grade improvements to the existing structure and therefore does not require review by the Landmarks Preservation Commission.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	No	The project proposes a new outdoor commercial recreation facility and does not include any housing. Therefore, the Housing Accountability Act does not apply to this project.
Housing Crisis Act of 2019 (SB 330)	No	The project does not propose any housing and therefore SB 330 does not apply to the project.
Rent Controlled Units	No	The project site does not feature any rent controlled units.

Characteristic	Applicability	Explanation
Residential Preferred Parking (RPP)	No	The site is not located in an RPP zone. The project is not eligible for RPP permits per BMC Section 14.72.080(C)(1) as no permits shall be issued to residents in newly constructed residential units.
Seismic Hazards (SHMA)	No	The project site is not located within an area susceptible to landslide/liquefaction/fault rupture as shown on the State Seismic Hazard Zones map. [c]
Soil/Groundwater Contamination	No	The project does not propose any below or above-grade improvements and would not create any potential impacts on soil or groundwater.
Transit	Yes	The project site is served by multiple AC Transit bus lines (local and Transbay) that operate within ¼ mile of the site, and is approximately 0.2 miles west from the Downtown Berkeley Bay Area Rapid Transit (BART) Station.

Notes:

a. BMC 23.328.020(E) defines a "Housing Development Project" for purposes of inclusionary housing requirements as "a development project, including a Mixed-Use Residential project involving the new construction of at least one Residential Unit. Projects with one or more buildings or projects including multiple contiguous parcels under common ownership or control shall be considered as a sole Housing Development Project and not as individual projects.

b. Government Code Section 65589.5(h)(2) "Housing development project" means a use consisting of any of the following: (A) residential units only, (B) mixed-use developments consisting of residential and nonresidential uses in which at least two-thirds of the square footage is designated for residential use, and (C) transitional or supportive housing. Government Code Section 65905.5(b)(3)(C) "Housing development project" includes a proposal to construct a single dwelling unit. This subparagraph shall not affect the interpretation of the scope of paragraph (2) of subdivision (h) of Section 65589.5.

c. California Department of Conservation. DOC Maps: Geologic Hazards. Available: https://maps.conservation.ca.gov/geologichazards/

d. Cortese List is an annually updated list of hazardous materials sites complied pursuant Government Code Section 65962.5.

Table 3: C-DMU Zoning District Development Standards BMC Sections 23.204.130 and 23.322 Parking and Loading

Standard	Existing	Addition/ (Reduction)	Proposed Total	Permitted/ Required
Lot Area (sq. ft.)	31,056	No change	31,056	No min.
Automobile Parking	610	-35	575	1.5 spaces per 1,000 sq. ft.

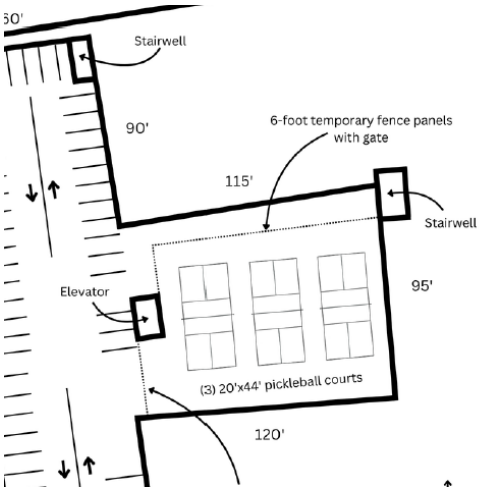
Abbreviations: sq. ft. = square feet; max. = maximum; min. = minimum; n/a = not applicable; % = percent; avg. = average, ft = feet (’), in. = inches (”)

Notes:

AB-2097, effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses located within a 1/2 mile of public transit.
For the portion of building 0 to 20 ft. there is a 5 ft. maximum setback.
For the portion of building 21 to 75 ft. that is over 65 ft. from the lot frontage there is a 5 ft. setback.
Per BMC Section 23.312.040(A)(1)(b)(ii), if the workspace is less than 60 percent of live/work unit, then the unit is considered a swelling unit and is subject to all requirements applicable to dwelling units.

Zoning Adjustments Board Findings

ZP2025-0040 **Use Permit for a Project at 2061 Allston Way** **December 11, 2025**



Quick Facts	Project Description:
Applicant: Jim Jenkins; Neighborhood Pickleball **Property Owner:** First Shattuck LLC **Project Address:** 2061 Allston Way **Site Size:** 7,900 sq. ft. **GP Land Use:** Downtown **Zoning:** C-DMU Core **CEQA:** Categorically Exempt pursuant to Section 15301 ("Existing Facilities") of the CEQA Guidelines **Date Submitted:** April 23, 2025 **Date Deemed Complete:** May 27, 2025 **Project Planner:** Joshua Muller	The applicant is seeking approval to operate a commercial recreation outdoor pickle ball court by removing 35 parking spaces and replacing with three pickle ball courts to the top level of an existing parking garage.
	Zoning Permits Requested:
	A Use Permit Public Hearing is required for the following permits: 1. **Establish New Use.** BMC Section 23.204.040(A), **"Use-Specific Permit Requirements and Regulations"** to establish an outdoor commercial recreation facility of any size within the C-DMU District.
	Staff Recommendation:
	Staff recommends that ZAB determine the project is exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities") and approve ZP2025-0040 pursuant to Section 23.406.040 (E) (1-5) "**Findings for Approval**" and subject to the attached Findings and Conditions of Approval.

CEQA

Categorical Exemption

The project is categorically exempt from the requirements of CEQA pursuant to Section 15301 – "Existing Facilities" of the California Environmental Quality Act (CEQA).

Evidence: The project does not propose any permanent above-grade construction or improvements to the existing parking garage.

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

FINDINGS FOR APPROVAL

As required by BMC Section 23.406.040 (E) (1-4) "Findings for Approval," the following findings shall be made:

1. To approve a Use Permit, the ZAB shall find that the proposed project or use:

   (a) Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use; and

   Evidence: The project will not be detrimental to the health safety, peace, morals, comfort or general welfare of people residing or visiting in the area because the project is consistent with all applicable C-DMU District standards.

   The proposed recreation facility is a use that is allowed within the C-DMU district and will augment the existing high-density, mixed-use environment of the surrounding area within the district. Additionally, the proposed use and scale of the facility is consistent with the policies of the Downtown Area Plan (see staff report for specific policies) and therefore will not create circumstances detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood, or to the general welfare of the City.

   (b) Will not 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.

   Evidence: The project does not propose any permanent above-grade additions or improvements to the existing parking garage. The proposed freestanding fencing will be six feet in height and made of matte metal. Additionally, the dimensions of the lot, the height and scale of the proposed barriers and court equipment and the according proximity to the public right-of-way will mitigate any visual impacts from the fence

placement. Due to its location in a dense and high traffic commercial district, potential noise impacts from the proposed recreational activity will be mitigated due to the ambient noise within the vicinity, including traffic on Shattuck Avenue, and the vertical and horizontal distances from the proposed courts to adjacent uses.

2. To approve the Use Permit, the ZAB must also make any other Use Permit findings specifically required by the Zoning Ordinance for the proposed project.

Permit Findings for Projects in the C-DMU district

(a) Is compatible with the purposes of the district; and

Evidence: The proposed commercial recreation facility aligns with the Downtown Area Plan's goals (see staff report for specific applicable policies) of promoting Downtown as a dense and livable community with a diverse range of convenient non-residential uses for residents, as well as augmenting the commercial nature of the district.

(b) Is compatible with the surrounding uses and buildings.

Evidence: The proposed use will not require the installation or construction of any permanent above-grade improvements to the existing structure and will therefore not increase the height or massing of the parking garage. The new recreational use will also complement the existing commercial spaces on the bottom floor along Allston Street as well as the food service, retail, and educational uses throughout the C-DMU Core subarea. Also, the location of the project, on top of an existing parking garage, is consistent with the high-density and multi-story built environment of the C-DMU Core subarea.

3. When taking action on a Use Permit, the ZAB shall consider in its findings:
   (a) The proposed land use; and

   Evidence: The proposed land use is an outdoor commercial recreational facility which is allowed in the C-DMU District Core Subarea with a use permit.

   (b) The structure or addition that accommodates the use.

   Evidence: The structure is an existing parking garage and no additions are required to accommodate the proposed use.
4. Required findings shall be made based on the circumstances existing at the time a decision is made on the application.

PLANNING AND DEVELOPMENT

USE PERMIT ZP2025-0040 CONDITIONS OF APPROVAL

December 11, 2025

2061 Allston Way

Use Permit #ZP2025-0040 to operate a commercial recreation outdoor pickle ball court by removing 35 parking spaces and replacing with three pickle ball courts to the top level of an existing parking garage.

I. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

Pursuant to Berkeley Municipal Code (BMC) Title 23 Zoning Ordinance and Title 13 Public Peace, Morals, and Welfare, the following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

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

5. **Exercise and Expiration of Permits (BMC Section 23.404.060(C)):**

   A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.

   B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.

   C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with BMC Chapter 23.410, Appeals and Certification.

   D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. **Permit Remains Effective for Vacant Property (BMC Section 23.404.060(D)).** Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. **Permit Modifications (BMC Section 23.404.070).** No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

8. **Permit Revocation (BMC Section 23.404.080).** The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

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

II. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

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

Prior to Submittal of Any Building Permit:

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

    ☐ **Project Liaison** _____

    Name Phone #

At All Times:

11. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated August 25, 2025.
12. **Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.
13. **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.
14. **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.

RESOLUTION NO. 65,647–N.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Noes: Worthington.

Absent: None.

Tom Bates

Tom Bates, Mayor

Attest: Mark Numainville

Mark Numainville, CMC, Acting City Clerk

Exhibit A

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

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

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

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

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

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

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

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

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

AIR QUALITY

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

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

Dust (PM10) Control Measures:

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

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

Measures to Reduce Diesel Particulate Matter and PM2.5:

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

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

> C-DMU District - 23E.68.065 Performance Standards - Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program.
>
> Green Pathway - 23.34.070E Development Standards - To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

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

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

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

CULTURAL RESOURCES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> C-DMU District - 23E.68.065 Performance Standards - Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program.
>
> Green Pathway - 23.34.070E Development Standards - To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

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

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

NOISE

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

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

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

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

> C-DMU District - 23E.68.065 Performance Standards - Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program.
>
> Green Pathway - 23.34.070E Development Standards - To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

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

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

TRANSPORTATION / TRAFFIC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

UTILITIES AND SERVICE SYSTEMS

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

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

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

> C-DMU District - 23E.68.065 Performance Standards - Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program.
>
> Green Pathway - 23.34.070E Development Standards - To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

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

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

II. SIGNIFICANT UNAVOIDABLE IMPACTS

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

AESTHETICS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AIR QUALITY

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

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

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

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

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

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

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

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

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

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

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

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

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

CULTURAL RESOURCES

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

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

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

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

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

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

NOISE

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

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

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

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

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

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

> C-DMU District - 23E.68.065 Performance Standards - Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program.
>
> Green Pathway - 23.34.070E Development Standards - To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mitigation NOI-5: Develop Site-Specific Noise Reduction Programs and Implement Noise Abatement Measures during Construction. Prior to the issuance of building permits, the applicant shall develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include appropriate time limits for construction (7:00 AM to 7:00

PM on weekdays and between the hours of 9:00 AM and 8:00 PM on weekends or holidays) as well as technically and economically feasible controls to meet the requirements of the Berkeley Municipal Code. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:

- Construction equipment should be well maintained and used judiciously to be as quiet as practical.
- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
- Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
- Prohibit unnecessary idling of internal combustion engines. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
- Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
- Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- Route construction related traffic along major roadways and away from sensitive receptors where feasible.
- Businesses, residences or other noise-sensitive land uses within 500 feet of construction sites should be notified of the construction schedule in writing prior to the beginning of construction. Designate a "construction liaison" that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the liaison at the construction site.

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

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

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

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

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

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

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

Transportation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. EVALUATION OF ALTERNATIVES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Building Height Comparison

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

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

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

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

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

Dwelling Unit Comparison

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

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

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

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

Greenhouse Gas Comparison

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Feasibility of Alternatives

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

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

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

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

IV. Statement of Overriding Considerations

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

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

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

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

Community Benefits Associated with Development and Growth

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

- reduced per capita automobile use and reduced generation of per capita greenhouse gases;

- increased support for retail uses and availability of walk-to conveniences, which also improves the walkability of districts by bringing more destinations and amenities close by;

- increased transit patronage and transit service (transit funding is generally dependent upon land use densities that are sufficient to reduce the need for transit subsidies) and thereby justfy public investments;

- increased public revenues for public improvements including ecologically beneficial features, through development fees and increased economic activity;

- increased open space for the enjoyment of the public along streets, on other public lands, and on private land;

- increased housing for all income levels, including provision of affordable units through incentives;

- increased homeownership opportunities through the production of condominiums;

- increased availability of "car-free" living opportunities, which are ideally suited to senior citizens and persons with limited mobility who benefit from centrally located housing;

- increased support for culture and the arts by increasing the local patron base;

- increased job opportunities;

- increased opportunities for business and intellectual synergies by increasing businesses in proximity to the University of California Berkeley;

- increased opportunities to demonstrate environmental leadership and engage in environmental innovation by encouraging sustainable development and attracting interested organizations and businesses, and improving the feasibility of green buildings;

- reductions in the length of commuting to jobs within and outside of Berkeley and associated traffic congestion by improving Berkeley's housing balance, through the

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

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

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

- Zoning Ordinance Section 23E.68.090E Findings

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

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

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

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

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

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

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

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

A. All construction workers shall be paid state prevailing wage as established by the California Department of Industrial Relations.

B. To the extent that a sufficient number of qualified apprentices are reasonably available, no less than 16% of the construction workers shall be apprentices from a State Certified Apprenticeship program with a record of graduating apprentices.

C. Employees in hotels with a height over 75 feet shall be paid prevailing wages as established by the Department of Industrial Relations for hotel employees. If the Department of Industrial Relations does not establish prevailing wages for hotel employees, such employees shall be paid wages consistent with area mean wages per occupational category.

D. As a condition of approval for any Green Pathway subject to the requirements of this Section, the owner shall enter into a written agreement that shall be binding on all successors in interest.

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

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

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

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

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

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

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

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

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

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

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

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

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
• Encourage creative and innovative contemporary designs for new buildings in the downtown. • Streetscape plays an important role in drawing individuals to a particular area of the city. Use signage, lighting, and paving to improve the pedestrian experience. • Build consistently with the street wall, particularly at corner sites. Continue dominant rhythms for structural bays, bay windows, large pilasters, and other repeating vertical elements. Also, continue dominant cornice lines, such as between ground floors and upper stories, and at the top of facades that meet a street. • Design new buildings to respond to the existing building context within a block, and provide continuity to the overall streetscape. Frequently, a new building will be inserted on a site between two existing buildings of disparate scale and design. • Set back upper floors where taller buildings are permitted, so that dominant roof and cornice lines remain generally consistent in the Downtown, as seen from the street. • Explore options for multi-use buildings, combining residential, commercial, and other compatible uses where appropriate. • Provide multi-tenant retail space and other active publicly-accessible uses at the street level. These should be accessible directly from the sidewalk, rather than through common interior lobbies. • Provide easy-to-locate building entrances on all street-facing facades. Where a building extends through an entire block or is located at a corner, connect its entrances with signage and lighting to distinguish them from storefronts • Use vertically proportioned windows. Group such windows in sets where a horizontally proportioned window opening is desired, especially for the expression of structural bays. ***(Impact Avoided or Mitigated to a Less Than Significant Level)***			
DAP MM CUL-3: Halt Work/Archaeological Evaluation/Site-Specific Mitigation. If archaeological resources are uncovered during construction activities, all work within 50 feet of the discovery shall be redirected until a qualified archaeologist can be contacted to evaluate the situation, determine if the deposit qualifies as an archaeological resource, and provide recommendations. If the deposit does not qualify as an archaeological resource, then no further protection or study is necessary. If the deposit does qualify as an archaeological resource, then the impacts to the deposit shall be avoided by project activities. If the deposit cannot be avoided, adverse impacts to the deposit must be mitigated. Mitigation may include, but is not limited to, archaeological data recovery. Upon completion of the archaeologist's assessment, a report should be prepared documenting the methods, findings and recommendations. The report should be submitted to the City, the project proponent and the NWIC. ***(Impact Avoided or Mitigated to a Less Than Significant Level)***	a) Do conditions of approval, if applicable, and construction plans or related agreements require conformance with the mitigation measure? b) Have archaeological resources been uncovered during construction activities? If yes: - Has all work within 50 feet of the discovery been redirected until a qualified archaeologist could be contacted to evaluate the situation, determine if the deposit qualifies as an archaeological resource, and provide recommendations? - If the deposit does qualify as an archaeological resource, have impacts to the deposit been avoided or mitigated by project activities? - Was the archaeologist's assessment or report documenting the methods, findings and recommendations been prepared and submitted to the City, the project proponent and NWIC?	CoB	W C

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

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

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
DAP MM CUL-4: Halt Work/Paleontological Evaluation/Site-Specific Mitigation. Should paleontological resources be encountered during construction or site preparation activities, such works shall be halted in the vicinity of the find. A qualified paleontologist shall be contacted to evaluate the nature of the find and determine if mitigation is necessary. All feasible recommendations of the paleontologist shall be implemented. Mitigation may include, but is not limited to, in-field documentation and recovery of specimen(s), laboratory analysis, the preparation of a report detailing the methods and findings of the investigation, and curation at an appropriate paleontological collection facility. ***(Impact Avoided or Mitigated to a Less Than Significant Level)***	a) Do conditions of approval, if applicable, and construction plans or related agreements require conformance with mitigation measures? b) Was work halted if paleontological resources were discovered during construction? If yes: - was a qualified paleontologist contacted to evaluate the find and determine if further mitigation is necessary? - If mitigations were deemed necessary by the paleontologist, were all feasible measures implemented?	CoB	W C
DAP MM CUL-5: Halt Work/Coroner's Evaluation/Native American Heritage Consultation/Compliance with Most Likely Descendent Recommendations. If human remains are encountered during construction activities, all work within 50 feet of the remains should be redirected and the County Coroner notified immediately. At the same time, an archaeologist shall be contacted to assess the situation. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and any associated grave goods. The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion of the archaeologist's assessment, a report should be prepared documenting methods and results, as well as recommendations regarding the treatment of the human remains and any associated archaeological materials. The report should be submitted to the City, the project proponent and the NWIC. ***(Impact Avoided or Mitigated to a Less Than Significant Level)***	a) Do conditions of approval, if applicable, and construction plans or related agreements require conformance with mitigation measures? b) Was work halted if any human remains were found at the construction site? If yes: - was the county coroner notified immediately and an archaeologist contacted to assess the situation? - If the human remains were of Native American origin, was an archaeologist's report prepared and submitted to the City, the Project Proponent and the NWIC?	CoB	W C

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

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

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
Noise			
DAP MM NOI-1: Site-Specific Noise Studies, Site Planning, Noise Control Treatments. Future residential units proposed under the DAP would be exposed to outdoor noise levels in excess of 60 L_{dn} and indoor levels in excess of 45 L_{dn}, which would exceed the City's and state's established land use compatibility thresholds. In areas where residential development would be exposed to an L_{dn} of greater than 60 dBA, site-specific noise studies should be conducted to determine the area of impact and to present appropriate mitigation measures, which may include the following: • Utilize site planning to minimize noise in shared residential outdoor activity areas by locating these areas behind the buildings, in courtyards, or orienting the terraces to alleyways rather than streets, whenever possible. • The California Building Code and the City of Berkeley require project-specific acoustical analyses to achieve interior noise levels of 45 dBA L_{dn} or lower in residential units exposed to exterior noise levels greater than 60 dBA L_{dn}. Building sound insulation requirements would need to include the provision of forced-air mechanical ventilation in noise environments exceeding 70 dBA L_{dn} so that windows could be kept closed at the occupant's discretion to control noise. • Special building construction techniques (e.g., sound-rated windows and building facade treatments) may be required where exterior noise levels exceed 65 dBA L_{dn}. These treatments include, but are not limited to, sound rated windows and doors, sound rated exterior wall assemblies, acoustical caulking, etc. The specific determination of what treatments are necessary will be conducted on a unit-by-unit basis during project design. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City along with the building plans and approved prior to issuance of a building permit. Feasible construction techniques such as these would adequately reduce interior noise levels to 45 dBA L_{dn} or lower. ***(Significant Unavoidable Impact)***	In areas where residential development would be exposed to L(dn) exceeding 60 dBA, were site specific noise studies conducted to determine the area of impact and to present mitigation measures, and were appropriate mitigation measures incorporated into the proposed project to reduce noise levels?	CoB	P W
DAP MM NOI-2: Site-Specific Noise Studies, Activities Scheduling. The following measures should be implemented to reduce noise exposure of Downtown Area residents to noise associated with nearby commercial activities: • Noise levels at residential property lines from commercial development should be maintained not in excess of the Berkeley Municipal Code Limits. The approvals of the commercial development should require a noise study demonstrating how the business (including loading docks, refuse areas, and ventilation systems) would meet, and be consistent with, the City's noise standards. • Ensure that noise-generating activities, such as maintenance activities and loading and unloading activities are limited to the hours of 7:00 AM to 9:00 PM. ***(Impact Avoided or Mitigated to a Less Than Significant Level)***	a) As needed, have proposed commercial projects provided a noise study demonstrating how the business (including loading docks, refuse areas, and ventilation systems) would meet the City's noise standards? b) Are noise levels at residential property lines from commercial development maintained so as not to exceed Berkeley Municipal Code limits? c) Have noise generating activities, such as maintenance, refuse collection and loading dock functions been limited to the hours of 7:00 AM to 9:00 PM?	CoB	P O

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

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

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
DAP MM NOI-3: Site-Specific Noise Analysis, Noise Barriers, Pavement Modifications, Traffic Calming, Sound Insulation. Where anticipated noise levels would exceed City of Berkeley standards for interior noise, methods available to mitigate Project-related noise level increases would need to be studied on a case-by-case basis as individual development projects are proposed at receivers that would be considered noise impacted along Shattuck Avenue between University Avenue and Allston Way, and along Allston Way between Shattuck Avenue and Oxford Street. Since these increases in noise levels are related to the closure of Center Street and the elimination of travel lanes on Shattuck Avenue assumed under the DAP, retaining existing travel lane configurations in the Downtown Area street network would reduce this impact to a level of less than significant. The Project no longer includes reduction of lanes on Shattuck to one through lane in each direction. However, closure of Center Street is included in the DAP 2012 (see Figure AC-3). If the proposed Center Street modification takes place, additional noise reduction methods could include the following: • Installing traffic calming measures to slow traffic. Typically, each 5 mph reduction in travel speeds equates to 1 dBA of noise reduction. • Affected residences could be provided building sound insulation such as sound-rated windows and doors on a case-by-case basis as a method of reducing noise levels in interior spaces. ***(Significant Unavoidable Impact)***	If Center Street is closed and noise levels along Shattuck Avenue between University Avenue and Allston Way, and along Allston Way between Shattuck Avenue and Oxford Street are expected to exceed COB standards for interior noise, have impacts been studied and mitigations provided to reduce noise levels?	CoB	P W C
DAP MM NOI-4: Site-Specific Noise Analysis, Noise Barriers, Pavement Modifications, Traffic Calming, Sound Insulation. Where anticipated noise levels would exceed City of Berkeley standards for interior noise, methods available to mitigate Project-related noise level increases would need to be studied on a case-by-case basis as individual development projects are proposed at receivers that would be considered noise impacted along Shattuck Avenue between University Avenue and Allston Way, along Allston Way between Shattuck Avenue and Oxford Street, and along Durant Avenue between Milvia Street and Shattuck Avenue. Since these increases in noise levels are related to the closure of Center Street and the elimination of travel lanes on Shattuck Avenue assumed in the EIR, retaining existing travel lane configurations in the Downtown Area street network would reduce this impact to a level of less than significant. The DAP 2012 no longer includes reducing Shattuck to one through lane in each direction; however, it does include the potential closure of Center Street to most traffic. At the time a proposed project for closing Center Street is developed, noise reduction methods could include the following: • Installing traffic calming measures to slow traffic. Typically, each 5 mph reduction in travel speeds equates to 1 dBA of noise reduction. • Affected residences could be provided building sound insulation such as sound-rated windows and doors on a case-by-case basis as a method of reducing noise levels in interior spaces. ***(Significant Unavoidable Impact)***	If Center Street is closed and noise levels along Shattuck Avenue between University Avenue and Allston Way, along Allston Way between Shattuck Avenue and Oxford Street, and along Durant Avenue between Milvia Street and Shattuck Avenue are expected to exceed COB standards for interior noise, have impacts been studied and mitigations provided to reduce noise levels?	CoB	P W C

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

MITIGATION MONITORING AND REPORTING PROGRAM

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

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
DAP MM NOI-5: Develop Site-Specific Noise Reduction Programs and Implement Noise Abatement Measures during Construction. Prior to the issuance of building permits, the applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extend feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include appropriate times limits for construction (7 AM to 7 PM on weekdays and between the hours of 9:00 AM and 8:00 PM on weekends or holidays) as well as technically and economically feasible controls to meet the requirements of the Berkeley Municipal Code. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical. • Construction equipment should be well maintained and used judiciously to be as quiet as practical. • Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment. • Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible. • Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible. • Prohibit unnecessary idling of internal combustion engines. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile. • Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise. • Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected. • Route construction related traffic along major roadways and away from sensitive receptors where feasible. • Businesses, residences or other noise-sensitive land uses within 500 feet of construction sites should be notified of the construction schedule in writing prior to the beginning of construction. Designate a "construction liaison" that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the liaison at the construction site. ***(Significant Unavoidable Impact)***	a) Do conditions of approval, if applicable, and construction plans or related agreements require conformance with mitigation measures, including provision of a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction nose impacts? b) Has a construction liaison been identified to address local complaints?	CoB	W C

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.

P=Planning; O=Operations; W=Working Drawings; C=Construction

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

Mitigation Measure or Continuing Best Practice	Question for Checklist	Responsible for Implementation*	Phase/When Implemented*
DAP MM NOI-6 Avoidance of Pile-Driving/Site-Specific Vibration Studies/ Monitoring/Contingency Planning. The following measures are recommended to reduce vibration from construction activities: • Avoid impact pile-driving where possible. Drilled piles causes lower vibration levels where geological conditions permit their use. • Avoid using vibratory rollers and tampers near sensitive areas. • In areas where project construction is anticipated to include vibration-generating activities, such as pile-driving in close proximity to existing structures, site-specific vibration studies should be conducted to determine the area of impact and to present appropriate mitigation measures that may include the following: - Identification of sites that would include vibration compaction activities such as pile-driving and that have the potential to generate groundborne vibration, and the sensitivity of nearby structures to groundborne vibration. Vibration limits should be applied to all vibration-sensitive structures located within 200 feet of the project. A qualified structural engineer should conduct this task. - Development of a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. - Construction contingencies would be identified for when vibration levels approached the limits. - At a minimum, vibration monitoring should be conducted during initial demolition activities and during pile driving activities. Monitoring results may indicate the need for more or less intensive measurements. - When vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures. - Conduct post-survey on structures where either monitoring has indicated high levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. ***(Significant Unavoidable Impact)***	a) Does the project avoid the use of pile driving? b) Does the project avoid the use of vibratory rollers and tampers near sensitive areas? c) In areas where vibration inducing activities cannot be avoided, has a site specific vibration study been conducted to present appropriate mitigation measures and have mitigations been provided to minimize impacts to the satisfaction of the City?	CoB	W C

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

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

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

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

MITIGATION MONITORING AND REPORTING PROGRAM

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

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

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.

P=Planning; O=Operations; W=Working Drawings; C=Construction

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

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

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

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

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

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

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

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

* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

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

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

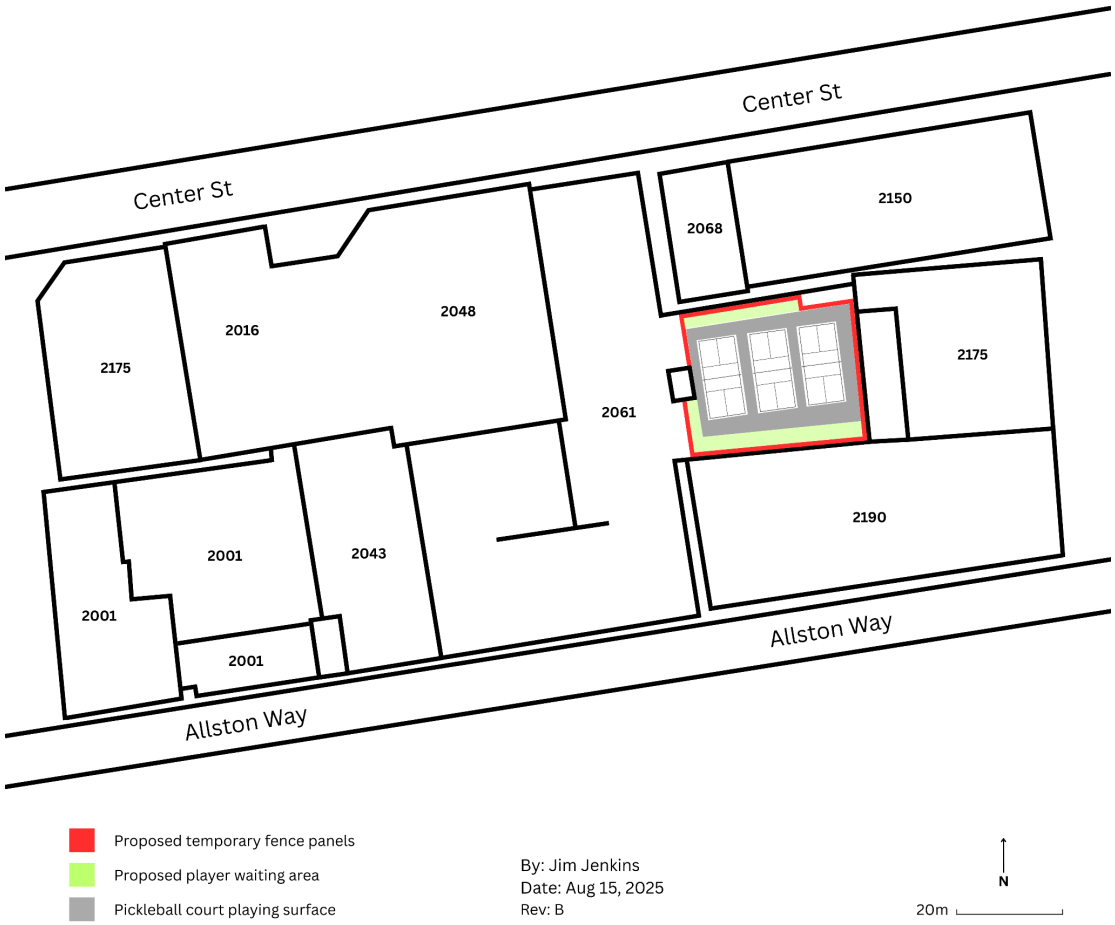
* Key: CoB = City of Berkeley. While it is the applicant's responsibility to mitigate the identified impacts, it is the City's responsibility through zoning review, plan check and inspection to verify compliance. During operations, compliance is verified during inspections and response to complaints. As needed, the City requires assignment of a mitigation monitor.
P=Planning; O=Operations; W=Working Drawings; C=Construction

APPLICANT STATEMENT

Project: Conversion of Parking Garage Top Floor to Pickleball Facility

Address: 2061 Allston Way, Berkeley, CA 94704

This statement supports an application for a Use Permit to authorize the project described below.



1. Project Description

The proposed project involves the conversion of approximately 7,900 square feet (equivalent to 35 parking spaces) on the eastern portion of the sixth-floor parking deck at 2061 Allston Way, Berkeley, CA 94704 into a recreational pickleball facility. The

project will create three regulation-sized pickleball courts with appropriate line markings, nets, and player areas.

The facility will include:

- Three regulation pickleball courts with proper surfacing and markings
- 6-foot high freestanding fencing surrounding the court area for safety and security during off-hours
- Existing garage lighting will be utilized, with no upgrades or modifications, to ensure safe evening play until 8pm.
- No permanent structural changes to the existing parking garage structure

This project represents an adaptive reuse of underutilized parking infrastructure to create a community recreational amenity in downtown Berkeley.

2. Zoning Compliance

The property at 2061 Allston Way is located in Berkeley's C-DMU Core District, which encourages a mix of commercial, office, residential, and recreational uses. This project aligns with the City of Berkeley's zoning goals by:

- Maintaining compatibility with the mixed-use character of the district while adding a recreational component that serves community needs
- Not increasing the building height, coverage, or floor area ratio (FAR) as the project utilizes existing built space
- Preserving the majority of the parking facility's function while enhancing utilization of underused space
- Integrating a recreational facility that complements the overall mixed-use nature of the district

3. Contextual Analysis

The project site is situated in downtown Berkeley, characterized by a diverse mix of commercial, office, residential, and institutional uses. Several considerations demonstrate the project's compatibility with the surrounding context:

- The site is proximate to UC Berkeley, downtown businesses, and residential buildings, providing convenient recreational opportunities for a broad demographic
- The sixth-floor location minimizes visual impact on the streetscape while maintaining the existing architectural character of the area
- The surrounding area currently lacks dedicated pickleball facilities, addressing a growing recreational need within the community
- The adaptive reuse of existing infrastructure aligns with Berkeley's sustainability goals by maximizing use of developed spaces rather than requiring new construction

4. Impact Assessment

The proposed pickleball facility has been carefully planned to minimize potential impacts on surrounding properties:

- The sixth-floor location provides significant horizontal and vertical distance from surrounding buildings, which should naturally attenuate sound from pickleball activity. The open-air parking structure setting, combined with the ambient downtown noise environment, is expected to help minimize potential noise impacts on neighboring properties.
- Operating hours will be limited to 8am-8pm, seven days a week, ensuring recreational opportunities while respecting neighboring uses
- The existing parking structure already accommodates vehicular activity, and the pickleball use will not alter the character or intensity of site usage
- No additional exterior lighting that could affect neighboring properties will be installed; existing garage lighting will be utilized and directed inward toward the courts

4.1 Sound Assessment

While acoustic literature commonly cites 70 dBA at 100 feet for pickleball, our field measurements of recreational play documented only 55 dBA at 100 feet. Using the more conservative 70 dBA standard, sound would drop to 64 dBA at 200 feet. However,

our actual measurements indicate levels of approximately 49 dBA at 200 feet. Our 6th-floor location provides additional mitigation through elevation (60+ feet above street level), increasing slant distances to all receptors. Comprehensive acoustic analysis demonstrates that pickleball sound levels of 46-49 dBA at street-level receptors will be completely masked by existing ambient noise of 56-73 dBA. **Please refer to the accompanying "Sound Impact Analysis" document for detailed measurements and calculations.**

5. Transportation & Parking

The selection of the sixth-floor parking deck for this facility is based on its consistent and significant underutilization, directly observed over an extended period, making it highly suitable for adaptive reuse while preserving the garage's primary function.

- Regular, frequent site assessments conducted over the last six months confirm extremely low parking demand on the top deck, particularly the eastern portion proposed for conversion. During these consistent observations, this area was found to be virtually unoccupied, indicating a clear pattern of negligible use compared to the more utilized lower levels.
- The project proposes converting 35 spaces situated within this area of exceptionally low demand. A total of 97 parking spaces will remain available on the sixth floor, supplementing the full capacity of the lower levels, resulting in 575 total spaces remaining facility-wide (out of an original 610).
- The remaining 575 spaces would support up to 287,500 square feet of commercial space at the standard ratio of 2 spaces per 1,000 square feet. This modest 5.7% reduction in parking capacity targets only the consistently underutilized spaces on the top deck, which our regular observations indicate would not impact the garage's ability to meet current demand.
- Access will utilize existing elevators and stairs, with new signage. The facility also benefits greatly from its downtown location, adjacent to BART and numerous AC Transit bus lines, which provides excellent alternatives to driving for potential users and supports Berkeley's transportation goals.

6. Architectural Design & Materials

6.1 Design Approach

The design approach maintains the integrity of the existing structure while creating a safe and functional recreational space:

- The open-air concept preserves the existing roofline and structural elements with no permanent modifications to the building envelope
- Freestanding 6-foot perimeter fencing will be installed using non-permanent attachments that preserve the structural integrity of the garage
- Court surfacing will utilize specialized non-slip materials appropriate for pickleball that can be applied directly to the existing concrete deck
- Bright, contrasting boundary markings will ensure player safety while maintaining an aesthetic appropriate to the utilitarian nature of the parking structure

6.2 Playing Surface

The courts will be created through a water-based paint application system applied directly to the existing concrete parking garage surface.

Application Process

- Surface Preparation: Clean existing concrete and apply water-based primer
- Water-Based Paint: Multi-layer acrylic paint specifically designed for concrete surfaces:
    - Resurfacer paint layer for smoothness
    - Textured paint layer for appropriate playing characteristics
    - Colored topcoat paint for court surface
    - Line marking paint for court boundaries

Application Method

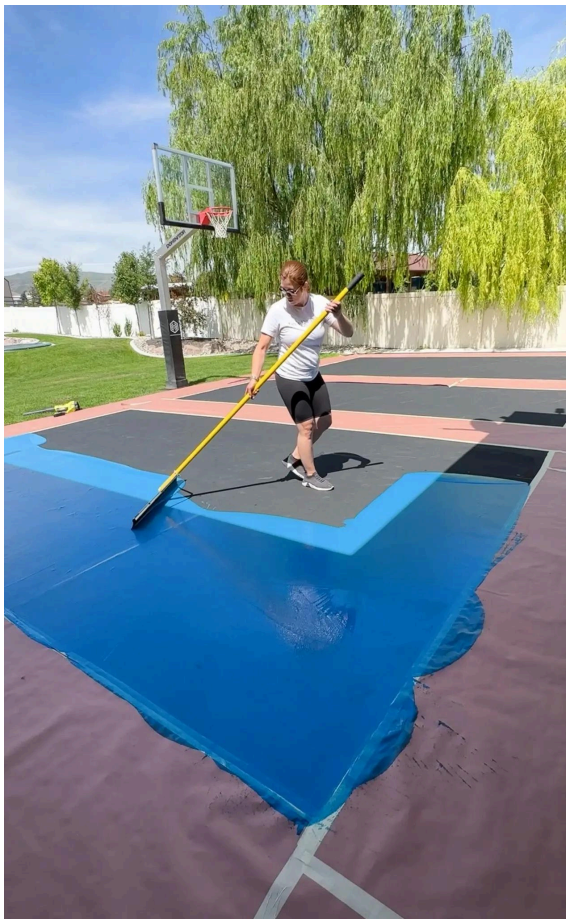
- All materials are liquid, water-based paints applied with squeegees
- No penetration into or modification of the concrete structure
- Court dimensions marked using paint application only

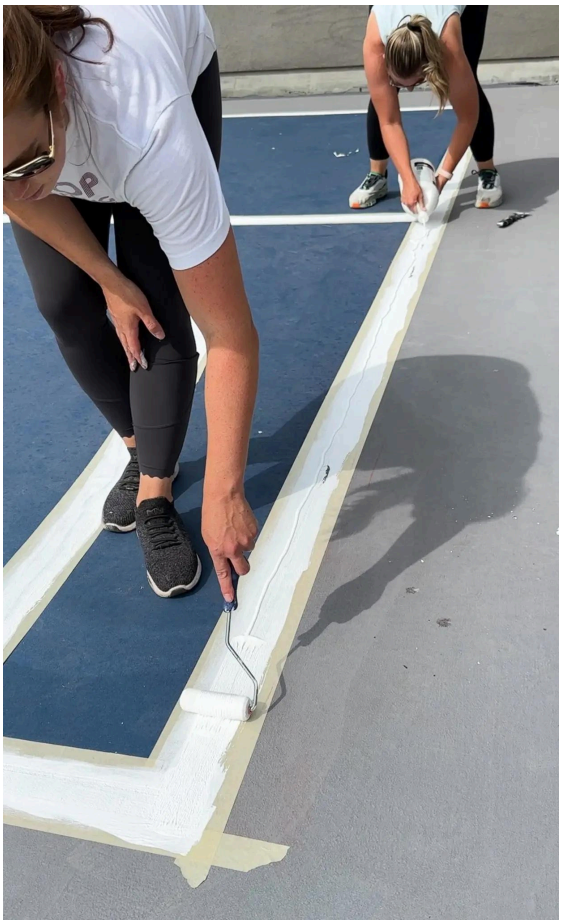
Material Safety

- All materials are water-based and non-hazardous
- Free of lead, mercury, asbestos, and formaldehyde
- Easy cleanup with water during application
- Environmentally safe for outdoor municipal use

Summary

This installation involves only painting the concrete surface with safe, water-based materials. The underlying concrete structure remains unchanged throughout.





6.3 Portable Pickleball Nets

The pickleball nets are portable, wheeled units that can be easily installed without any permanent attachment and completely removed when the courts are no longer needed. Their weather-resistant construction allows them to remain outdoors without requiring daily setup or storage.

Installation Method

- Freestanding design: Nets rest on their own wheeled base systems with no drilling, anchoring, or structural attachment required
- Portable construction: Designed for complete disassembly and removal when needed
- Locking wheels: Wheels lock in place during play but can be unlocked for easy relocation or removal
- No storage required: Designed to remain on courts at all times due to weather-resistant construction

Construction for Outdoor Use

- Weather-resistant materials: Aircraft-grade aluminum and stainless steel components allow outdoor placement without degradation
- Durable design: Built to withstand weather exposure during the installation period
- Self-contained units: Each net system is completely independent with no site infrastructure required

Removal Process

- Disassemble into component parts for transport
- Complete removal leaves no trace of installation
- No site remediation required after removal

Example Net Installations:


SELKIRK

6.4 Fencing

Approximately 360 linear feet of freestanding fencing panels will provide continuous security and public safety. The above-ground installation method requires no permanent modification to the building or site.

6.4.1 Specifications and Installation

The proposed fencing consists of approximately 360 linear feet of 6-foot tall chain-link fence panels installed on all four sides of the court area (north, south, east, and west borders as shown in the diagram above). The fencing specifications are:

- **Materials:** Freestanding chain-link fence panels with weighted bases (no permanent installation into the deck surface)
    - Galvanized Steel Construction
    - Corrosion-Resistant Zinc Coating
    - ASTM A392-06 Standards Compliant, CSI 01 56 26
    - 36” Base Stands for Added Stability
    - Width: 12’ Height: 6’
- **Installation:** Freestanding panels connected with standard panel clamps, secured by sandbag-weighted bases
- **Gate Locations:**
    - Main entrance: 12-foot wide double gate on the western side for primary player access
    - Secondary access: 4-foot wide gate on the northern side connecting to the stairwell
    - Gates will be locked during off hours with a Master Lock Outdoor Smart Bluetooth Padlock
- **Gate Design**: Gates will be integrated into the fencing system using standard portable fence gate configurations - either 12-foot wide by 6-foot high sliding panel gates or 4-foot wide by 6-foot high hinged gate kits, depending on the final fence layout. All gates are galvanized steel, matching the fence panels, and are standard components from fencing suppliers.

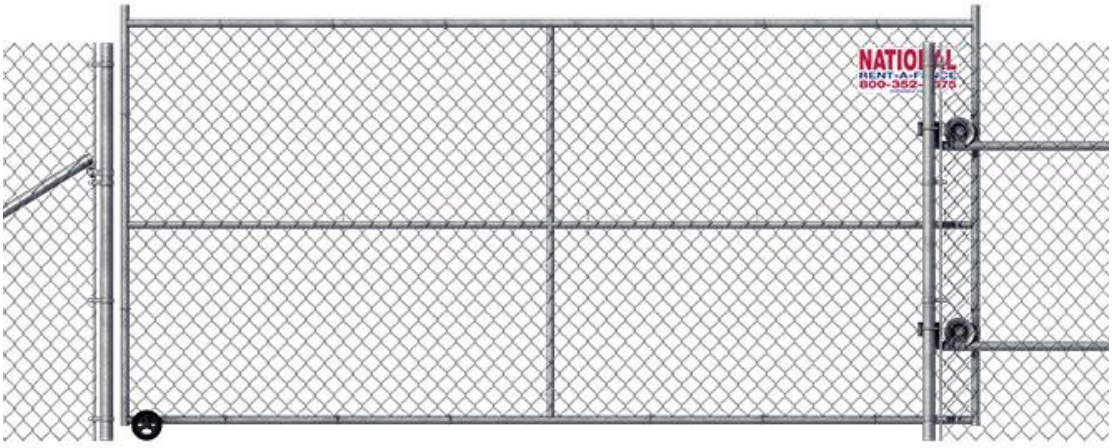
To preserve the integrity of the parking deck, the fencing is a completely freestanding system:

- No permanent anchoring or drilling into the parking deck
- Modular panel system can be disassembled and removed without structural impact
- Weighted base system allows for repositioning or complete removal as needed

Example Fence Panel:

Example Hinged Gate Kit:

Example Sliding Gate:



6.4.2 Safety Considerations

The 6-foot fence panels provide exceptional public safety when combined with the existing 42-inch concrete parapet wall, creating a redundant barrier system that exceeds building code requirements:

Dual-Barrier:

- Existing 42-inch concrete parapet wall meets fall protection requirements for rooftop safety
- 6-foot fence panels positioned in front of the concrete wall create an additional safety layer
- This configuration provides two independent barriers, ensuring public safety even if one barrier is compromised

Ball Containment:

- **90% containment rate:** Industry studies demonstrate that 6-foot fencing contains approximately 80-90% of balls during recreational pickleball play
- **Pickleball characteristics:** Unlike tennis, pickleballs are plastic with holes, travel at lower velocities, and have limited flight distance, enhancing containment effectiveness

Enhanced Safety:

- **Strategic setbacks with dual protection:**

    - Southern wall: 25 feet from court edge to the existing parapet wall (includes 15-foot designated waiting area)
    - Northern fence: 10 feet from court edge
    - Eastern/Western fences: 8 feet from court edges
- **Southern border strategy:** The 25-foot setback incorporates a 15-foot designated waiting area that serves as a buffer zone, preventing players and balls from approaching the parapet wall

The 42-inch concrete wall independently satisfies building code requirements for rooftop fall protection, while the 6-foot panels provide supplementary protection that exceeds minimum safety standards. This combination of code-compliant permanent barriers, 90% ball containment efficiency, additional fencing, strategic court positioning with varied setbacks, and substantial buffer zones creates multiple layers of safety for the public.

The freestanding fencing, gates, and nets will remain in place continuously throughout the project's duration. All equipment will be properly secured using standard portable fencing stabilization methods appropriate for rooftop installations. No daily setup or teardown is required.

7. Projected Usage and Operational Management

7.1 Capacity

The facility includes three pickleball courts, allowing for a maximum of 12 individuals playing at any given time. This small-group format ensures that the intensity of use on the top deck remains low and manageable.

Our peak occupancy accounts for both active players and a limited number of members waiting to play. While the three courts can accommodate a maximum of 12 players, we project a total peak occupancy of approximately 16 to 20 individuals on-site at any given time.

7.2 Access Model

As a private recreational club, facility usage is not based on unpredictable, walk-in traffic. Instead, access is structured around pre-scheduled programming, including member reservations, private lessons, and small-group clinics. This model gives us

significant control over the timing and intensity of activities, allowing us to manage the facility in a way that respects our neighbors and the surrounding downtown environment.

7.3 Usage Patterns

Based on demand for pickleball programming, we anticipate the following use patterns:

- **Weekdays:** We expect moderate use during weekday evenings (approximately 4:00 PM to 8:00 PM) as members play after work. Daytime use will be lighter and typically consist of private lessons or small clinics.
- **Weekends:** We anticipate weekends will be our busiest period, with more consistent, pre-booked play throughout the day, particularly from 9:00 AM to 4:00 PM.

Example programming:

Weekday Morning/Afternoon (9:00 AM - 2:00 PM)

- 9:00-10:30 AM: Beginner Clinic (Courts 1-2, 8 participants)
- 10:30 AM-12:00 PM: Intermediate Clinic (Courts 1-2, 8 participants)
- 10:00 AM-12:00 PM: Private Lessons (Court 3, 2-4 people per hour)
- 12:00-2:00 PM: Member Reservations (All courts available for booking)

Weekday Evening (4:00-8:00 PM)

- 4:00-8:00 PM: Member Court Reservations (pre-booked in 1-hour blocks)

8. Community Benefits

The proposed pickleball facility offers numerous benefits to the Berkeley community:

- Creates accessible recreational opportunities in the downtown area where such facilities are currently limited
- Utilizes existing underused infrastructure without requiring new land development, aligning with Berkeley's sustainability goals
- Provides opportunities for physical activity, social interaction, and community building through a rapidly growing sport suitable for diverse age groups and abilities

- Creates potential for partnerships with local organizations, schools, and community groups for programming and events

9. Commitment Statement

As the applicant, we are fully committed to creating a high-quality, neighborhood-appropriate recreational amenity that enhances Berkeley's downtown while respecting the surrounding context. We pledge to:

- Maintain the facility to high standards of safety, cleanliness, and functionality
- Be responsive to community feedback regarding operations
- Work collaboratively with city staff to ensure compliance with all applicable regulations
- Create a recreational resource that serves diverse community needs while remaining a good neighbor to surrounding properties

10. Waivers Requested

We request waivers from the following standard submission requirements based on the limited scope of the proposed project:

A. Community Outreach:
We request a waiver from the requirement to conduct community outreach to neighbors as outlined in the city's community outreach instructions. This request is based on the project's scope not meeting the criteria defining a "Project of Community or Neighborhood Interest." Specifically, the project does not qualify because:

1. It is located in the C-DMU Core District, not a Residential District, and does not involve the creation of new bedrooms.
2. While located in a non-residential district, the project does not meet any of the triggering conditions for this designation:
    - It involves no new construction, structural modifications, or addition of stories to the existing structure.
    - It does not utilize Density Bonus provisions.
    - It does not alter the existing Floor Area Ratio (FAR) of the building.

- The project area encompasses approximately 7,900 square feet, which is below the 10,000 square feet gross floor area threshold.

As the project consists solely of repurposing a small portion of an existing parking deck surface with painted lines and freestanding fencing, without meeting the criteria for a Project of Community or Neighborhood Interest, we believe the standard community outreach process is not applicable and request this requirement be waived.

B. Detailed Floor Plans:
We request a waiver from the requirement to submit detailed Floor Plans as specified in Section D of the Zoning Application Requirements. This requirement mandates plans showing all floors, trash rooms, bicycle parking, room uses, and distinguishing between existing and proposed conditions.

Our project involves only the painting of pickleball court lines and the installation of freestanding fencing on the existing, open surface of the sixth-floor parking deck. There is no construction, demolition, or alteration to the building's structure, layout, designated rooms (as the area is an open deck), mezzanines, basements, attics, trash facilities, or permanent bicycle parking infrastructure.

Since this project does not alter any features that standard floor plans are designed to illustrate (such as walls, rooms, structural elements, or fixed facilities), these requirements do not apply to the scope of our work. Therefore, we respectfully request that the standard floor plan submission requirement be waived.

Findings Required by the Zoning Ordinance

This project satisfies the findings required for approval under the Berkeley Zoning Ordinance in the following ways:

1. **Land Use Compatibility**: The proposed recreational facility is intended to be compatible and complementary to the existing mixed-use character of the C-DMU Core District. By activating underutilized space, it **aims to enhance** the area's offerings, while its location and proposed operating hours are designed **to minimize potential impacts** on surrounding uses.

2. **Preservation of Site Function**: The project maintains the primary parking function of the structure while repurposing underutilized space, preserving adequate parking capacity for existing users.
3. **Minimal Physical Alteration**: No permanent structural changes are proposed, maintaining the building's existing envelope, height, and architectural character.
4. **Minimal Environmental Impact**: The adaptive reuse of existing infrastructure minimizes environmental impacts compared to new construction and does not increase impervious surface area or stormwater runoff.
5. **Public Benefit**: The project provides a recreational amenity serving diverse community members, addressing a growing demand for pickleball facilities in Berkeley.
6. **Operational Compatibility**: Limited hours of operation and the sixth-floor location help minimize impacts on surrounding uses regarding noise, traffic, or other potential nuisances.

We respectfully request approval of this application based on the project's alignment with Berkeley's zoning goals and its potential to enhance community recreational opportunities through creative adaptive reuse of existing infrastructure.

Sincerely,

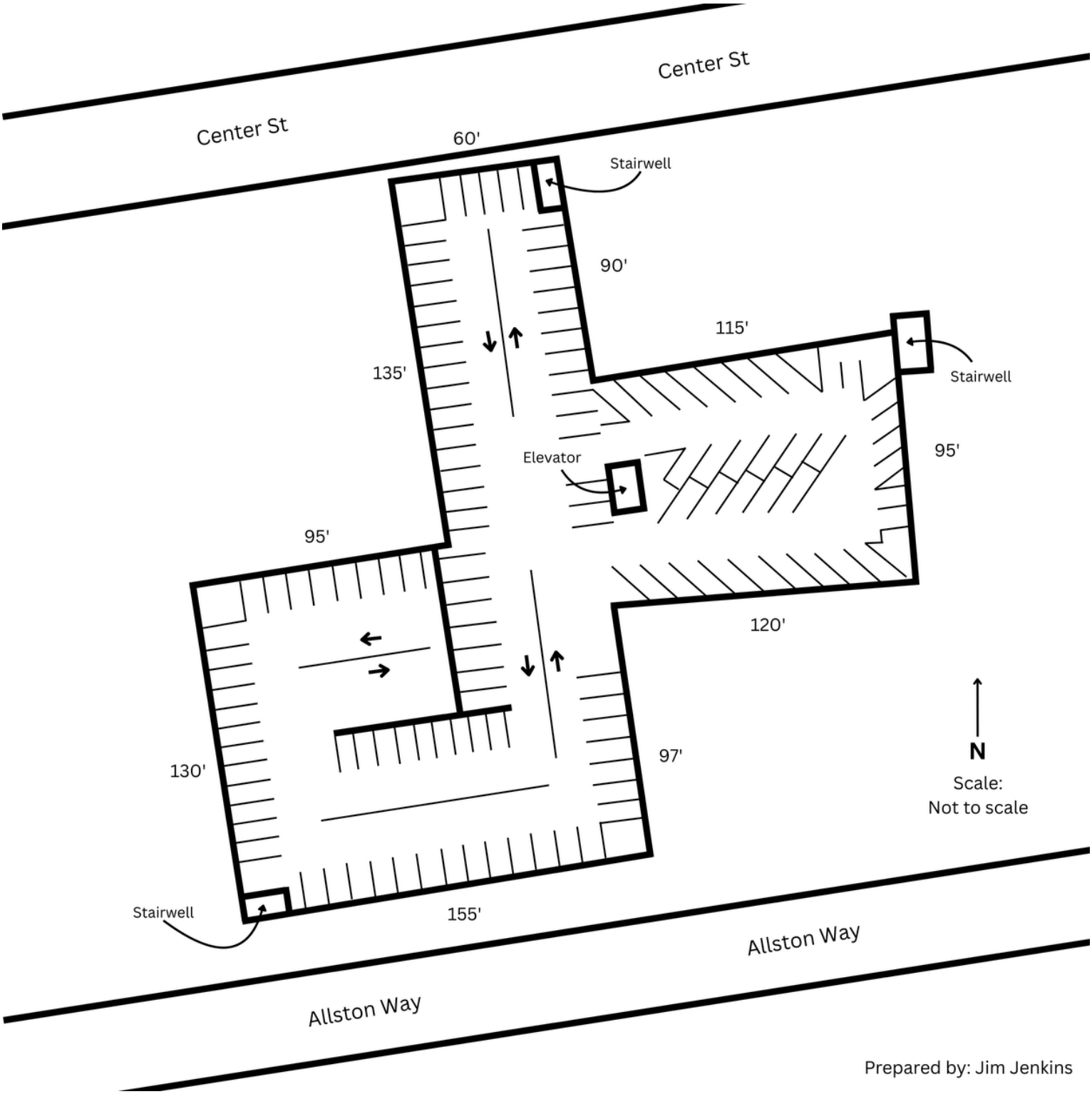
Jim Jenkins
Neighborhood Pickleball, LLC
(510) 485-9024
jim@n24b.com

Site Plan: 2061 Allston Way, Berkeley, CA

Site Plan

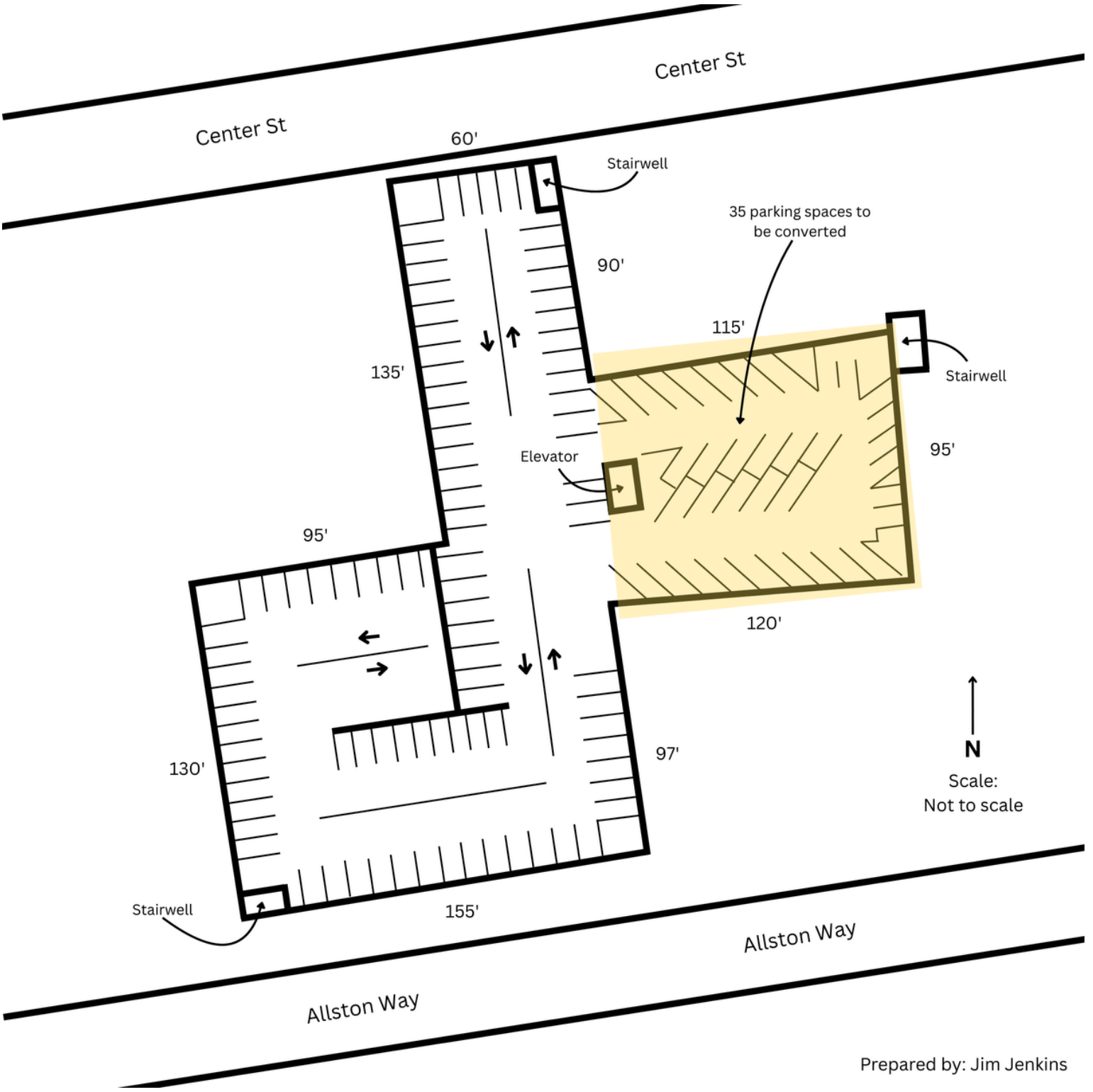
Site plan with preparation and revision dates with a graphic scale, neighboring building portions within 20 feet of the property lines, and the location and extent of the proposed temporary fencing as requested.

Existing top deck parking configuration

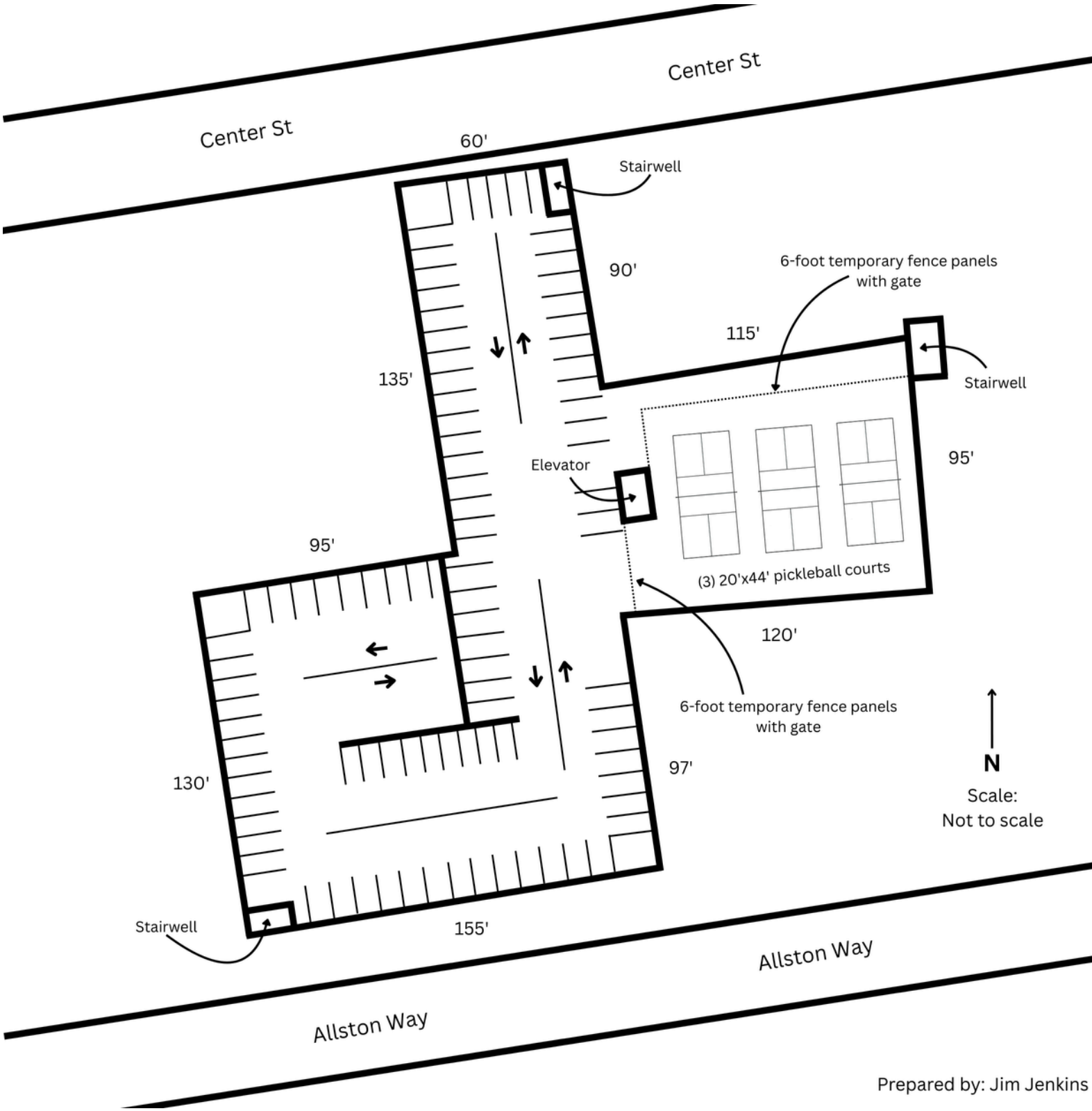


Prepared by: Jim Jenkins

35 Parking spaces to be converted



Proposed pickleball court configuration



Prepared by: Jim Jenkins

ZONING ADJUSTMENTS BOARD

NOTICE OF PUBLIC HEARING

2061 Allston Way

Use Permit ZP2025-0040 to establish and operate a commercial recreation outdoor pickle ball court by removing 35 parking spaces and replacing with three pickle ball courts to the top level of an existing parking garage.

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

When: Thursday, December 11, 2025, 7:00 pm
Where: Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

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

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

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

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

A. Land Use Designations:

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

B. Zoning Permits Required:

- Use Permit under BMC Section 23.204.040(A), **"Use-Specific Permit Requirements and Regulations"** to establish an outdoor commercial recreation facility of any size within the C-DMU District.

D. CEQA Recommendation: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities").

E. Project Recommendation: Approve Use Permit #ZP2025-0040 pursuant to BMC Section 23.406.040(D)

F. Parties Involved:

- Applicant — Jim Jenkins; Neighborhood Pickleball
- Property Owner — First Shattuck LLC

Further Information:
All application materials are available online at:
https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board.

Questions about the project should be directed to the project planner, Joshua Muller, at (510) 981-7488 or jmuller@berkeleyca.gov.

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

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

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

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

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

- **Correspondence received by 5:00 PM, two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports #1, which is released around noon one day before the public hearing.
- **Correspondence received by 12:00 PM, the day of** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports #2, which is released around noon the day of the public hearing.
- **Correspondence received after 12:00 PM, the day of** this public hearing will be saved in the project administrative record.

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

SB 343 Disclaimer:
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@berkeleyca.gov) to request hard-copies or electronic copies.

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

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within 14 days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than 90 days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that 90-day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
    a. That this belief is a basis of your appeal.
    b. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
    c. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above. If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.