



ZONING ADJUSTMENTS BOARD – MEMORANDUM

August 13, 2026

To: Zoning Adjustments Board

From: Allison Riemer, Senior Planner

Subject: Revisions to the Conditions of Approval for Item 6C, #ZP2026-0039, 2298 Durant Avenue

Chair Gaffney and Members of the Zoning Adjustments Board,

The applicant has proposed revisions to Condition of Approval XI.1 (in Section XI, AB 130 Conditions, on Page 40) that resulted from tribal consultation required by Public Resources Code Section 21080.66(b)(4) / AB 130. Both the applicant and the consulting tribes have agreed to the attached revised condition. Deletions are noted by a strikethrough, and new text is underlined and red.

Staff has also updated the information under the Timing/Implementation column of Condition of Approval XI.1 so that the condition now applies “During Demolition,” instead of “Prior to Issuance of Building Permit.”

Staff recommends that ZAB approve the project with the attached revised Condition of Approval XI.1.

Staff Planner: Allison Riemer, ariemer@berkeleyca.gov, (510) 981-7433

CONDITIONS OF APPROVAL

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XI. Assembly Bill 130		Regulation Source	Timing/Implementation	Enforcement/ Monitoring
1.	Pursuant to Public Resources Code Section 21080.66 (b) (4) the City of Berkeley shall include, as binding conditions of the project approval, all of the following: (A) Any enforceable agreements reached during the project consultation. (i) Agreement reached with the Muwekma Ohlone Tribe: (I) Muwekma Ohlone tribal monitors <u>to</u> be hired for <u>all ground-disturbing activities</u> subsurface ground excavations for this housing project in order to ensure that any and all ancestral heritage artifacts <u>tribal cultural resources and</u> human remains and subsurface features are carefully addressed and dealt with by the Tribe and any hired CRM firm <u>developer hired qualified archaeologist (“project archaeologist”)</u>. (II) Tribal monitoring <u>to</u> occur during all ground-disturbing activities unless and until a qualified <u>the project</u> archaeologist and tribal representative mutually determine that excavation is confined to previously disturbed soils with no reasonable potential to encounter tribal cultural resources, archaeological deposits, or Native American ancestral remains. (III) Tribal monitors <u>to</u> be provided at least two business days (48 hours excluding weekends and holidays) advance notice of scheduled ground-disturbing activities. (IV) Work halt procedures <u>to</u> be implemented in the event of a potential tribal cultural resource discovery. Work may continue in unaffected portions of the project area; however, work should immediately cease within a protective buffer of 50 ft. surrounding any potential tribal cultural resource discovery pending evaluation by the project archaeologist and consultation with the tribal monitor. (V) Inadvertent discoveries should be addressed in accordance with applicable state law, including Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and other applicable provisions governing Native American ancestral remains and associated cultural items. In the event that Native American human remains or associated funerary objects are encountered, all work within the vicinity of the discovery shall cease and the appropriate statutory procedures shall be followed. Upon designation by the Native American Heritage Commission, the Most Likely Descendant (MLD) shall be afforded the opportunity to make recommendations regarding the treatment, avoidance, preservation, reburial, and disposition of the remains and any associated cultural items in accordance with state law. The Tribe requests that the recommendations of the NAHC-designated MLD be implemented to the maximum extent feasible <u>and in accordance with Public Resources Code section 5097.98</u>, and that avoidance and preservation in place remain the preferred treatment option whenever feasible.	State of California Public Resources Code Section 21080.66	Prior to Issuance of Building Permit <u>During Demolition</u>	Land Use Planning

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	Consultation with the MLD shall occur prior to the implementation of any treatment measures affecting Native American ancestral remains or associated funerary objects. For discoveries of tribal cultural resources that do not involve human remains, the Muwekma Ohlone Tribe shall be consulted regarding appropriate avoidance, preservation, and treatment measures prior to the implementation of any actions that may affect the resource; and (VI) Tribal Cultural Sensitivity Training to be provided to construction personnel prior to the start of ground disturbance activities, and Muwekma Ohlone Tribe will provide the Tribal Cultural Sensitivity Training. (ii) Agreement reached with the Confederated Villages of Lisjan: (I) The project shall include tribal monitoring by a Confederated Villages of Lisjan monitor during all ground-disturbing activities, as follows: (a)The California Native American tribe shall designate the monitor. (b)The tribal monitor shall comply with applicant’s site access and workplace safety requirements. (c) The applicant shall compensate the tribal monitor at a reasonable rate, determined in good faith, that aligns with customary compensation for cultural resource monitoring, taking into account factors such as the scope and duration of the project. (II) Tribal cultural resources shall be avoided where feasible, in accordance with subdivision (a) of Section 21084.3. In furtherance of this requirement, where feasible, the project applicant shall provide deference to tribal preferences regarding access to spiritual, ceremonial, and burial sites, and incorporate tribal traditional knowledge in the protection and sustainable use of tribal cultural resources and landscapes. (III) All treatment and documentation of tribal cultural resources shall be conducted in a culturally appropriate manner, consistent with Section 21083.9. (IV) A California Historical Resources Information System archaeological records search and a tribal cultural records search shall be completed for the project site. (V) A Sacred Lands Inventory request shall be submitted to the Native American Heritage Commission. (VI) The project shall comply with Section 7050.5 of the Health and Safety Code and Section 5097.98, including immediate work stoppage upon discovery of human remains or burial grounds, and treatment in accordance with applicable law and in consultation with the affected California Native American tribe. Specifically, if cultural resources of Native American origin are identified during grading or excavation of the proposed project, all ground disturbing activities within 50 feet shall cease until a representative from the Confederated Villages of Lisjan Nation is consulted by the government agency. Work may continue in unaffected portions of the project area; however, work should immediately cease within a protective			
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	buffer of 50 ft. surrounding any potential tribal cultural resource discovery pending evaluation by the developer’s qualified archaeologist (“project archaeologist”) and consultation with the Tribal representative tribal monitor. The project archaeologist, in consultation with the consulting Tribe(s), will prepare a mitigation plan for any identified Tribal Cultural Resources, which shall be implemented in consultation with the consulting Tribe. If the entity project archaeologist in consultation with the consulting Tribe(s), determines that the resource is a Tribal Cultural Resource, the project archaeologist in consultation with the Tribe(s) the entity shall retain a Tribal representative and, if applicable, a qualified archaeologist, at the applicant’s expense, to will prepare a mitigation plan, which shall be implemented in consultation with the consulting Tribe. The mitigation plan shall include avoidance of the resource or, if avoidance of the resource is not feasible, the plan shall outline appropriate treatment of the resource in coordination with the consulting Tribe. Examples of appropriate mitigation for Tribal Cultural Resources include, but are not limited to, protecting the cultural character and integrity of the resources, protecting traditional use of the resources, protecting the confidentiality of the resources, and/or permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places. If human remains are encountered during construction and ground disturbing activities, all work within 50 feet of the remains should be redirected and the County Coroner notified immediately. At the same time, project an archeologist 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 (NAHC) within 24 hours of this identification. The NAHC will identify a Native American Most Likely Descendent (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and any associated funerary objects. There shall be no pictures taken or testing done on the Native American human remains. All bone, until identified as not human, shall be treated as potential human remains and the appropriate protocols followed. The archaeologist shall record information, as appropriate and in accordance with the recommendations of the MLD and/or Tribal representative. Upon completion of the project archeologist’s assessment, a report should be prepared documenting methods and results, as well as the MLD’s recommendations regarding the treatment of the human remains and any associated funerary objects. The report should be submitted to the lead government agency, the NWIC and the consulting Tribe. Tribal representatives will rebury the Native American human remains and associated funerary objects with the appropriate dignity either; in accordance with the recommendations of the MLD if available or in the project vicinity at a location agreed upon between the Tribe and the developer in accordance with Public			
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	Resources Code section 5097.98. entity, where the reburial would be accessible to Tribal members in perpetuity and would not be subject to further disturbance. The discovery and reburial is to be kept confidential and secure to prevent any further disturbance. (VII) An application of tribal ecological knowledge into habitat restoration efforts undertaken by the project as applicable to the specific environmental context and conditions of the project. (B) All of the following measures, unless there is mutual agreement between the California Native American tribe and the project proponent not to include the measure as a binding condition: (i) Upon request by a California Native American tribe, the project shall include tribal monitoring during all ground-disturbing activities, as follows: (I) Confederated Villages of Lisjan Nation shall designate a monitor; Muwekma Ohlone Tribe Incorporated shall designate a monitor (II) Both tribal monitors shall comply with applicant’s site access and workplace safety requirements. (III) The applicant shall compensate both tribal monitors at a reasonable rate, determined in good faith, that aligns with customary compensation for cultural resource monitoring, taking into account factors such as the scope and duration of the project. (ii) Tribal cultural resources shall be avoided where feasible, in accordance with subdivision (a) of Section 21084.3. In furtherance of this requirement, where feasible, the project applicant shall provide deference to tribal preferences regarding access to spiritual, ceremonial, and burial sites, and incorporate tribal traditional knowledge in the protection and sustainable use of tribal cultural resources and landscapes. (iii) All treatment and documentation of tribal cultural resources shall be conducted in a culturally appropriate manner, consistent with Section 21083.9. (iv) A California Historical Resources Information System archaeological records search and a tribal cultural records search shall be completed for the project site. (v) A Sacred Lands Inventory request shall be submitted to the Native American Heritage Commission. (vi) The project shall comply with Section 7050.5 of the Health and Safety Code and Section 5097.98, including immediate work stoppage upon discovery of human remains or burial grounds, and treatment in accordance with applicable law and in consultation with the affected California Native American tribe. (vii) An application of tribal ecological knowledge into habitat restoration efforts undertaken by the project as applicable to the specific environmental context and conditions of the project.			
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