



Planning & Development
Land Use Planning Division

MEMORANDUM

September 2, 2026

To: Landmarks Preservation Commission

From: Nilu Karimzadegan, Senior Planner

Subject: SUPPLEMENTAL COMMUNICATION
Agenda Items: 7B (#ZP2026-0060), 7C (LMSAP2026-0007)
701 University Avenue - West Berkeley Shellmound

BACKGROUND

Staff has prepared the following clarifying information in response to correspondence received on August 24 and September 1, 2026.

ANALYSIS

The correspondence received identified concerns related to piecemealing of the analysis required by the California Environmental Quality Act (CEQA) and the use of Categorical Exemptions for the proposed removal of asphalt and a non-landmarked structure at 701 University Avenue.

Piecemealing

It is stated in the correspondence that approving demolition of the parking lot now, without also studying the future construction of the park at the site, constitutes improper "piecemealing" under CEQA. Under CEQA, a city must analyze the environmental effects of a future action if it is a foreseeable consequence of the initial project. Piecemealing occurs when the reviewed project is the first step of a future development.

The purpose of removing the existing parking lot is independent of any future park proposal which is not currently funded and is only contemplated at this time. The future development of a park at the site may or may not occur and the submitted conceptual park plan is subject to change.

Demolition of the parking lot is considered a beneficial action in its own right, both for honoring the cultural significance of the site and for enabling geolocation and investigation of subsurface

resources, regardless of whether a park is ultimately constructed. Removal of the asphalt also enhances the historic resource—the subsurface Shellmound—independent of any future park development.

Categorical Exemption

It is stated in the correspondence that use of a Categorical Exemption is not applicable per CEQA Guidelines Section 15300.2 (f) which provides that "a categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource."

The historical resource is limited to the subsurface remnants of the West Berkeley Shellmound, and not the asphalt or structures proposed to be removed. Staff identified that the CEQA exemption is appropriate because the removal of the parking lot and building will not disturb or alter historical resources and, in fact, will enhance them by allowing for improved detection of subsurface features. The above-ground parking lot is not a landmarked historical resource. The City will monitor the removal process to ensure that no Shellmound remnants are relocated or altered in a manner that would constitute a material impairment of the underground resources.

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September 1, 2026

VIA ELECTRONIC MAIL (planninglpc@berkeleyca.gov)

Landmarks Preservation Commission
City of Berkeley
c/o Ms. Allison Riemer, Secretary
1947 Center Street, 2nd Floor
Berkeley, CA 94704

**Re: Supplemental Comment — Agenda Items 7B and 7C (September 3, 2026 Hearing)
LMSAP2026-0007 (Structural Alteration Permit); ZP2026-0060 (Use Permit)
701 University Avenue / 1900 Fourth Street — West Berkeley Shellmound**

Dear Chair and Members of the Commission:

This office represents Abrams Millikan, Fourth Street Holdings, LLC, Bond Retail, and Jamestown Premier Berkeley Grotto LP—longtime property owners and operators in the Fourth Street district adjoining the project site (the “Fourth Street Shops”). Having reviewed the staff reports, we submit this letter as a Late Communication under the agenda’s September 1 deadline. It supplements our August 24, 2026 letter and Mr. Abrams’ August 19, 2026 correspondence (Item 7C, Attachment 5), which are incorporated by reference.

The Fourth Street Shops is a vital part of the City, with the retail district providing employment to an estimated 900 workers and substantial revenue for the City. As set forth in our August 24, 2026 letter, my clients, some of which have been building and stewarding the district for 50 or more years, intend to support a well-conceived restoration of the site. As part of that, is critical that the approvals of this project incorporate proper review and, where needed, mitigation of impacts on the surrounding community.

We were glad to see the 2000 Notice of Decision in the record (Item 7C, Attachment 4), draft findings addressed to the landmark site consistent with the designation, a Historic Resource Evaluation (Item 7B, Attachment 1), and discovery protocols among the draft conditions. In addition, we would expect to see a review that makes public input—on, e.g., construction dust, debris routes, drainage, parking, and interim operations—useful. The remaining questions are what project is before the Commission, and whether the environmental determination included in the staff report matches it.

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1. The Project Is Larger than the Application Describes.

The application describes demolition and site clearance with “no new construction.” Yet, the record describes preparation for a defined future. The plan set states the purpose: “final rough grading of the site” to “prepare the parcel for future development” (Sheet A0.01). The staff report’s Figure 6 reproduces the “Conceptual Master Plan” for that future—a park with plantings, pathways, and a daylighted Strawberry Creek—while describing it as “not part of this application.” The findings then rely on it: the analysis for SOI Standard 1 explains that “the site is proposed to be redeveloped as a park,” and the SOI Standard 10 analysis weighs “the subsequent development of a park.” Item 7B, for its part, defers: “[t]he CEQA determination will be discussed in the Use Permit staff report and findings”—a second determination, at a later hearing, for the same demolition.

Under CEQA the “project” is “the whole of an action” and “does not mean each separate governmental approval.” Guidelines § 15378(a), (c); *Save Tara v. City of West Hollywood*, 45 Cal.4th 116, 129 n.8 (2008). Where an action can be described narrowly or broadly, the broader description controls. Guidelines § 15378(d). Dividing one operation between approvals “can improperly submerge the aggregate environmental considerations of the total project.” *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151, 165–67 (1985). The future phase here is material: staff itself relies on the park to make the required findings, and what may happen in the future bears on the nature of the initial project’s effects. The whole of the action should be identified and reviewed before the first discretionary approval issues—not determined a second time, permit by permit.

2. A Categorical Exemption Does Not Fit this Project, However It Is Defined.

Guidelines § 15301 exempts “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration” of existing facilities. This does not include removal of an entire improvement. This exemption does include some demolition activity under subdivision (I), but that describes only demolition and removal of “individual small structures,” such as a single family residence, a commercial structure designated for a load of 30 persons or less, and accessory structures like patios. It does not describe anything resembling clearing 99,410 square feet of paving, embedded curbs and concrete, and a building’s slab and foundations, with site-wide rough grading.

Guidelines § 15332 exempts projects “characterized as in-fill development”; but this application proposes no development—the staff report’s own formulation is that the project is exempt “because the project would demolish an existing parking lot and an existing non-residential building.” The draft findings then recite § 15332’s five conditions verbatim and attach evidence to none of them. Notably, one of the required findings is that “Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.” That is exactly the type of evaluation we are asking the City to actually do (e.g. via initial study) so that we and the public may participate and ensure there are no unmitigated such effects. In any

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event, the above discussions on the applicability of the language are questions of what the exemption classes mean, not of what the record shows, and exemption categories “are not to be expanded beyond the reasonable scope of their statutory language.” *Mountain Lion Foundation v. Fish & Game Com.*, 16 Cal.4th 105, 125 (1997).

Independently, Public Resources Code § 21084(e) provides that a project which may cause a substantial adverse change in the significance of a historical resource “shall not be exempted,” and Guidelines §§ 15061(b)(2) and 15300.2(f) implement that bar for every categorical class. The draft conditions appear to concede the applicability of this bar. The conditions include IV.B.3, which applies “[p]ursuant to CEQA Guidelines section 15064.5(f)” —a significance-and-mitigation provision. Condition IV.B.2 provides that if a discovered resource is “significant under CEQA, a mitigation plan shall be prepared and implemented.” These seem prudent measures, but “[m]itigation measures may support a negative declaration [and] not a categorical exemption.” *Historic Architecture Alliance v. City of Laguna Beach*, 96 Cal.App.5th 186, 208 (2023); *accord Berkeley Hillside Preservation v. City of Berkeley*, 241 Cal.App.4th 943, 960 (2015); *Salmon Protection & Watershed Network v. County of Marin*, 125 Cal.App.4th 1098, 1106–08 (2004). We read their presence as conceding a reasonable possibility of effect, which is the exception’s threshold.

The appropriate instrument, in our view, is an initial study. We would anticipate that would result in a mitigated negative declaration with a mitigation monitoring and reporting program, which would give any conditions enforceable effect and beneficial value to the community.

3. The City’s Own Requirements Should Come First.

The City’s July 16, 2026 letter on the companion Use Permit requires a Phase I or Phase II site assessment and a conceptual grading plan for this same physical work. Neither is in the record. Nothing in the draft conditions prevents a demolition or building permit from issuing on this Structural Alteration Permit alone, before those materials exist and before the Use Permit is acted on. The Commission should not authorize ground disturbance ahead of the studies the City has itself required.

4. Record Notes.

The Historic Resource Evaluation is the April 21, 2016 LSA report prepared for the prior owners; it evaluates a different project—“a 207,590-square foot mixed-use project”—and only the building, “limited to above ground.” It should be updated before findings rest on it, and incorporated into the Item 7C record. Condition of Approval I.1 approves the “project plans dated June 4, 2026,” while Attachment 2 is the “Project Plans, received July 15, 2026”; the operative set should be clarified. And because Item 7B notices no ground for a CEQA

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determination—it states the determination “will be discussed in the Use Permit staff report”—Item 7B should be heard together with Item 7C rather than on the consent calendar.¹

5. Requested Actions.

We respectfully request that the Commission:

- (a) continue Item 7C to a date certain, keeping the public hearing open, until (i) the project description is clarified to encompass the whole of the action, (ii) the site assessment and conceptual grading plan required on the companion Use Permit are submitted, and (iii) environmental review of the whole of the project is completed;
- (b) in the alternative, if the Commission acts on September 3, condition any approval—with the applicant’s consent, BMC § 3.24.240.A—so that it does not take effect, and no demolition or building permit issues and no ground disturbance occurs, until the companion Use Permit and the environmental review of the project are complete; this adds no substantive requirement and simply aligns the sequence of approvals with the City’s July 16 letters;
- (c) hear Item 7B together with Item 7C, direct the record corrections above, and incorporate the Historic Resource Evaluation into the Item 7C record; and
- (d) provide notice of the Commission’s decision to this office on behalf of each client named above, BMC §§ 3.24.240.A, 3.24.160.C.3, together with a copy of any CEQA determination or notice of exemption when filed.

All issues raised in this letter, in our August 24 letter, and in Mr. Abrams’ August 19 correspondence are preserved. My clients continue to support the return and restoration of the Shellmound; their request remains a complete record and an environmental determination that will hold.

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¹ Item 7B and the agenda caption the companion Use Permit as #ZP2026-0007 and state “Date Deemed Complete: July 16, 2026.” The Use Permit of record is ZP2026-0060, which was deemed incomplete a second time on July 16; the completeness date shown is the Structural Alteration Permit’s.

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Respectfully submitted,



Colin J. Barreno

Counsel for Abrams Millikan, Fourth Street Holdings, LLC, Bond Retail, and Jamestown Premier
Berkeley Grotto LP

cc: Nilu Karimzadegan, Senior Planner
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