2190 Shattuck Avenue

Use Permit Modification #ZP2022-0026 to modify the project originally approved under #ZP2016-0117, to construct a 25-story (268 feet, 6 inches), 397,212-square-foot mixed-use building with up to 326 dwelling units (including up to 32 Very Low-Income Density Bonus qualifying units), approximately 7,500 square feet commercial space, and approximately 51 underground parking spaces.

I. Background

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

B. Zoning Permits Approved with Use Permit #ZP2016-0117:
   - Use Permit for demolition of a non-residential building
   - Use Permit for construction of a new main building with mixed-use development
   - Use Permit for construction of more than 10,000 square feet of gross floor area
   - Use Permit to allow a maximum height of up to 180 feet
   - Use Permit to allow a reduction in the required 5-foot rear yard setback for the portion of the building between 20 and 75 feet in height
   - Use Permit to allow that portion of the building over 120 feet to be greater than 120 feet in width when measured at the widest point on the diagonal in plan view
   - Use Permit to allow a reduced vehicle parking space requirement
   - Use Permit for reduction of required parking spaces through payment of an in-lieu fee to be used to provide enhanced transit services
   - Administrative Use Permit to allow architectural projections (e.g., elevator enclosures) to exceed the height limit

C. Zoning Permits Required for Permit Modification:
   - Use Permit under Berkeley Municipal Code (BMC) Section 23.404.070(B) to modify an approved permit
• Use Permit under BMC Section 23.204.130(E)(2) to construct a building that exceeds the district height limit, and that is over 120 feet but not more than 180 feet
• Use Permit under BMC Section 23.204.130(E)(3)(b) to modify front, side, and rear setback requirements
• Use Permit under BMC Section 23.204.130(E)(3)(b)(i) to exceed 120 feet in width in diagonal measurement
• Use Permit under BMC Section 23.204.130(E)(6)(a)(i) to pay a fee in lieu of providing Privately-Owned Public Open Space
• Administrative Use Permit under BMC Section 23.304.050(A) to allow architectural projections to exceed district height limits

D. Concessions and Waivers Requested Pursuant to State Density Bonus Law (California Government Code Section 65915):
• Concession to reduce the commercial parking requirement – to provide zero, where 11 is required
• Concession to reduce the car share requirement – to provide zero, where two is required
• Waiver of BMC Section 23.204.130(E)(2) to exceed building height limits – to be 264 feet (plus 5-foot parapet, by right), where 180 feet (plus 5-foot parapet, by right) is the limit
• Waiver of BMC Section 23.204.130(E)(3)(b) to modify front, side, and rear setbacks above 75 feet in height – see Table 4 for details
• Waiver of BMC Section 23.204.130(E)(3)(b)(i) to exceed 120 feet in width in diagonal measurement – to be 238 feet in width
• Waiver of BMC Section 23.204.130(E)(4) to reduce the usable open space requirement – to be 22,719 square feet, where 26,080 square feet is required
• Waiver of BMC Section 23.204.130(E)(4) to reduce the Privately-Owned Public Open Space (POPOS) – to be 0 square feet, where 150 square feet is required

E. CEQA Recommendation: It is staff’s recommendation that the Zoning Adjustments Board (ZAB) adopt the Addendum to the certified 2190 Shattuck Mixed-Use Project Final EIR (SCH #2017012011) and Revised Mitigation Monitoring and Reporting Program (Revised MMRP) pursuant to the California Environmental Quality Act (CEQA). The Addendum and Revised MMRP are attached to this staff report. See Section V for further discussion of the project’s CEQA review.

F. Parties Involved:
• Applicant Trachtenberg Architects, 2421 Fourth Street, Berkeley, CA 94701
• Property Owner PR III Shattuck LLC c/o PGIM Real Estate, 101 California Street, 40th Floor, San Francisco 94111
G. Application Materials, Staff Reports and Correspondence are available on the City’s website:
https://aca.cityofberkeley.info/citizenaccess/Default.aspx
https://cityofberkeley.info/your-government/boards-commissions/zoning-adjustments-board

Figure 1: Zoning Map
Figure 2: Aerial View of Site
Figure 3: Allston Way (South) and Shattuck Avenue (East) Elevations

Figure 4: North and West Elevations

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### Table 1: Land Use Information

<table>
<thead>
<tr>
<th>Location</th>
<th>Existing Use</th>
<th>Zoning District</th>
<th>General Plan Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Property</td>
<td>Retail drug store (Walgreens) / Office</td>
<td>C-DMU</td>
<td>Core DT</td>
</tr>
<tr>
<td>North</td>
<td>Public parking structure / Office, retail, restaurant</td>
<td>C-DMU</td>
<td>Core DT</td>
</tr>
<tr>
<td>East</td>
<td>Retail (Target Store)</td>
<td>C-DMU</td>
<td>Core DT</td>
</tr>
<tr>
<td>South</td>
<td>Hotel Shattuck Plaza (City Landmark Site) / Site of 2065 Kittredge Mixed-Use Residential Project (ZP2021-0193), approved January, 2023</td>
<td>C-DMU</td>
<td>Core DT</td>
</tr>
<tr>
<td>West</td>
<td>Public parking structure</td>
<td>C-DMU</td>
<td>Core DT</td>
</tr>
</tbody>
</table>

### Table 2: Special Characteristics

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Applies to Project?</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affordable Child Care Fee &amp; Affordable Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. &amp; 66,617-N.S.)</td>
<td>No</td>
<td>These fees apply to projects with more than 7,500 square feet of net new non-residential gross floor area. The project includes no net new non-residential gross floor area. Therefore, the project would not be subject to these fees.</td>
</tr>
<tr>
<td>Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)</td>
<td>Yes</td>
<td>The project would include five or more market rate dwelling units and is therefore subject to the affordable housing provisions of BMC 22.20.065.</td>
</tr>
<tr>
<td>Alcohol Sales/Service</td>
<td>No</td>
<td>The project is not proposing alcohol sales or service with this permit.</td>
</tr>
<tr>
<td>Coast Live Oaks</td>
<td>No</td>
<td>There are no oak trees on the project site.</td>
</tr>
<tr>
<td>Creeks</td>
<td>No</td>
<td>The project site is not within a creek buffer.</td>
</tr>
<tr>
<td>Density Bonus</td>
<td>Yes</td>
<td>The project would provide 32 Very Low-Income units, or 14 percent of the Base Project units, and qualifies for a 46.25 percent density bonus, or 104 bonus units (103 taken). See Section III.B for discussion.</td>
</tr>
<tr>
<td>Green Building Score</td>
<td>Yes</td>
<td>The project is designed to achieve a Leadership in Energy and Environmental Design (LEED) - Gold (or equivalent) rating.</td>
</tr>
<tr>
<td>Characteristic</td>
<td>Applies to Project?</td>
<td>Explanation</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>---------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Historic Resources</td>
<td>Yes</td>
<td>The project would involve demolition of a 1958 J.C. Penney Company building, which is not an eligible historic resource. The proposed new building would impact the Shattuck Avenue Commercial Corridor Historic District, which is identified as an historic resource. Analysis of impact and Mitigation measures are discussed in Section V.</td>
</tr>
<tr>
<td>Housing Accountability Act (Govt. Code 65589.5(j))</td>
<td>Yes</td>
<td>The project is a “housing development project” consisting of a mixed-use building, and requests no modifications to development standards beyond waivers and concessions requested under density bonus law. Therefore, the HAA findings apply to this project, and the project cannot be denied at the density proposed unless the findings for denial can be made. See Section III.C for discussion.</td>
</tr>
<tr>
<td>Public Art on Private Projects (BMC Chapter 23C.23)</td>
<td>Yes</td>
<td>The project is subject to the Percentage for Public Art on Private Projects Ordinance. The applicant is electing to pay the fee (0.8% of total building permit valuation) to comply.</td>
</tr>
<tr>
<td>Rent Controlled Units</td>
<td>No</td>
<td>The project involves the demolition of non-residential structures and no rent-controlled units would be demolished.</td>
</tr>
<tr>
<td>Residential Preferred Parking (RPP)</td>
<td>Yes</td>
<td>The site is located in RPP zone &quot;I&quot;. However, newly constructed dwellings would not be eligible to participate in the RPP program.</td>
</tr>
<tr>
<td>Seismic Hazards</td>
<td>No</td>
<td>The project site is not located in an area susceptible to seismic hazards, as defined by the State Seismic Hazards Mapping Act (SHMA). No further study is required.</td>
</tr>
<tr>
<td>Soil/Groundwater Contamination</td>
<td>No</td>
<td>The project site is located within the City’s Environmental Management Area. The project site is not listed on the Cortese List. The Phase I submitted by applicant found no Recognized Environmental Conditions on the site. standard Conditions of Approval related to hazardous materials would apply.</td>
</tr>
<tr>
<td>Transit</td>
<td>Yes</td>
<td>The project site is served by multiple bus lines (local, rapid, and Transbay) that operate along Shattuck Avenue, and is shares the City block with the Downtown Berkeley Bay Area Rapid Transit (BART) Station.</td>
</tr>
</tbody>
</table>
### Table 3: Project Chronology

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 31, 2019</td>
<td>Council Resolution 68,755-N.S., affirming ZAB approval of #ZP2016-0117</td>
</tr>
<tr>
<td>February 17, 2022</td>
<td>SB 330 Preliminary Application deemed complete</td>
</tr>
<tr>
<td>April 27, 2022</td>
<td>SB 330 Use Permit Application submitted</td>
</tr>
<tr>
<td>July 27, 2022</td>
<td>Application deemed complete</td>
</tr>
<tr>
<td>August 5, 2022</td>
<td>Level of CEQA review determined by staff – EIR Addendum</td>
</tr>
<tr>
<td>December 15, 2022</td>
<td>DRC Preview</td>
</tr>
<tr>
<td>February 17, 2023</td>
<td>DRC Preliminary Design Review</td>
</tr>
<tr>
<td>March 16, 2023</td>
<td>Public hearing notices mailed/posted</td>
</tr>
<tr>
<td>March 30, 2023</td>
<td>ZAB Hearing</td>
</tr>
</tbody>
</table>
Table 4: Development Standards

<table>
<thead>
<tr>
<th>C-DMU Standards, Core Sub-Area</th>
<th>Approved w/ ZP2016-0117</th>
<th>Change</th>
<th>Proposed</th>
<th>Permitted/Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Area (sq. ft.)</td>
<td>19,967</td>
<td>-</td>
<td>19,967</td>
<td>n/a</td>
</tr>
<tr>
<td>Gross Floor Area (s.f.)</td>
<td>211,590</td>
<td>+185,622</td>
<td>397,212</td>
<td>n/a</td>
</tr>
<tr>
<td>Commercial Floor Area</td>
<td>10,000</td>
<td>-2,500</td>
<td>7,500</td>
<td>n/a</td>
</tr>
<tr>
<td>FAR</td>
<td>10.6</td>
<td>+9.3</td>
<td>19.9</td>
<td>n/a</td>
</tr>
<tr>
<td>Dwelling Units</td>
<td>274</td>
<td>+52</td>
<td>326</td>
<td>n/a</td>
</tr>
<tr>
<td>Bedoons</td>
<td>274</td>
<td>709</td>
<td>983</td>
<td>n/a</td>
</tr>
</tbody>
</table>

**Building Setbacks**

<table>
<thead>
<tr>
<th>Building Height¹</th>
<th>Maximum</th>
<th>Change</th>
<th>Proposed</th>
<th>Permitted/Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stories</td>
<td>18</td>
<td>+7</td>
<td>25</td>
<td>n/a</td>
</tr>
<tr>
<td>Front (Shattuck)³</td>
<td>0'</td>
<td>--</td>
<td>0'</td>
<td>0'–5' (bldg. ht.≤20')</td>
</tr>
<tr>
<td>0'</td>
<td>--</td>
<td>0'</td>
<td>0'–5' (bldg. ht.&gt;20' ≤75')</td>
<td></td>
</tr>
<tr>
<td>15'</td>
<td>-15'</td>
<td>0'</td>
<td>15' (bldg. ht.&gt;75')</td>
<td></td>
</tr>
<tr>
<td>Street Side (Allston)³</td>
<td>0'</td>
<td>--</td>
<td>0'</td>
<td>0'–5' (bldg. ht.≤20')</td>
</tr>
<tr>
<td>0'</td>
<td>--</td>
<td>0'</td>
<td>0'–5' (bldg. ht.&gt;20' ≤75')</td>
<td></td>
</tr>
<tr>
<td>15'</td>
<td>-10'</td>
<td>0'</td>
<td>15' (bldg. ht.&gt;75')</td>
<td></td>
</tr>
<tr>
<td>Rear</td>
<td>0'</td>
<td>+5'</td>
<td>5'</td>
<td>5' (bldg. ht.≤20')</td>
</tr>
<tr>
<td>0'</td>
<td>+5'</td>
<td>5'</td>
<td>5' (bldg. ht.&gt;20' ≤75')</td>
<td></td>
</tr>
<tr>
<td>15'</td>
<td>-10'</td>
<td>5'</td>
<td>15' (bldg. ht.&gt;75')</td>
<td></td>
</tr>
<tr>
<td>Interior Right Side (north)</td>
<td>0'</td>
<td>--</td>
<td>0'</td>
<td>0'–5' (bldg. ht.≤20')</td>
</tr>
<tr>
<td>0'</td>
<td>--</td>
<td>0'</td>
<td>0'–5' (bldg. ht.&gt;20' ≤75')</td>
<td></td>
</tr>
<tr>
<td>5'</td>
<td>--</td>
<td>5'</td>
<td>15' (bldg. ht.&gt;75')</td>
<td></td>
</tr>
<tr>
<td>10'</td>
<td>--</td>
<td>5'</td>
<td>15' (bldg. ht.&gt;75')</td>
<td></td>
</tr>
<tr>
<td>Diagonal Dimension</td>
<td>&gt;120</td>
<td>n/a</td>
<td>235'</td>
<td>120' (bldg. ht.&gt;120')</td>
</tr>
</tbody>
</table>

Lot Coverage (%)          | 92       | -4     | 88       | n/a                |

Usable Open Space (s.f.)  | 21,952   | +767   | 22,719   | 26,080 min. (80 s.f./d.u.) |

Privately Owned Public Open Space (s.f.) | 252 | -252 | 0 | 150 min. (1 s.f./50 s.f. of commercial) |

¹ Use permits to allow height up to 75 feet and up to 180' are included in the Base Project for the calculation of the density bonus, and are not requested waivers. Additional height beyond 180' is being requested as a waiver.

² The use permit to allow reduced setbacks up to 180' building height is included in the Base Project for the calculation of the density bonus, and is not a requested waiver. Setback reductions above 180' is being requested as a waiver.

³ Façade has elements with 2' overhang into the right-of-way.

== Waiver requested to modify the district standard.

* Concession, pursuant to State Density Bonus Law, requested to modify the district standard.

Abbreviations: s.f.= square feet; d.u.=dwelling unit; min. = minimum; max. = maximum; bldg. ht.=building height
Table 4: Development Standards (Continued)

<table>
<thead>
<tr>
<th>C-DMU Standards, Core Sub-Area</th>
<th>Approved w/ ZP2016-0117</th>
<th>Change</th>
<th>Proposed</th>
<th>Permitted/Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parking</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial (7,500 sq. ft.)</td>
<td>15</td>
<td>-15</td>
<td>0</td>
<td>11 min. (1.5 space/1,000 s.f.)</td>
</tr>
<tr>
<td>Residential</td>
<td>91</td>
<td>-40</td>
<td>51</td>
<td>0 min./163 max. (0.5 spaces/du max.)</td>
</tr>
<tr>
<td>Carshare</td>
<td>5</td>
<td>-5</td>
<td>0</td>
<td>2 min (for 31-60 parking spaces)</td>
</tr>
<tr>
<td>Total</td>
<td>106</td>
<td>-55</td>
<td>51</td>
<td>11 min./163 max.</td>
</tr>
<tr>
<td>Bicycle Parking</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial - Short Term (7,500 sq. ft.)</td>
<td>0</td>
<td>+4</td>
<td>4</td>
<td>4 (1 space/2,000 s.f. commercial)</td>
</tr>
<tr>
<td>Residential - Long Term</td>
<td>99</td>
<td>+172</td>
<td>271</td>
<td>266 (1 space/3 bedrooms)</td>
</tr>
<tr>
<td>Residential - Short Term</td>
<td>0</td>
<td>+20</td>
<td>20</td>
<td>20 (1 space/40 bedrooms, or 2)</td>
</tr>
<tr>
<td>Total</td>
<td>99/0</td>
<td>+172/24</td>
<td>271/24</td>
<td>266/24 (long term/short term)</td>
</tr>
</tbody>
</table>

= Waiver requested to modify the district standard.

* Concession, pursuant to State Density Bonus Law, requested to modify the district standard.

Abbreviations: s.f. = square feet; d.u. = dwelling unit; min. = minimum; max. = maximum; bldg. ht. = building height

II. Project Setting

A. Neighborhood/Area Description: The project site is located southeast corner of Shattuck Avenue and Allston Way, within the Downtown Mixed-Use District (C-DMU), Core Sub-Area, as identified in the City’s Downtown Area Plan (DAP). The site has frontage on Shattuck Avenue and Allston Way, and is adjacent to the southern half of the Bay Area Rapid Transit (BART) Plaza associated with the Downtown Berkeley BART station. The project site is surrounded primarily by commercial and institutional buildings ranging in height from one story (commercial buildings across Shattuck) to 16 stories (the Residence Inn Hotel at 2129 Shattuck Avenue).

A public parking structure and other commercial uses (office, retail, and restaurant) occupy the abutting four- and five-story buildings to the north and west of the project site. One- and two-story, commercial uses are located across Shattuck Avenue to the east. South of the project site across Allston is a City of Berkeley landmark, the Hotel Shattuck Plaza, which is five stories tall. (See Figure 1: Zoning Map and Figure 2: Aerial View.)

The block where the project site is located is a central transit hub for several modes of public transportation – multiple AC Transit bus lines, the University of California, Berkeley Shuttle, a bike share station, and the Downtown Berkeley BART station.

B. Site Conditions/Background: The project site is associated with addresses 2190 Shattuck and 2075 Allston, and Assessor's Parcel Number 57-2026-4-5. The 19,967
square-foot (0.46-acre) project site is a rectangular parcel that is occupied by a two-story, approximately 38,700 square-foot, retail and office building currently occupied by the Walgreens drug store and pharmacy on the ground floor. The second floor has office uses. The basement was occupied by Fast Response, a paramedics and phlebotomy training center, until December 2016, and is currently vacant.

Entitlements were previously obtained for the project site in January 2019 (Use Permit #ZP2016-0117) to demolish the existing building and construct an 18-story, 274-unit, mixed-use building, with approximately 10,000 square feet of commercial space, and 106 parking spaces. Building permit applications for construction of the project foundation and superstructure were opened in December 2019 but never issued.

III. Project Description

A. The project (modified project) proposes to modify the project originally approved under #ZP2016-0117 (original project) to construct a building that utilizes the State density bonus in a mixed-use building with the following main components:

- 25 stories, 268 feet-6 inches in height (see Figures 3 and 4: Elevations)
- 326 dwelling units – 21 studios, 71 one-bedroom, 113 two-bedroom, 29 three-bedroom, 69 four-bedroom, and 23 five-bedroom
- 983 bedrooms total
- 32 Very Low Income (VLI) units
- 7,500 square feet of ground-floor commercial space
- 22,719 square feet of usable open space – roof deck, private balconies
- 51 residential vehicle parking spaces in ground-level garage
- 271-spaces in three bike rooms
- Community benefits package – Project Labor Agreement and 677-square-foot Community Room for public use

B. Base Project and Density Bonus: By committing to provide 32 VLI units, the project is eligible for a density bonus under Government Code Section 65915. Under the City’s density bonus procedures, the Base Project was calculated to have 23 units, as the maximum allowable density for the site. The Base Project has an average unit size of 1,193 square feet in a 17-story building. Thirty-two VLI units, or 14 percent of the Base Project, qualifies the project for a 46.25 percent density bonus or 104 bonus units, of which the project would utilize 103. The resulting proposed project would be a 25-story building with 326 units (out of 327 units maximum), with an average unit size of 1,195 square feet (see Table 5: Density Bonus).

1 Per the City’s Density Bonus Procedures (DBP), the Base Project is the largest project allowed on the site that is fully compliant with district development standards (i.e. height, setbacks, usable open space, parking, etc.), or, the maximum allowable density for the site. The City uses the DBP to calculate the maximum allowable density for a site where there is no density standard in the zoning district, and to determine the number of units in the Proposed Project, which is the number of Base Project units plus the number of density bonus units that can be added according to the percentage of BMR units proposed, per Government Code, §65915(f).
Table 5: Density Bonus – Government Code 65915

<table>
<thead>
<tr>
<th>Base Project Units*</th>
<th>Qualifying Units</th>
<th>Percent Density Bonus</th>
<th>Number of Density Bonus Units*</th>
<th>Proposed Project Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>223</td>
<td>32 VLI</td>
<td>46.25 percent</td>
<td>103 (104 max.)</td>
<td>326 (327 max.)</td>
</tr>
</tbody>
</table>

*Per Government Code 65915(q), all unit calculations are rounded up to the nearest whole number.

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

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

The Base Project complies with applicable, objective general plan and zoning standards. Further, Section 65589.5(j)(3) provides that a request for a density bonus “shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.” Therefore, the City may not deny the Base Project or density bonus request or reduce the density with respect to those units without basing its decision on the written findings under Section 65589.5(j), above. Staff is aware of no specific adverse impacts that could occur with the construction of the Base Project or the density bonus units. Therefore, Section 65589.5(j) does apply to the proposed project. All findings discussed in Sections VI and VII are subject to the requirements of Government Code Section 65589.5.

IV. Community Discussion

- Neighbor/Community Concerns: Prior to submitting the application to the City on April 27, 2022, the applicant installed yellow Proposed Development Project signs at the project site.

On March 28, 2022 a neighborhood outreach meeting was held by the applicant. Three members of the public attended and discussed questions about: the target population for rental tenants, density bonus, and affordable housing.

On February 15, 2023, an email was received from a neighbor expressing concern that an accurate simulation of the view of the Golden Gate Bridge from the Campanile with the...
proposed building rendered in the view was not submitted by the applicant before the Design Review Committee finalized its recommendations to the ZAB.

On March 16, 2023, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations, and posted notices within the neighborhood in three locations. No further communications regarding the project were received as of the writing of this staff report.

- **Design Review Committee (DRC):** The DRC conducted a Preview of the project on December 15, 2022, and a Preliminary Design Review on February, 16, 2023, and forwarded the following recommendation: “With regret for the loss of the historic view, which will never be seen again once this building is built, the DRC forwards a favorable recommendation for this Preliminary Design Review Modification to ZAB with the following direction for Final Design Review (FDR): 
  
  **[MOTION: (Mitchell, Kahn) VOTE (6-0-0-1) Finacom – no]**

  **Condition**
  - Bring physical material samples to FDR that illustrate color palette contrast.

  **Recommendations**
  - Refine detailing of the lantern feature.
  - Consider a more human scale at the residential entry on Allston.
  - Consider the thickness of the frame, especially in relation to adjacent windows.
  - Consider adding lantern feature on the North elevation.
  - Consider simplifying the bays on the south elevation near the SW corner.
  - Look carefully at windows on east elevation and refine vertical relationships where possible.
  - Regret losing brick, especially on the lower floors.

- **Landmarks Preservation Commission:** The demolition permit for the project was approved with the original permit, #ZP2016-0117. The project is not subject to another demolition referral review for the use permit modification. An historic resource analysis is included in the Addendum; see Section V for details. Conditions of approval related to the demolition permit attached to #ZP2016-0117 will be updated and included in the Use Permit Modification Findings and Conditions.

## V. Environmental Review

### A. CEQA Approach: **Pursuant to Section 15164 of the CEQA Guidelines, codified in Sections 15000 et seq. of Title 14 of the California Code of Regulations, a lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15612 calling for preparation of a subsequent EIR have occurred. Under Section 15162 (a), where an EIR has been certified for a project, no subsequent EIR shall be prepared for the project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that there are substantial changes in the project or circumstances or substantially important
new information that will cause the project to have significant new impacts or substantially increase previously identified significant impacts.

As discussed in detail in the Addendum, potential impacts associated with the modified project (the proposed changes compared to the project evaluated in the Final EIR) currently before the ZAB would be consistent with potential impacts characterized and mitigated for in the Final EIR. Although the addendum includes an analysis of energy, tribal cultural resources, and wildfire, which were not included in the Final EIR, no significant impacts were found to occur regarding these resource areas. Substantive revisions to the Final EIR are not necessary because no new significant impacts or significant impacts of substantially greater severity than previously described would occur. Thus, the conditions outlined in CEQA Guidelines Section 15162 requiring preparation of a subsequent EIR would not be met and an addendum is the appropriate CEQA document.

B. EIR Addendum and Revised MMRP: An Addendum to the 2190 Shattuck Avenue Mixed-Use Project Final EIR, which was certified in January 2019, was prepared to evaluate the potentially significant environmental impacts of the proposed project, pursuant to CEQA. The Addendum considered the Final EIR and Statement of Overriding Considerations and evaluated the modified project, i.e., the proposed project currently before the ZAB (see Table 6). Impacts related to construction noise would remain significant and unavoidable, and the same overriding considerations would apply to the modified project, except that the cultural resource impacts relating to historic resources were addressed in the modified design.
Table 6: Changes to Previously Approved Project (from EIR Addendum)

<table>
<thead>
<tr>
<th>Project Characteristic</th>
<th>Original Project</th>
<th>Modified Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Building Size</td>
<td>211,590 sf(^1)</td>
<td>397,212 sf</td>
</tr>
<tr>
<td>Residential</td>
<td>196,342 sf</td>
<td>389,712 sf</td>
</tr>
<tr>
<td>Retail</td>
<td>10,000 sf</td>
<td>7,500 sf</td>
</tr>
<tr>
<td>Building Height</td>
<td>180 feet; 18 stories</td>
<td>268 feet and 6 inches; 25 stories</td>
</tr>
<tr>
<td>Total Residential Units</td>
<td>274 units(^2)</td>
<td>326 units(^3)</td>
</tr>
<tr>
<td>Micro</td>
<td>57 units</td>
<td>N/A</td>
</tr>
<tr>
<td>Studio</td>
<td>63 units</td>
<td>21 units</td>
</tr>
<tr>
<td>1-Bedroom</td>
<td>93 units</td>
<td>71 units</td>
</tr>
<tr>
<td>2-Bedroom</td>
<td>61 units</td>
<td>113 units</td>
</tr>
<tr>
<td>3-Bedroom</td>
<td>N/A</td>
<td>29 units</td>
</tr>
<tr>
<td>4-bedroom</td>
<td>N/A</td>
<td>69 units</td>
</tr>
<tr>
<td>5-bedroom</td>
<td>N/A</td>
<td>23 units</td>
</tr>
<tr>
<td>Affordable Units</td>
<td>N/A</td>
<td>32 units</td>
</tr>
<tr>
<td>Open Space</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residential Roof Terrace</td>
<td>10,438 sf(^4)</td>
<td>9,679 sf</td>
</tr>
<tr>
<td>Private Balconies</td>
<td>10,586 sf</td>
<td>13,040 sf(^5)</td>
</tr>
<tr>
<td>Public Open Space</td>
<td>449 sf</td>
<td></td>
</tr>
<tr>
<td>Parking</td>
<td>2 subterranean levels</td>
<td>1 subterranean level</td>
</tr>
<tr>
<td>Automobile</td>
<td>103 spaces</td>
<td>51 spaces(^6)</td>
</tr>
<tr>
<td>Bicycle</td>
<td>100 spaces</td>
<td>295 spaces(^7)</td>
</tr>
<tr>
<td>Energy Use</td>
<td>Natural gas and electricity</td>
<td>Electricity only</td>
</tr>
<tr>
<td>Construction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Length</td>
<td>24 months</td>
<td>28 months</td>
</tr>
<tr>
<td>Cut Quantity</td>
<td>25,000 cy</td>
<td>12,533 cy</td>
</tr>
</tbody>
</table>

\(^1\) Included 5,248 sf for parking
\(^2\) Average size of units ranged from 389 sf to 889 sf.
\(^3\) Units would range in size from 467 sf to 1,900 sf.
\(^4\) Includes terraces on the 2nd, 8th, and 13th floors in addition to the roof
\(^5\) While private balconies total 18,880 sf, only 50 percent of total required/qualified usable open space can be balconies; thus, 13,040 sf of the balconies are considered in open space calculations.
\(^6\) All automobile parking is for residents; zero commercial parking spaces would be provided.
\(^7\) Includes 271 long-term residential spaces, 20 short-term residential spaces, and 4 short-term commercial spaces

Source: Appendix E and 2190 Shattuck Avenue Mixed-Use Project Final Environmental Impact Report

The Addendum described the changes in the modified project and evaluated all of the required environmental topic areas for potential impacts that could result from implementation of the modified project. Similar to the proposed project, the Addendum determined that impacts would be less than significant with mitigation for air quality, cultural resources, geology and soils, noise and vibration, and transportation. For each
of the topic areas of evaluated, the Addendum findings supported the conclusion that impacts from the modified project would not result in new significant effects or a substantial increase in the severity of previously identified significant effects on the environment. Therefore, no new mitigation measures would be necessary for any of topic areas evaluated. Furthermore, several mitigation measures for Cultural Resources are no longer required, as discussed below.

Cultural Resources. No new or substantially more severe significant effects would occur to cultural resources, and no new mitigation measures would be necessary. Design changes in the modified project include parallel or perpendicular facades with abutting property lines, modified wall proportions and cladding material, roofline modifications, and segmented storefronts. These design modifications responded to the design measures adopted in Mitigation Measures CR-1(a), (b), (c), (d) and (e) of the Final EIR; therefore, the measures do not apply to the modified project. In particular, the modified project design includes the following features:

- Wall surfaces parallel to the abutting property lines, and architectural details parallel or perpendicular to the abutting property line, in response to Mitigation Measure CR-1(a).
- Fenestration designed to more closely match the wall treatments exhibited in the Shattuck Hotel, as required by Mitigation Measure CR-2(b).
- Wall cladding materials compatible with the Shattuck Hotel and other contributors to the proposed Shattuck Avenue Downtown Historic District including stacked bond brick and plaster, with aluminum transom panels at the second story and metal screen railings at balconies, in response to Mitigation Measure CR-1(c).
- Rectilinear brick-clad frames at the roofline that would result in horizontal elements visible from below, providing a distinctive rooftop element, and uninterrupted views of the rooftop features from street level, thereby adhering to the requirements of Mitigation Measure CR-1(d).
- Visual segmentation at the ground floor elevations along Shattuck Avenue and Allston Way, with a structural framing of storefronts, meeting the requirements of Mitigation Measure CR-1(e).

Mitigation Measures CR-1(a) through (e) would be removed from the MMRP. All other measures adopted in the Final EIR for the purposes of mitigating cultural resources impacts remain applicable.

Public Resources Code Section 21081.6 and CEQA Guidelines Section 15091(d) require the City to adopt a reporting or monitoring program for the changes to the project that it has adopted or made a condition of approval in order to avoid or substantially lessen significant effects on the environment. The monitoring program is designed to ensure compliance during project implementation. The MMRP for the 2190 Shattuck Avenue Mixed-Use Project Final EIR has been revised to reflect the changes to the
mitigation measures that were described in the Addendum. The Revised MMRP is attached to the permit (see Attachment 1, Exhibit B).

VI. Issues and Analysis

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

1. Government Code Section 65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, then the city shall not conduct more than five hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act [Chapter 4.5 (commencing with Section 65920)].

   The March 30, 2023 ZAB Hearing represents the third public hearing for the proposed project since the project was deemed complete. The City can hold two additional public hearings on this project, if needed. One hearing must be reserved for a potential appeal to the City Council.

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

   As discussed in Section IV.B, at the time the project was deemed complete, the structures proposed to be demolished were not City landmarks, and were also determined not eligible for listing on the National Register of Historic Places nor the California Register of Historic Resources. However, the Final EIR did require mitigation measures for project impact on the Downtown Historic District. The Addendum concluded that no additional mitigation measures are required for cultural resource impacts from the modified project; rather, several mitigation measures that were previously required in the Final EIR were eliminated (See Section V.B for a discussion on cultural resources). The proposed project is still required to comply with the City’s standard conditions of approval, which instruct construction workers to halt work if any unanticipated discovery of archeological, paleontological, or tribal
cultural resources are uncovered on the project site during ground disturbing activities.

3. Government Code Section 65950(a)(2) requires a public agency to approve or disapprove a project within 90 days from the date of certification by the lead agency of the environmental impact report for a housing development project. An EIR for the original use permit on the project site was certified on January 31, 2019. The modified project was deemed complete on July 27, 2022. Staff determined on August 5, 2022 that the appropriate level of CEQA review was preparation of an Addendum to the Final EIR, in order to evaluate the modified project’s potential impacts on the environment (See Section V for details on the CEQA Approach and EIR Addendum). Therefore, Section 65950(a)(2) does not apply to the project.

4. Government Code Section 66300(d) prohibits the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished. The project does not propose the demolition of housing units. Therefore, Section 66300(d) does not apply to the project.

B. Density Bonus Waivers and Concessions: The project is entitled to three concessions (or incentives), under Government Code Section 65915(d) for providing at least 5 percent of total units to very low-income households, and an unlimited number of waivers, under Section 65915(e).

Concession. A concession or incentive is a modification of a zoning code requirement that results in identifiable and actual cost reductions to provide for affordable housing costs. The applicant is requesting two concessions: 1) to reduce the commercial parking requirement to zero which would eliminate the cost of providing parking machines for commercial spaces, and reduce the cost of providing an elevator for commercial access from the basement to the ground level; and 2) to eliminate the vehicle share requirement of two spaces which would eliminate the cost of providing an elevator and stairs for public access and egress from the garage.

The City may only deny the concessions if it finds that the concessions would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low income, very low income, and moderate-income households, or if the concession would be contrary to State or Federal law. Staff has identified no basis for making such a finding.

Waiver. A waiver is a modification of a development standard that would otherwise physically preclude the construction of the project with the permitted density bonus and concessions. Waivers for height (maximum height and rooftop projections), setbacks,
diagonal width, and open space are requested because they are necessary to physically accommodate the full density bonus project on the site.

The City may only deny the waivers if it finds that the waivers would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low income, very low income, and moderate income households, or if the waiver would be contrary to State or Federal law. Staff has not identified any evidence that would support such a finding.

VI. Other Considerations

The analyses of conformance with district purposes, use permit findings for non-detriment, and the Downtown Area Plan (adopted 2012) goals and policies are provided for Board consideration. The proposed project is HAA-compliant. The following permits have been determined by the City to be included in the Base Project of the proposal, and are subject to Section 65589.5(j) of the HAA. See section III.D for discussion of the HAA. All permits are subject to the C-DMU District permit findings and General Non-Detriment findings discussed in sections VI.A and VI.B.

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

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

   The original project was found to be consistent with the district purposes. The modified project would include 326 dwelling units (increase of 52 units), 32 affordable units (increase of 32 units), 983 bedrooms (increase of 709 bedrooms) 7,500 square feet of ground floor commercial uses intended for retail (decrease of 2,500 square feet), 22,719 square feet of usable open space (increase of 767 square feet of UOS, and decrease of 252 square feet of POPOS), 51 car parking spaces (decrease of 55 spaces), and 271 bike parking spaces (increase of 172 long term and 24 short term); and a Community benefits package that includes a Project Labor Agreement and a 677-square-foot Community Room for public use. The project is located in Downtown Berkeley, is within walking distance of the University of California, Berkeley campus, and is well served by transit – the Downtown Berkeley BART station is located on the same block as the site, and multiple Alameda County Transit lines run on Shattuck Avenue and University Avenue (two blocks away).

   The purpose of the C-DMU Downtown Mixed-Use District is to implement the vision and goals of the Downtown Area Plan (DAP). Summarized below are the principal goals of the DAP that are applicable to the project, in each of the main areas of concentration: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development.
- **Environmental Sustainability and Access.** DAP goals: Integrate environmentally sustainable development and sustainability best practices; encourage high density, highly livable development to utilize regional transit and improve the availability of diverse walk-to destinations; promote “green” buildings; promote ecologically beneficial landscaping and stormwater features; minimize waste generated Downtown; improve options that increase access to Downtown on foot, by bicycle, and via transit; provide parking to meet the needs of Downtown, while discouraging commuter parking; promote transit as an efficient, attractive choice and as a primary mode of travel.

The modified project would be a higher-density development than the original project, in proximity to regional transit, shops and amenities, and would provide more housing in the Downtown to increase access to local services and amenities by foot, by bicycle and via transit, while promoting public transit as an efficient and attractive choice through its location and through its Transportation Demand Management Plan and other associated Conditions of Approval. Like the original approved project, the modified project is designed to achieve a LEED Gold or equivalent rating. The project would comply with the State’s Model Water Efficient Landscape Ordinance (MWELO), the City’s requirement of at least 40 percent landscaping in its open space areas, and would feature a number of native plant species in its landscape palette.

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

The modified project would include less commercial area than the original project, but would bring a greater number of new residents, in a greater range of unit sizes – from studio to five-bedroom units – and greater range of housing affordability to the Downtown area than the original project, to contribute to the area’s vitality, livability, sustainability, and character. The project would be required to contribute to the Streets and Open Space Improvement Plan (SOSIP) fund via Condition of Approval.

- **Historic Preservation and Urban Design:** DAP goals: Conserve Downtown’s historic resources and unique character and sense of place; enhance areas of special character in Downtown, such as clusters of historic resources; provide continuity and harmony between the old and the new in the built environment; improve the visual and environmental quality of Downtown, with an emphasis on pedestrian environments that are active, safe and visually engaging.
The original project Final EIR evaluated the project design’s consistency with DAP Design Guidelines and its impact to the Shattuck Avenue Downtown Historic District resource (under “Cultural Resources”), and attached Mitigation Measures CR-1a through CR-1e to the project to enhance compatibility of building design with the Historic District. The Addendum evaluated the modified project’s potential impact to the Historic District and concluded that the new project design addressed Mitigation Measures CR-1a through CR-1e in the Final EIR. Therefore, the MMRP for the Final EIR was revised to remove Mitigation Measures CR-1a through CR-1e (refer to Revised MMRP Attachment 1, Exhibit B; see section V.B for discussion.)

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

  Similar to the original project, the modified project would provide a 677-square-foot indoor Community Room on the ground floor for public use (as a part of the Community Benefits package) and 7,500 square feet of ground-floor retail, to help enhance Downtown public open spaces and streets to benefit pedestrians, improve Downtown’s livability, and foster a sense of place. The modified project would provide more open space for residents’ use than the original project, and as mentioned previously, would comply with the State’s MWELO and the City’s minimum landscaping requirements. The modified project would also be required to contribute to the SOSIP fund via Condition of Approval.

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

  Compared to the original project, the modified project would have 52 more residential units, with a greater range of unit sizes (studio to five-bedroom units) than the original project, and would have 32 affordable units (VLI), where the original project had none, to bring a greater range of household incomes to the area and contribute to diversifying housing opportunities for households of different ages, incomes, varying sizes, and abilities in the Downtown.

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

The modified project would bring a greater number of new residents and greater range of household incomes to the Downtown area than the original project, while preserving the character of the Downtown Historic neighborhood, to contribute to the area’s vitality and success. The project would bring 7,500 square feet of ground-floor retail to the area to contribute to making the Downtown an attractive regional destination for living, working and visiting.

Similar to the original project, as a part of the Community Benefits package, the project would commit to creating a Project Labor Agreement (per the terms of City Council City Council Resolution 67,172 – N.S.) agreeing to hire no less than 20% Berkeley or Green Corridor/Alameda County residents (with priority to Berkeley residents) for its construction workforce.

2. Is compatible with surrounding uses and buildings.

The project site currently includes office and retail uses. Uses on the surrounding properties include retail, public parking, office, hotel, and residential. The original project was approved as a retail/residential mixed-use building. The modified project is a larger and more intense use than the original project, with increases in the number of units, bedrooms, and building envelope, through the utilization of the State Density Bonus to increase the project density, and changes the amount of the proposed uses, without changing the retail/residential mixed-use nature of the project. Thus, the modified project would not introduce new land uses that do not already exist in the Downtown, and would further the vision and goals of the DAP.

Also, as discussed in the Addendum and in section V.B of this report, the modified project design addresses Mitigation Measures CR-1a through CR-1e in the Final EIR to reduce impacts to the Shattuck Avenue Downtown Historic District, and enables the removal of the mitigation measures in the modified project’s Revised MMRP. The Addendum found that the modified project is otherwise consistent with DAP design guidelines.

B. General Non-Detriment Finding: BMC Section 23.406.040 states that before the ZAB approves an application for a Use Permit, it must find that the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed
use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.

Shadows: According to the shadow studies submitted for the project (See Attachment 2, Project Plans – Sheets A.4a through A.4c). New shadow impacts would occur in the summer months in the hours before sunset at residential building at 2116 Allston Way on the block southeast of the site; in the spring months in the hours before sunset at residential building at 2161 Allston Way on the block east of the site; and winter months in the hours after sunrise and at noon at residential building at 2055 Center Street on the block north of the site. All other new shadows would impact commercial buildings in the area.

Non-Detriment: The project is subject to the City’s standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring that the project meets the non-detriment finding.

C. Use Permit to Modify an Approved Discretionary Permit: Pursuant to BMC Section 23.404.070(B), City approval of a modification of an approved permit is required, to:

1. Expand the floor or land area devoted to an approved use
2. Change, expand, or intensify a use or structure in any other manner or substantially alters the use or structure

The modified project a larger and more intense use than the original project, with increases in the number of units, bedrooms, and building envelope, through the utilization of the State Density Bonus to increase the project density, and changes the amounts of the residential and commercial uses from the original project.

D. Administrative Use Permit for Architectural Projections to Exceed Height Limit:
Pursuant to BMC Section 23.304.050(A) an Administrative Use Permit for architectural elements, such as mechanical penthouses, elevator equipment rooms or stair towers, that would exceed the maximum height limit. Such projections are limited to no more than 15 percent of the average floor area of all of the building’s floors and cannot be used as habitable space or for commercial purposes. The project proposes a stair and elevator elements, a mechanical room, and bathrooms (non-habitable, by definition) and architectural walls, totaling 1,718 square feet, that extend 15 feet over 268-foot-6-inch-tall roof height (with 5-foot parapet). The elements represent 11 percent of the 15,763-square-foot average all the floor areas, and are permissible.

E. Use Permit to Exceed Building Height Limits: Pursuant to BMC Section 23.204.130(E)(2), the ZAB may issue Use Permits for up to five buildings that exceed the 75-foot height limit – two buildings in the C-DMU District Combined Core and Outer Core Sub-Areas between 75 and 120 feet, and three buildings in the Core Sub-Area between 120 and 180 feet. The Use Permits shall include a condition of approval that establishes a schedule for submittal of a building permit application, timely response to plan check comments, payment of building permit fees such that a building permit can be issued, and beginning construction.
With Use Permit #ZP2016-0117, the original project secured a position as one of three buildings in the Core Sub-Area that are allowed to exceed height limit of 120 feet, up to 180 feet. The current project proposes to modify the #ZP2016-0117 approval with a further increase in height through the utilization of a State Density Bonus waiver, where the Base Project height is 180 feet, and the height in excess is allowed.

Community Benefits. Use Permits to exceed building height of 75 feet must 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. Significant community benefits 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. Community benefit requirements shall be included as conditions of approval and the owner shall enter into a written agreement with the City that shall be binding on all successors in interest. City Council provided direction for determining significant community benefits with Resolution #67,172-NS, adopted in July, 2015.

The original project’s community benefits proposal was approved with the #ZP2016-0117 (consistent with Option B of the Resolution), and included the following main components:

- **Project Labor Agreement.** An agreement with the Alameda County Building Trades Council, total value of $9,579,738 based on 5% of estimated construction costs.

- **Community Space.** A 677-square-foot community space next to the residential lobby that would be available for community events.

The modified project community benefits package proposes the same two components. A memorandum dated June 7, 2022 was prepared by Economic & Planning Systems, Inc. (EPS), summarizing a market review and pro forma financial analysis update for the modified project (see Attachment 4), and according to Council Resolution #67,172-NS. Market values for these components were updated to be approximately $9.6 million for Project Labor Agreement, and approximately $850,000 for the 677-square foot Community Room, and concluded that “the project is feasible with a Project Labor Agreement but limiting additional requirements for significant community benefits will improve the likelihood of project development”.

The City engaged Strategic Economics, the consultant who conducted the peer review of the original project benefits pro forma, to review the EPS memorandum (see Attachment 4). The peer review memorandum dated October 7, 2022 concluded that the EPS evaluation of the benefits package is reasonable, and provided this review conclusion: “Strategic Economics reviewed market indicators for multifamily development in Berkeley and the Bay Area generally. Although a developer return assumption of five percent yield is relatively low historically, it is consistent with, at the time of the study, the strong market outlook for multifamily, its lower risk in comparison with other types of investments, and the low cost of capital for development. A reversal
in any of these trends, caused by higher interest rates or other market factors, could endanger the feasibility of this project.”

F. Use Permit to Reduce Setbacks in Base Project: Pursuant to BMC Section 23.204.130(E)(2), the ZAB may approve a permit to modify setbacks upon finding that the modifications will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.

The modified project requests reduced front, side and rear setbacks above 75 feet building height in the Base Project. Reduced setbacks are requested waivers in the Proposed Density Bonus Project above 120 feet and are not subject to these findings. Due to the increase of seven stories of height over the original project, the modified project would cause additional shadow impact on northwest and northeast street levels, as well as on the sidewalk and street along Allston Way abutting the site. However, the setback encroachment in the Base Project itself would result in a minimal contribution to the increased shadow impact, relative to the increase in shadow impact from the Density Bonus project height and reduced setbacks that are requested as waivers. The setback reduction the Base Project would not unreasonably limit solar access.

The Wind and Comfort Impact Analysis in the Final EIR prepared for the original project found that wind accelerations generated by the building would be located over rooftops of adjacent buildings or at decks and terraces within the building itself. It is not expected that the building would significantly affect ground-level winds. The building’s extension beyond setback standards would not significantly increase winds on the public sidewalk. The updated Wind Analysis for the modified project concluded that the increase in height over the original project would not cause significant additional wind impact on the street level beyond the levels evaluated in the original project.

G. Use Permit to Pay Fee In-lieu of Providing POPOS in Base Project: Pursuant to BMC Section 23.204.130(E)(6)(b), the ZAB may approve a permit to pay an in-lieu fee to help fund SOSIP upon finding that the payment will support timely development of open space improvements that will serve the needs of both project residents and other people living in and using the downtown. The applicant agrees to pay the SOSIP fee, and a Condition of Approval is included in the permit to ensure payment of the fee prior to occupancy. The fee will help fund current and future Downtown SOSIP Public Works projects.

VI. Recommendation

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

A. ADOPT the Addendum to the 2190 Shattuck Mixed-Use Project Final EIR (SCH #2017012011) and Revised MMRP.

B. APPROVE Use Permit #ZP2022-0026, pursuant to BMC Section 23.406.040 and subject to the attached Findings and Conditions and Revised MMRP (see Attachment 1, Exhibit A, B, and C).
Attachments:
1. Findings and Conditions
   a. Exhibit A, Findings and Conditions
   b. Exhibit B, Mitigation Monitoring and Reporting Program, Revised February, 2023
   c. Exhibit C, Statement of Overriding Considerations, October 25, 2018
2. Project Plans, received February 6, 2023
3. EIR Addendum for 2190 Shattuck Mixed-Use Project
   The 2190 Shattuck Mixed-Use Project Final EIR is available at this link: https://aca.cityofberkeley.info/CitizenAccess/Default.aspx. Click on Zoning tab; enter permit number ZP2022-0026; select permit ZP2022-0026; click on the “Record Info” drop down menu; click on Attachments for a list of all application materials.
4. Community Benefits Feasibility Analysis Memorandum, dated June 7, 2022; Peer Review for Revised Community Benefits Package for 2190 Shattuck Avenue, dated October 7, 2022
5. Correspondence
6. Notice of Public Hearing

Staff Planner: Sharon Gong, sgong@cityofberkeley.info, (510) 981-7429
2190 Shattuck Avenue

Use Permit Modification #ZP2022-0026 to modify the project originally approved under #ZP2016-0117, to construct a 25-story (268 feet, 6 inches), 397,212-square-foot mixed-use building with up to 326 dwelling units (including up to 32 Very Low-Income Density Bonus qualifying units), approximately 7,500 square feet commercial space, and approximately 51 underground parking spaces.

PERMITS REQUIRED

- Use Permit under BMC Section 23.404.070(B) to modify an approved permit
- Use Permit under BMC Section 23.204.130(E)(2) to construct a building that exceeds the district height limit, and that is over 120 feet but not more than 180 feet
- Use Permit under BMC Section 23.204.130(E)(3)(b) to modify front, side, and rear setback requirements
- Use Permit under BMC Section 23.204.130(E)(3)(b)(i) to exceed 120 feet in width in diagonal measurement
- Use Permit under BMC Section 23.204.130(E)(6)(a)(i) to pay a fee in lieu of providing Privately-Owned Public Open Space (POPOS)
- Administrative Use Permit under BMC Section 23.304.050(A) to allow architectural projections to exceed district height limits

CONCESSIONS/WAIVERS UNDER GOVERNMENT CODE SECTION 65915-65918

- Concession to reduce the commercial parking requirement – to provide zero, where 11 is required
- Concession to reduce the car share requirement — to provide zero, where two is required
- Waiver of BMC Section 23.204.130(E)(2) to exceed building height limits – to be 264 feet (plus 5-foot parapet, by right), where 180 feet is the limit (plus 5-foot parapet, by right)
- Waiver of BMC Section 23.204.130(E)(3)(b) to modify front, side, and rear setbacks above 75 feet in height
- Waiver of BMC Section 23.204.130(E)(3)(b)(i) to exceed 120 feet in width in diagonal measurement – to be 238 feet in width
- Waiver of BMC Section 23.204.130(E)(4) to reduce the usable open space requirement – to be 22,719 square feet, where 26,080 square feet is required
- Waiver of BMC Section 23.204.130(E)(4) to reduce the privately-owned public open space— to be 0 square feet, where 150 square feet is required

I. CEQA FINDINGS

1. Pursuant to the California Environmental Quality Act (CEQA), the City prepared an Addendum to the 2190 Shattuck Mixed-Use Project Final EIR (SCH #2017012011) for this project.
   A. CEQA Approach: Pursuant to Section 15164 of the CEQA Guidelines, codified in Sections 15000 et seq. of Title 14 of the California Code of Regulations, a lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15612 calling for preparation of a subsequent EIR have occurred. Under Section 15162 (a), where an EIR has been certified for a project,
no subsequent EIR shall be prepared for the project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that there are substantial changes in the project or circumstances or substantially important new information that will cause the project to have significant new impacts or substantially increase previously identified significant impacts.

As discussed in detail in the Addendum, potential impacts associated with the modified project (the proposed changes compared to the project evaluated in the Final EIR) currently before the Zoning Adjustments Board (ZAB) will be consistent with potential impacts characterized and mitigated for in the Final EIR. Although the addendum includes an analysis of energy, tribal cultural resources, and wildfire, which were not included in the Final EIR, no significant impacts were found to occur regarding these impacts. Substantive revisions to the Final EIR are not necessary because no new significant impacts or significant impacts of substantially greater severity than previously described would occur. Thus, the conditions outlined in CEQA Guidelines Section 15162 requiring preparation of a subsequent EIR would not be met and an addendum is the appropriate CEQA document.

B. EIR Addendum and Revised MMRP: An Addendum to the 2190 Shattuck Avenue Mixed-Use Project Final EIR, which was certified in January 2019, was prepared to evaluate the potentially significant environmental impacts of the proposed project, pursuant to the CEQA. The Addendum considered the Final EIR and Statement of Overriding Considerations and evaluated the modified project, i.e., the proposed project currently before the ZAB. Impacts related to construction noise will remain significant and unavoidable, and the same overriding considerations will apply to the modified project, except that the cultural resource impacts relating to historic resources were addressed in the modified design.

The Addendum described the changes in the modified project and evaluated all of the required environmental topic areas for potential impacts that could result from implementation of the modified project. Similar to the proposed project, the Addendum determined that impacts will be less than significant with mitigation for air quality, cultural Resources, geology and soils, noise and vibration, and transportation. For each of the topic areas of evaluated, the Addendum findings supported the conclusion that impacts from the modified project will not result in new significant effects or a substantial increase in the severity of previously identified significant effects on the environment. Therefore, no new mitigation measures would be necessary for any of topic areas evaluated. Furthermore, several mitigation measures for Cultural Resources are no longer required, as discussed below.

Cultural Resources. No new or substantially more severe significant effects will occur to cultural resources, and no new mitigation measures will be necessary. Design changes in the modified project include parallel or perpendicular facades with abutting property lines, modified wall proportions and cladding material, roofline modifications, and segmented storefronts. These design modifications have responded to the design measures adopted in Mitigation Measures CR-1(a), (b), (c), (d) and (e) of the Final EIR; therefore, the measures do not apply to the modified project. In particular, the modified project design includes the following features:

• Wall surfaces parallel to the abutting property line, and architectural details parallel or perpendicular to the abutting property line, in response to Mitigation Measure CR-1(a).
• Fenestration designed to more closely match the wall treatments exhibited in the Shattuck Hotel, as required by Mitigation Measure CR-2(b).
• Wall cladding materials compatible with the Shattuck Hotel and other contributors to the proposed Shattuck Avenue Downtown Historic District including stacked bond brick and plaster, with aluminum transom panels at the second story and metal screen railings at balconies, in response to Mitigation Measure CR-1(c).
• Rectilinear brick-clad frames at the roofline that would result in horizontal elements visible from below, providing a distinctive rooftop element, and uninterrupted views of the rooftop features from street level, thereby adhering to the requirements of Mitigation Measure CR-1(d).
• Visual segmentation at the ground floor elevations along Shattuck Avenue and Allston Way, with a structural framing of storefronts, meeting the requirements of Mitigation Measure CR-1(e).

Mitigation Measures CR-1(a) through (e) will be removed from the MMRP. All other measures adopted in the Final EIR for the purposes of mitigating cultural resources impacts remain applicable.

Public Resources Code Section 21081.6 and CEQA Guidelines Section 15091(d) require the City to adopt a reporting or monitoring program for the changes to the project that it has adopted or made a condition of approval in order to avoid or substantially lessen significant effects on the environment. The monitoring program is designed to ensure compliance during project implementation. The MMRP for the 2190 Shattuck Avenue Mixed-Use Project Final EIR has been revised to reflect the changes to the mitigation measures that were described in the Addendum.

C. The Zoning Adjustments Board finds that the modified project's significant environmental impacts to noise are acceptable in light of the project's benefits, as set forth in the statement of overriding considerations that was adopted with the 2190 Shattuck use permit. (See Attachment 1, Exhibit C.)

The 2190 Shattuck Mixed-Use Project Final EIR is available at this link: https://aca.cityofberkeley.info/CitizenAccess/Default.aspx. Click on Zoning tab; enter permit number ZP2022-0026; select permit ZP2022-0026; click on the “Record Info” drop down menu; click on Attachments for a list of all application materials.

II. DENSITY BONUS FINDINGS

1. Pursuant to Government Code Section 65915, the Zoning Adjustments Board finds that:
   A. Under the City’s methodology for implementing density bonuses, the “base project” consists of 223 units;
   B. The project will provide at least 32 Very Low-Income (VLI) qualifying units in the 223-unit “base project”;
   C. The project is entitled to a density increase of 46.25 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, under the requirements of Government Code Section 65915(b) and (f), plus two concessions or incentives. This equates to a density bonus of 103 units (104 units maximum) above the Base Project, for a total of 326 units.
2. In accordance with Government Code Section 65915(d) and (k), the Zoning Adjustments Board hereby grants the following concessions in order to provide for affordable housing costs:
   A. Concession to reduce the commercial parking requirement — to provide zero, where 11 is required
   B. Concession to reduce the car share requirement — to provide zero, where two is required

3. In accordance with Government Code Section 65915(d), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds that the approval of the concession is required to provide for affordable rents, as provided in Government Code Section 65915(d)(1)(A) because 1) approval of the concession will result in identifiable and actual cost reduction; 2) approval of the concession will not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) will not be contrary to State or Federal law.

4. In accordance with Government Code Section 65915(e) the Zoning Adjustments Board hereby grants the following waivers:
   A. Waiver of BMC Section 23.204.130(E)(2) to exceed building height limits – to be 264 feet (plus 5-foot parapet, by right), where 180 feet is the limit (plus 5-foot parapet, by right)
   B. Waiver of BMC Section 23.204.130(E)(3)(b) to modify front, side, and rear setbacks above 75 feet in height
   C. Waiver of BMC Section 23.204.130(E)(3)(b)(i) to exceed 120 feet in width in diagonal measurement – to be 238 feet in width
   D. Waiver of BMC Section 23.204.130(E)(4) to reduce the usable open space requirement – to be 22,719 square feet, where 26,080 square feet is required
   E. Waiver of BMC Section 23.204.130(E)(4) to reduce the privately-owned public open space— to be 0 square feet, where 150 square feet is required

These waivers are required because state law requires the City to modify development standards as necessary to accommodate these density bonus units, and because the Zoning Adjustments Board hereby finds that the density bonus units can best be accommodated by granting these waivers.

5. In accordance with Government Code Section 65915(e), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds approval of waivers is required 1) construct the proposed project at the density permitted under State law; 2) approval of requested waivers will not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) approval of the requested waivers will not be contrary to State or Federal law.

III. FINDINGS FOR APPROVAL

6. The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, a local agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that:
   A. The development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density; and
B. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density. The project includes construction of 223 dwelling units. Because the base project would comply with applicable, objective general plan and zoning standards, §65589.5(j) does apply to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified by staff.

7. As required by Section 23.406.040(E)(1) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
   A. The project is consistent with all applicable C-DMU District standards and qualifies for waivers and concessions for the listed district standards granted pursuant to State Density Bonus, Government Code, Section 65915;
   B. New shadow impacts will occur in the summer months in the hours before sunset at residential building at 2116 Allston Way on the block southeast of the site; in the spring months in the hours before sunset at residential building at 2161 Allston Way on the block east of the site; and winter months in the hours after sunrise and at noon at residential building at 2055 Center Street on the block north of the site. All other new shadows will impact commercial buildings in the area; and
   C. The project is subject to the City’s standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring that the project meets the non-detriment finding.

IV. OTHER FINDINGS FOR APPROVAL

8. As required by Section 23.204.130(I) of the BMC, the Zoning Adjustments Board finds that the proposed use or structure:
   A. Is compatible with the purposes of the district to implement the vision and goals of the Downtown Area Plan:
      a. Environmental Sustainability and Access: The modified project will be a higher-density development than the original project, in proximity to regional transit, shops and amenities, and will provide more housing in the Downtown to increase access to local services and amenities by foot, by bicycle and via transit, while promoting public transit as an efficient and attractive choice through its location and through its Transportation Demand Management Plan and other associated Conditions of Approval. Like the original approved project, the modified project is designed to achieve a LEED Gold or equivalent rating. The project will comply with the State’s Model Water Efficient Landscape Ordinance (MWELO), the City’s requirement of at least 40% landscaping in its open space areas, and will feature a number of native plant species in its landscape palette.
      b. Land Use: The modified project will include less commercial area than the original project, but will bring a greater number of new residents, in a greater range of unit sizes – from studio to five-bedroom units – and greater range of housing affordability to the Downtown area than the original project, to contribute to the area’s vitality, livability, sustainability, and character. The project will be required to contribute to the Streets and Open Space Improvement Plan (SOSIP) fund via Condition of Approval.
c. Historic Preservation and Urban Design: The original project Final EIR evaluated the project design’s consistency with DAP Design Guidelines and its impact to the Shattuck Avenue Downtown Historic District resource (under “Cultural Resources”), and attached Mitigation Measures CR-1a through CR-1e to the project to enhance compatibility of building design with the Historic District. The Addendum evaluated the modified project’s potential impact to the Historic District and concluded that the new project design addressed Mitigation Measures CR-1a through CR-1e in the Final EIR. Therefore, the MMRP for the Final EIR was revised to remove Mitigation Measures CR-1a through CR-1e.

d. Streets and Open Space: Similar to the original project, the modified project will provide a 677-square-foot indoor Community Room on the ground floor for public use (as a part of the Community Benefits package) and 7,500 square feet of ground-floor retail, to help enhance Downtown public open spaces and streets to benefit pedestrians, improve Downtown’s livability, and foster a sense of place. The modified project will provide more open space for residents’ use than the original project, and as mentioned previously, will comply with the State’s MWELO and the City’s minimum landscaping requirements. The modified project will also be required to contribute to the SOSIP fund via Condition of Approval.

e. Housing and Community Health and Services: Compared to the original project, the modified project will have 52 more residential units, with a greater range of unit sizes (studio to five-bedroom units) than the original project, and will have 32 affordable units (VLI), where the original project had none, to bring a greater range of household incomes to the area and contribute to diversifying housing opportunities for households of different ages, incomes, varying sizes, and abilities in the Downtown.

f. Economic Development: The modified project will bring a greater number of new residents and greater range of household incomes to the Downtown area than the original project, while preserving the character of the Downtown Historic neighborhood, to contribute to the area’s vitality and success. The project will bring 7,500 square feet of ground-floor retail to the area to contribute to making the Downtown an attractive regional destination for living, working and visiting. Similar to the original project, as a part of the Community Benefits package, the project will commit to creating a Project Labor Agreement (per the terms of City Council City Council Resolution 67,172 – N.S.) agreeing to hire no less than 20% Berkeley or Green Corridor/Alameda County residents (with priority to Berkeley residents) for its construction workforce.

B. Is compatible with surrounding uses and buildings:

The project site currently includes office and retail uses. Uses on the surrounding properties include retail, public parking, office, hotel, and residential. The original project was approved as a retail/residential mixed-use building. The modified project is a larger and more intense use than the original project, with increases in the number of units, bedrooms, and building envelope, through the utilization of the State Density Bonus to increase the project density, and changes the amount of the proposed uses, without changing the retail/residential mixed-use nature of the project. Thus, the modified project will not introduce new land uses that do not already exist in the Downtown, and will further the vision and goals of the DAP. The modified project design addresses Mitigation Measures CR-1a through CR-1e in the Final EIR to reduce impacts to the Shattuck Avenue Downtown Historic District, and enables the removal of the mitigation measures in the modified project’s Revised MMRP.
Addendum found that the modified project is otherwise consistent with DAP design guidelines.

C. The DRC forwarded a favorable recommendation for the project design to the ZAB.

9. As required by Section 23.304.050(A), of the BMC, the Zoning Adjustments Board finds that:
   A. The project proposes a stair and elevator elements, a mechanical room, and bathrooms (non-habitable, by definition) and architectural walls, totaling 1,718 square feet, that extend 15 feet over 268-foot-6-inch-tall roof height (with 5-foot parapet). The elements represent 11 percent of the 15,763-square-foot average all the floor areas, and are permissible.

10. As required by Section 23.204.130(E)(2) of the BMC, the Zoning Adjustments Board finds that:
   A. The modified project community benefits package proposes the same two components as the original 2190 Shattuck project: 1) Project Labor Agreement and 2) Community Space.
   B. A memorandum dated June 7, 2022 was prepared by Economic & Planning Systems, Inc. (EPS), summarizing a market review and pro forma financial analysis update for the modified project, and according to Council Resolution #67,172-NS. Market values for these components were updated to be approximately $9.6 million for Project Labor Agreement, and approximately $850,000 for the 677-square foot Community Room, and concluded that “the project is feasible with a Project Labor Agreement but limiting additional requirements for significant community benefits will improve the likelihood of project development”.
   C. The City engaged Strategic Economics, the consultant who conducted the peer review of the original project benefits pro forma, to review the EPS memorandum. The peer review memorandum dated October 7, 2022 concluded that the EPS evaluation of the benefits package is reasonable.

11. As required by Section 23.204.130(E)(2) of the BMC, the Zoning Adjustments Board finds that:
   A. The modified project requests reduced front, side and rear setbacks above 75 feet building height in the Base Project. Reduced setbacks are requested waivers in the Proposed Density Bonus Project above 120 feet and are not subject to these findings. Due to the increase of seven stories of height over the original project, the modified project will cause additional shadow impact on northwest and northeast street levels, as well as on the sidewalk and street along Allston Way abutting the site. However, the setback encroachment in the Base Project itself will result in a minimal contribution to the increased shadow impact, relative to the increase in shadow impact from the Density Bonus project height and reduced setbacks requested as waivers. The setback reduction the Base Project will not unreasonably limit solar access.
   B. The Wind and Comfort Impact Analysis in the Final EIR prepared for the original project found that wind accelerations generated by the building will be located over rooftops of adjacent buildings or at decks and terraces within the building itself. It is not expected that the building will significantly affect ground-level winds. Therefore, Staff believes that the building’s extension beyond setback standards will not significantly increase winds on the public sidewalk. The updated Wind Analysis for the modified project concluded that the increase in height over the original project will not cause additional wind impact on the street level beyond the levels evaluated in the original project.

12. As required by Section 23.204.130(E)(6)(b) of the BMC, the Zoning Adjustments Board finds that:
A. The applicant agrees to pay the SOSIP fee, and a Condition of Approval has been included in the permit to ensure payment of the fee prior to occupancy. The fee will help fund current and future Downtown SOSIP Public Works projects.

V. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. **Conditions 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; 8-1/2" by 11" sheets are not acceptable.

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 reestablish 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 be in compliance with the approved plans and any conditions of approval.

5. **Exercise and Expiration of Permits (BMC Section 23.404.060.C)**
   A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
   B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
   C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

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

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

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

9. Indemnification Agreement
   The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney’s fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant’s expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.
VI. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.406.040.E, 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 # ___________________________


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

13. **Construction Noise Reduction Program.** The applicant shall develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
   
   A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
   
   B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
   
   C. Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
   
   D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
   
   E. Prohibit unnecessary idling of internal combustion engines.
   
   F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
   
   G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.

I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.

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

- establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spills; and
- include written descriptions and photographs.

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

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

16. Significant Community Benefits: Pursuant to BMC Section 23.204.130.E.2(c) and City Council Resolution No. 67,172-N.S., all significant community benefits agreed to by the applicant and approved by the City shall be included as Conditions of Approval and the owner shall enter into a written agreement with the City that shall be binding on all successors in interest. The significant community benefits for this project are:

   A. Project Labor Agreement. An agreement with the Alameda County Building Trades Council, with a total value of $9,579,738 based on 5% of estimated construction costs, as per City Council Resolution 67,172-N.S. and the Community Benefits Feasibility Analysis Memorandum, dated June 7, 2022.

   B. Community Space. A 677-square-foot community space next to the residential lobby that to be available for community events.

17. Fee Deferrals. All zoning project application fees that were deferred at the time of application submittal shall be paid in full.

18. Construction Noise Management - Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within 500 feet of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

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

20. Demolition. Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.

21. Construction and Demolition Diversion. Applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

22. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
A. Environmental Site Assessments:
   1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent
      Phase I ESA (less than 2 years old*) shall be submitted to TMD for developments for:
      • All new commercial, industrial and mixed use developments and all large
        improvement projects.
      • All new residential buildings with 5 or more dwelling units located in the
        Environmental Management Area (or EMA).
      • EMA is available online at: http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
   2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC)
      identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party
      toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
   3) If the Phase I is over 2 years old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

B. Soil and Groundwater Management Plan:
   1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-
      residential projects, and residential or mixed-use projects with five or more dwelling units,
      that: (1) are in the Environmental Management Area (EMA) and (2) propose any
      excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify
      procedures for soil and groundwater management including identification of pollutants
      and disposal methods. The SGMP will identify permits required and comply with all
      applicable local, state and regional requirements.
   2) The SGMP shall require notification to TMD of any hazardous materials found in soils and
      groundwater during development. The SGMP will provide guidance on managing odors
      during excavation. The SGMP will provide the name and phone number of the individual
      responsible for implementing the SGMP and post the name and phone number for the
      person responding to community questions and complaints.
   3) TMD may impose additional conditions as deemed necessary. All requirements of the
      approved SGMP shall be deemed conditions of approval of this Use Permit.

C. Building Materials Survey:
   1) Prior to approving any permit for partial or complete demolition and renovation activities
      involving the removal of 20 square or lineal feet of interior or exterior walls, a building
      materials survey shall be conducted by a qualified professional. The survey shall include,
      but not be limited to, identification of any lead-based paint, asbestos, polychlorinated
      biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration
      systems, treated wood and mercury containing devices (including fluorescent light bulbs
      and mercury switches). The Survey shall include plans on hazardous waste or hazardous
      materials removal, reuse or disposal procedures to be implemented that fully comply state
      hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.
D. Hazardous Materials Business Plan:
   1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at [http://cers.calepa.ca.gov/](http://cers.calepa.ca.gov/) within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at [http://ci.berkeley.ca.us/hmr/](http://ci.berkeley.ca.us/hmr/)

Prior to Issuance of Any Building (Construction) Permit

23. **Percent for Public Art:** Consistent with BMC §23C.23, the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.

24. **Affordable Housing Mitigation Fee:** Consistent with BMC §22.20.065, and fee resolution applicable to this project, the applicant shall provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the AHMF, and they shall pay this fee.

25. **HVAC Noise Reduction.** Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City’s exterior noise requirements in BMC Section 13.40.050. The City’s Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.

26. **Interior Noise Levels.** Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.

27. **Streets and Open Space Improvement Plan: Street Frontage Improvements.** Streets and Open Space Improvement Plan: Street Frontage Improvements. Consistent with the Downtown Streets and Open Space Improvement Plan (SOSIP) (or subsequent iterations as adopted by the City), the developer shall construct improvements along Shattuck Avenue and Allston Way, to the centerline. Such improvements shall be included with the building permit submittal, designed and constructed as directed by the Public Works and Fire Departments, and constructed prior to certificate of occupancy.

28. **Streets and Open Space Improvement Plan: Impact Fee:** As required by BMC Section 23.204.130.F, the project shall pay an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP) per the fee schedule adopted by the Council by resolution. The City shall deposit this payment into the Downtown Streets and Open Space Improvement Fund (SOSIF), or its equivalent, to pay for the design and construction of the SOSIP Major Projects. The fee shall apply to the project’s “Gross Floor Area” as defined in BMC Section 23.502, less any existing Gross Floor Area removed as part of the project.

At the City’s discretion, the City Manager or her designee may reduce the required SOSIP Impact Fee, on a $1 to $1 ratio, as a credit for constructing all or a portion of a Major SOSIP
Improvement Project beyond the frontage improvements already required by this Permit. The first half of this fee shall be paid prior to issuance of a building permit, and the second half shall be paid prior to issuance of a certificate of occupancy.

29. **SOSIP Improvements**: At the discretion of the City Engineer, the developer shall make an in-lieu payment for roadway improvements which are not constructed as part of the project, with a maximum payment of $530,000 for expected improvements. Maximum payment amount shall be increased annually (if applicable) based on the Engineering News Record’s construction prices for the San Francisco Bay Area. The first half of these payments shall be made prior to issuance of a building permit, and the second half shall be made prior to issuance of a certificate of occupancy.

30. **Green Building Certification**. The applicant shall submit documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation shall include proof of payment of the registration/application fee to the organization administering the green building certification system (e.g. USGBC/GBCI for LEED, Build It Green for GreenPoint Rated, etc.), a copy of the updated green building checklist that reflects anticipated points, and a statement from the appropriate project team professional (e.g. LEED Accredited Professional, GreenPoint Rater, etc.) verifying that the project is on track for certification at the required level or above. The submitted green building checklist must be a type that is appropriate for the project and a version that is being accepted by the organization granting the green building certification at the time of building permit application. Whenever applicable, measures from the green building checklist shall be incorporated and noted on site plans.

31. **Solar Photovoltaic (Solar PV)**. A solar PV system, on the solar zone specified in Section 110.10 of the 2019 Energy Code, shall be installed (subject to the exceptions in Section 110.10) as specified by the Berkeley Energy Code (BMC Chapter 19.36). Location of the solar PV system shall be noted on the construction plans.

32. **Electric Vehicle (EV) Charging**. At least 20% of the project parking spaces for residential parking shall be "EV Charger Ready": equipped with raceway, wiring, and power to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation, and at least 80% of the project parking spaces for residential parking shall be "EV Spaces Raceway Equipped": equipped with a raceway between an enclosed, inaccessible, or concealed area and an electrical service panel/subpanel as specified by the Berkeley Green Code (BMC Section 19.37.040). Any Level 2 EV charging systems installed at parking spaces will be counted toward the applicable readiness requirement. Readiness for EV charging and EV charging station installations shall be noted on the construction plans.

33. **Water Efficient Landscaping**. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State’s Model Water Efficient Landscape Ordinance (MWELO). MWELO-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ETo) for Berkeley is 41.8.
34. **Prohibition of Natural Gas Infrastructure in New Buildings.** The project shall comply with the City of Berkeley Prohibition of Natural Gas Infrastructure in New Buildings (BMC Chapter 12.80).

35. **Recycling and Organics Collection.** Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).

36. **Public Works ADA.** Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

37. **Required Parking Spaces for Persons with Disabilities.** Per BMC Section 23.322.040.H of the Zoning Ordinance, “If the number of required off-street parking spaces in a non-residential district is reduced as allowed by this chapter, the number of required parking spaces for persons with disabilities shall be calculated as if there had been no reduction in required spaces.”

**Prior to Demolition or Start of Construction:**

38. **Construction Meeting.** The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

**During Construction:**

39. **Construction Hours.** Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

40. **Construction Hours- Exceptions.** It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.

41. **Project Construction Website.** The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:
   - Contact information (i.e. “hotline” phone number, and email address) for the project construction manager
   - Calendar and schedule of daily/weekly/monthly construction activities
   - The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.
42. **Public Works - Implement BAAQMD-Recommended Measures during Construction.** For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:

A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.

B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

D. All vehicle speeds on unpaved roads shall be limited to 15 mph.

E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.

H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District’s phone number shall also be visible to ensure compliance with applicable regulations.

43. **Air Quality - Diesel Particulate Matter Controls during Construction.** All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with one of the following measures:

A. The project applicant shall prepare a health risk assessment that demonstrates the project’s on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or

B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.

In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

- An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.

- A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material
breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

44. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using Green Halo and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original Construction Waste Management Plan and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

45. Low-Carbon Concrete. The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.

46. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
   • Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
   • Storage of building materials, dumpsters, debris anywhere in the public ROW;
   • Provision of exclusive contractor parking on-street; or
   • Significant truck activity.

   The applicant shall secure the City Traffic Engineer’s approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

   Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

47. Avoid Disturbance of Nesting Birds. Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the
MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

48. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore:
A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

49. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

50. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction). In the event of an unanticipated discovery of a paleontological resource during construction,
excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

51. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

52. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City’s National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City’s storm drainage system, regardless of season or weather conditions.
B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City’s overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated
with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.

G. All private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).

H. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.

I. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

J. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.

K. Restaurants, where deemed appropriate, must be designed with a contained area for cleaning mats, equipment and containers. This contained wash area shall be covered or designed to prevent run-on or run-off from the area. The area shall not discharge to the storm drains; wash waters should drain to the sanitary sewer, or collected for ultimate disposal to the sanitary sewer. Employees shall be instructed and signs posted indicating that all washing activities shall be conducted in this area. Sanitary connections are subject to the review, approval and conditions of the waste water treatment plant receiving the discharge.

L. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

M. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
53. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

54. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

55. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

56. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

57. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City’s Public Works Department for the relocation of the fire hydrant during construction.

58. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

59. Compliance with Conditions and Environmental Mitigations. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit. Occupancy is subject to verification of compliance to the Mitigation Monitoring and Reporting Program.

60. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit, subject to any minor reductions in unit count and net square footage that may be required to ensure building code compliance, as approved by the Building and Safety Division. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated February 6, 2023, except as modified by conditions of approval.

61. Community Space Management Plan Approval. The applicant shall submit a management plan for the community space that shall include, but is not limited to: who has access to the space; how active use will be promoted within the space; how the space will be advertised; fees associated; etc. The plan must be submitted for review and approval by the Zoning Officer prior to issuance of final inspection or issuance of occupancy permit.

62. Transportation Demand Management. Prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Land Use Division staff to confirm that the
physical improvements required in BMC Section 23.322.060 have been installed. A Parking and Transportation Demand Management (PTDM) compliance report documenting that the programmatic measures required in BMC Section 23.322.060 are implemented shall be submitted to the Land Use Division prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is compliant with the applicable requirements in this section:

A. New construction that results in an off-street total of more than 25 publicly available parking spaces shall install dynamic signage to Transportation Division specifications, including real-time garage occupancy signs at the entries and exits to the parking facility with vehicle detection capabilities and enabled for future connection to the regional 511 Travel Information System; or equivalent, as determined by the Land Use Division in consultation with the Transportation Division. The information panels shall be shown in the construction drawings and shall be installed prior to occupancy.

B. For any new building with residential units or structures converted to a residential use, required parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units. The property owner shall notify all residents of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of Certificate of Occupancy or final inspection.

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

D. For residential structures constructed or converted from a non-residential use that provide off-street parking, vehicle sharing spaces shall be provided in the amounts shown in BMC Table 23.322-6, to be offered to vehicle sharing service providers at no cost, for as long as providers request the spaces, and otherwise consistent with BMC Section 23.322.060(D).

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

BELOW MARKET RATE UNITS

64. Number of Below Market Rate Units. The project shall provide 32 Very Low-Income rental dwelling units ("BMR Units"), which are required to comply with the State Density Bonus Law (Government Code Section 65915). The BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR Units shall conform to the addresses assigned to the building by the City.
65. **Regulatory Agreement.** Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements Government Code Section 65915 and this Use Permit. The Regulatory Agreement may include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The maximum qualifying household income for the BMR Units shall be 50 percent of area median income (AMI), and the maximum housing payment shall be 30 percent of 50 percent of AMI, as set forth in the following paragraphs of this condition. If the BMR units are occupied by very low-income tenants receiving a rental subsidy through the Section 8 or Shelter Plus Care programs, the rent received by the project sponsor may exceed the restricted rent to the payment standards allowed under those programs so long as the rent allowed under the payment standards is not greater than the market rents charged for comparable units in the development. The applicant shall submit the Regulatory Agreement to the Housing and Community Services Department (HHCS) via email to affordablehousing@cityofberkeley.info for review and approval.

66. In addition, the following provisions shall apply:
   A. Maximum rent shall be adjusted for the family size appropriate for the unit pursuant to California Health & Safety Code Section 50052.5 (h).
   B. Rent shall include a reasonable allowance for utilities, as published and updated by the Berkeley Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking and refrigeration fuels. Such allowance shall take into account the cost of an adequate level of service. Utilities do not include telephone service. Rent also includes any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.
   C. BMR units will be provided for the life of the project under Section 22.20.065.

67. **Determination of Area Median Income (AMI).**
   - The “AMI” (Area Median Income) shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.
   - The applicable AMI for the purpose of determining the allowable rent for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with the following table:

<table>
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<tr>
<th>Unit Size</th>
<th>AMI Standard</th>
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<tbody>
<tr>
<td>Studio unit</td>
<td>AMI for a one person household</td>
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<tr>
<td>One-bedroom unit</td>
<td>AMI for a two person household</td>
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<tr>
<td>Two-bedroom unit</td>
<td>AMI for a three person household</td>
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<tr>
<td>Three-bedroom unit</td>
<td>AMI for a four person household</td>
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</table>

68. Nothing in these conditions shall be interpreted to prohibit or to require modification of the Use Permit or Regulatory Agreement to allow the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.
At All Times:

69. **Transportation Demand Management Compliance.** The property owner shall submit to the Land Use Division annual PTDM Compliance Reports, subject to the review and oversight of Land Use Division staff.

70. **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.

71. **Rooftop Projections.** No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.

72. **Design Review.** Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Landmarks Preservation Commission approval.

73. **Rooftop Projections.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

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

75. **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.

76. **Residential Permit Parking.** No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.

77. **Tenant Notification.** The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and entertainment uses, and that each occupant shall not seek to impede their lawful operation.

78. **Transit Subsidy Condition.** The applicant shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area as per BMC Chapter 9.88.

79. **Increased Height Allowance – Application Process.**
   A. The applicant shall submit an application for a building permit no later than 180 days after this Use Permit is approved;
   B. Shall respond to all plan check comments no later than 30 days after they are issued; and
C. Shall pay all building permit-related fees promptly when due, and shall commence construction no later than 180 days after being notified of approval of the first building permit. Any extension of any deadline in this condition shall be subject to approval by the Zoning Officer, except that no deadline for payment of any fees may be extended.
This Mitigation Monitoring and Reporting Program (MMRP) was formulated based upon the findings of the Environmental Impact Report (EIR) and Infill Environmental Checklist (IEC) prepared for the 2190 Shattuck Avenue Mixed-Use Project. The MMRP, which is provided in Table 1 of this section, lists mitigation measures recommended in the EIR for the proposed project and identifies mitigation monitoring requirements. The Final MMRP must be adopted when the City makes a final decision on the project.

This MMRP has been prepared to comply with the requirements of State law (Public Resources Code Section 21081.6). State law requires the adoption of an MMRP when mitigation measures are required to avoid significant impacts. The MMRP is intended to ensure compliance during implementation of the project.

The MMRP is organized in a matrix format. The first column identifies the impact and the second column identifies the mitigation measure that will be implemented for each project impact. The third column, entitled “Monitoring Responsibility,” refers to the agency responsible for oversight or ensuring that the mitigation measure is implemented. The fourth column, entitled “Monitoring Timing,” refers to when the monitoring will occur to ensure that the mitigation action is completed. The lead agency will provide verification that the measures have been implemented. These mitigation measures include any minor revisions made as a result of the Response to Comments Document.

February 8, 2023

This MMRP was revised to reflect the findings in the EIR Addendum prepared for the 2190 Shattuck Mixed-Use Project (Use Permit Modification #ZP2022-0026). Specifically, Cultural Resource Mitigation Measures CR-1(a) through (e) were deleted (because they no longer apply due to changes in the project design).
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<th>Impact Statement</th>
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<td><strong>AIR QUALITY</strong></td>
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| AIR-1: Project construction would generate increases in localized air pollutant emissions. While these emissions may result in temporary adverse impacts to local air quality, they would not exceed BAAQMD thresholds. Nevertheless, the project would be required to comply with BAAQMD regulations and Mitigation Measure AIR-3 from the DAP EIR to minimize emissions that could pose a health and nuisance impact to nearby sensitive receptors. Therefore, air quality impacts associated with construction activities would be less than significant with mitigation. | Implement DAP EIR Mitigation Measure AIR-3 (see below). AIR-3: Implement BAAQMD-Recommended Measures to Control PM\textsubscript{10} Emissions during Construction. Measures to reduce diesel particulate matter and PM\textsubscript{10} from construction are recommended to ensure that short-term health impacts to nearby sensitive receptors are avoided. Dust (PM\textsubscript{10}) 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 PM\textsubscript{2.5}:  
- 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. | City of Berkeley Planning and Development and Public Works Departments | During demolition, site preparation, and project construction |
### Impact Statement

#### Mitigation Measures

- 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.

### Cultural Resources

**CR-1:** Although the proposed demolition of the existing commercial building on-site would not directly affect an eligible historical resource, the proposed building design would adversely affect the setting of nearby historical resources, including the adjacent Shattuck Hotel and the greater proposed Shattuck Avenue Downtown Historic District. Impacts on the integrity of historical resources would be less than significant with incorporation of mitigation to enhance the compatibility of the proposed building’s design with surrounding historical resources.

**CR-1a: Slanted Wall Modifications.** The project applicant shall modify the proposed design of the slanted walls composed of slotted aluminum panels at stories two through six along Shattuck Avenue and Allston Way to make them more compatible with the Shattuck Hotel and other contributors to the proposed Shattuck Avenue Downtown Historic District. Specifically, these slanted walls shall be replaced with a rectilinear wall system, i.e., one with predominant wall surfaces below the seventh-floor loggia being either parallel or perpendicular to the abutting property line.

**CR-1b: Wall Rhythm Modifications.** The proportion and pattern of void to wall in the proposed wall treatments of the project shall be modified to more closely match that exhibited in the Shattuck Hotel. Potential ways to achieve this include, but are not necessarily limited to, replacing the window wall systems with punched curtain wall systems or breaking up the window wall systems with windowless bays.

**CR-1c: Wall Cladding Material Modifications.** The project applicant shall modify the proposed design so as to incorporate wall cladding materials that are compatible with the Shattuck Hotel and other contributors to the proposed Shattuck Avenue Downtown Historic District. Such materials include brick, concrete, stucco, marble, granite, tile and terra cotta, and could be used in conjunction with the proposed glass fiber reinforced concrete (GFRC), glass panels, and metal screens.

**CR-1d: Roofline Modifications.** The project applicant shall modify the proposed design so as to incorporate elements that more prominently
### Impact Statement

**EIR IMPACTS AND MITIGATION MEASURES**

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<td>accentuate the building’s roofline by differentiating it from the walls below. Potential ways to achieve this include, but are not necessarily limited to, adding a cornice element or employing a change in material, color or finish at the uppermost portions of the wall façades. <strong>CR-1e: Ground Floor Modifications.</strong> The project applicant shall modify the proposed design of the storefront along Shattuck Avenue and the ground-floor wall along Allston Way in a manner that visually divides the uninterrupted expanse of glazing at the ground-floor into distinct bays that are between 15 and 30 feet in width.</td>
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<td>Implement DAP EIR Mitigation Measure NOI-6 (see below).</td>
<td>City of Berkeley Planning and Development Department, Land Use Division</td>
<td>Prior to the issuance of a grading permit (for review of vibration monitoring and construction contingency plan)</td>
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| | **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:  
  o 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.  
  o 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 | | |

**CR-2:** The proposed demolition of the existing building on-site and construction of an 18-story mixed-use building with two levels of underground parking would produce ground vibration in the vicinity of existing historical resources. The levels of vibration that would be generated by project construction activities could potentially exceed thresholds for physical damage to historic structures. However, implementation of Mitigation Measure NOI-6 in the DAP EIR would be required to monitor and reduce vibration levels at the Shattuck Hotel from construction activity. Therefore, impacts would be less than significant with mitigation.
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| **EIR IMPACTS AND MITIGATION MEASURES** | photo, elevation, and crack surveys to document before and after construction conditions.  
   o Construction contingencies would be identified for when vibration levels approached the limits.  
   o 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.  
   o When vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures.  
   o 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. | | |
| **GEOLOGY AND SOILS** | **GEO-1:** Construction of the project would occur within 25 feet of the centerline of the Strawberry Creek culvert. The presence of the culvert in proximity to the proposed building’s foundations could potentially result in instability of the proposed building’s foundations. Required compliance with Berkeley Municipal Code and California Building Code standards would reduce the potential for excavation, shoring and foundations to cause instability. However, improper installation of temporary shoring and tiebacks could result in damage to the | **GEO-1:** Temporary Shoring and Tieback Design Review. Prior to the issuance of a grading permit, the project applicant shall submit to the City of Berkeley Department of Planning & Development – Building and Safety Division for review and approval the results of a site-specific geotechnical investigation as well as final engineering and design plans for excavation, temporary shoring, tiebacks, and tieback anchors. The final engineering and design plans for the project shall demonstrate the precise location of the Strawberry Creek culvert, the location of all tiebacks and tieback anchors, the shoring design pressures, the bearing strength of the soil between the project and the culvert, and the construction sequencing. Excavation and temporary shoring shall be designed to limit horizontal and vertical ground deformations such that the stability of the adjacent culvert would not be affected. The installation of tiebacks and tieback anchors shall be designed to prevent damage to the adjacent culvert. The final design shall locate work as far from the edge of culvert as practicable at a distance equal to depth of culvert bottom. | City of Berkeley Planning and Development Department, Building and Safety Division | Prior to issuance of a grading permit |
### EIR IMPACTS AND MITIGATION MEASURES

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| **GEO-2:** Construction of the project would occur within the zone of influence of the adjacent BART station and tunnels. Improper construction within this zone could result in damage to, or destabilization of, the proposed project and the BART subway tunnel and station. Mitigation would be required to ensure that the construction design meets all applicable BART standards. With implementation of mitigation, the project would have a less than significant impact related to the structural integrity of BART substructures. | **GEO-2:** **BART Zone of Influence Design Review.** Prior to the issuance of a grading permit, the project applicant shall submit to the City of Berkeley Department of Planning & Development – Building and Safety Division for review and approval the results of a site-specific geotechnical investigation as well as final engineering and design plans for the building, including all subsurface and above-ground elements of the project. The final engineering and design plans for the project shall demonstrate adherence to BART’s General Guidelines for Design and Construction Over or Adjacent to BART’s Subway Structures. Applicable elements of the General Guidelines may include, but are not limited to, the following:  
- Minimum clearance of 7’6” between new construction and BART substructures  
- Shoring for excavations in the Zone of Influence  
- Monitoring of shoring to ensure that it maintains at-rest soil condition  
- Monitoring of dewatering and recharging if the existing groundwater level is expected to drop by more than two feet  
- Predrilling of piles to a minimum of 10 feet below the Line of Influence, which is a line from the critical point of a BART substructure at a slope of 1.5 horizontal to 1.0 vertical towards ground level | City of Berkeley Planning and Development Department, Building and Safety Division | Prior to issuance of a grading permit |

### NOISE AND VIBRATION

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| **N-1:** Project construction would temporarily generate high noise levels on and near the project site. Construction noise levels would intermittently exceed City standards for construction noise in commercial zones, particularly in the first months of construction during excavation and construction of the foundation. | **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 | City of Berkeley Planning and Development and Public Works Departments Construction Contractor | Prior to issuance of demolition, grading or building permits Throughout the
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<th>Impact Statement</th>
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<td>EIR IMPACTS AND MITIGATION MEASURES</td>
<td>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:</td>
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<td>▪ Construction equipment should be well maintained and used judiciously to be as quiet as practical.</td>
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<td>▪ Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.</td>
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<td>▪ 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.</td>
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<td></td>
<td>▪ 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.</td>
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<td>▪ Prohibit unnecessary idling of internal combustion engines.</td>
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<td>▪ If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.</td>
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<td>▪ 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.</td>
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<td>▪ Erect temporary noise control barrier blanket, 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.</td>
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<td>▪ Route construction related traffic along major roadways and away from sensitive receptors where feasible.</td>
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<td>▪ 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 period”</td>
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<td><strong>EIR IMPACTS AND MITIGATION MEASURES</strong></td>
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<td><strong>liaison</strong> 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.</td>
<td>Implement DAP EIR Mitigation Measure NOI-6 (see MM for Impact CR-2).</td>
<td>City of Berkeley Planning and Development Department, Land Use Division</td>
<td>Prior to the issuance of a grading permit</td>
</tr>
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<td>N-2: Project construction would temporarily generate high vibration levels on and adjacent to the project site. Because construction would occur inside the hours allowed in the Berkeley Municipal Code, it would not generate vibration when people normally sleep. While vibration in excess of FTA thresholds may temporarily disturb daytime educational activities at Berkeley City College, the use of administrative controls including notification of neighbors and appropriate scheduling of vibrating-generating activities would minimize exposure to perceptible vibration. Vibration levels at the Shattuck Hotel could potentially exceed Caltrans thresholds for structure damage, but vibration monitoring pursuant to Mitigation Measure NOI-6 from the DAP EIR would reduce the likelihood of structure damage. Therefore, the project would have</td>
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## EIR IMPACTS AND MITIGATION MEASURES

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<td>N-5: New residential units on the project site would be subject to noise levels in excess of the City of Berkeley noise compatibility guidelines. However, sound attenuation techniques would reduce ambient noise in the residential units to below the City’s standard of 45 dBA Ldn, ensuring that this impact would be less than significant with mitigation.</td>
<td>Implement DAP EIR Mitigation Measure NOI-1 (see below).</td>
<td>City of Berkeley Planning and Development and Public Works Departments</td>
<td>Prior to issuance of demolition, grading or building permits</td>
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<td>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 dBA Ldn and indoor noise levels in excess of 45 dBA Ldn, which would exceed the City’s and state’s established land use compatibility thresholds. In areas where residential development would be exposed to an Ldn 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:</td>
<td>Construction Contractor</td>
<td>Throughout the construction period</td>
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<td>- 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.</td>
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<td>- 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 façade treatments) may be required where exterior noise levels exceed 65 dBA Ldn. 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. Result 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.</td>
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### Impact Statement

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<td>N-5: <strong>Sound Insulation.</strong> The applicant shall install exterior building materials with sufficient Sound Transmission Class (STC) ratings to reduce interior noise levels in habitable rooms to below 45 dBA Ldn, as required by California Code of Regulations, Title 24, Section 1207.4. All residential windows, exterior doors, and exterior wall assemblies shall meet the STC 30 rating to ensure the adequate attenuation of noise at a range of frequencies.</td>
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### TRANSPORTATION AND TRAFFIC

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| **T-3: Construction of the project, based on its expected duration and intensity, would result in a temporary reduction in roadway capacity, closure of portions of Allston Way, and relocation of AC Transit bus stops. These physical changes would have temporary adverse effects on vehicle, pedestrian, bicycle, and transit circulation. The project would have a less than significant impact with mitigation during construction.** | **T-3: Development and Implementation of a Construction Traffic Management Plan.** Prior to the issuance of demolition permits, a construction traffic management plan shall be prepared and implemented during construction and shall include, but not be limited to, the following strategies to the satisfaction of the City’s Zoning Officer and Public Works staff: 1) **Temporary Traffic Control Strategies**  
   - Coordinate with the City of Berkeley Public Works Department and construction manager(s)/contractor(s) for nearby developments, and with AC Transit, Bear Transit, and Alta Bates Shuttle, as applicable, to develop construction phasing and operations and detour plans that would result in the least amount of disruption that is feasible to transit operations, pedestrian and bicycle activity, and vehicular traffic.  
   - Establish construction phasing/staging schedule and sequence that minimize impacts of a work zone on traffic by using operationally sensitive phasing and staging throughout the life of the project.  
   - Coordinate and schedule utilities work to minimize potential work disruptions or interruptions and reduce overall construction duration.  
   - Identify optimal delivery and haul routes to and from the site to minimize impacts to traffic, transit, pedestrians, and bicyclists.  
   - Conduct monitoring for pavement damage and timing/coordination for completing repairs along construction truck routes.  
   - Identify arrival/departure times for trucks and construction workers to avoid peak periods of adjacent street traffic and minimize traffic affects  
   - Specify timing, signage, location, and duration of necessary partial/complete sidewalk closures and identification of detour routes for pedestrians, bicyclists, and vehicles, as needed. | Project Applicant  
City of Berkeley Planning and Development and Public Works Departments, Transportation Division | Prior to issuance of a demolition permit |
### EIR IMPACTS AND MITIGATION MEASURES

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<td></td>
<td>▪ Preserve safe and convenient passage for pedestrians and bicyclists around construction areas. Provide alternate facilities for bicyclists and pedestrians (including those with disabilities) in places where the work zone impacts accessibility.</td>
<td>City of Berkeley Zoning Officer</td>
<td>Prior to issuance of a certificate of occupancy</td>
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<td>▪ Provide for relocation of bus stops and ensure adequate wayfinding and signage to notify transit users.</td>
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<td>▪ Establish criteria for use of flaggers and other temporary traffic controls.</td>
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<td>▪ Preserve emergency vehicle access.</td>
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<td>▪ As necessary, obtain a transportation permit from Caltrans for transportation of heavy construction equipment and/or materials which requires the use of oversized transport vehicles on State highways.</td>
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<td>2)</td>
<td>▪ Encourage construction workers to use transit, carpool and other sustainable transportation modes when commuting to and from the site.</td>
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<td>Transportation</td>
<td>▪ Specify locations of construction worker employee parking.</td>
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<td>Operations and</td>
<td>▪ Provide advance notification to affected property owners, businesses, residents, etc. of possible driveway blockages or other access obstructions and implement alternate access and parking provisions where necessary.</td>
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<td>Transportation</td>
<td>▪ Implement public awareness strategies to educate and reach out to the public, businesses, and the community concerning the project and work zone (e.g., brochures and mailers, press releases/media alerts).</td>
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<td>Demand</td>
<td>▪ Provide a point of contact for residents, employees, property owners, and visitors to obtain construction information, and provide comments and questions.</td>
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<td>Management</td>
<td>▪ Provide current and/or real-time information to road users regarding the project work zone (e.g., changeable message sign to notify road users of lane and road closures and work activities, temporary conventional signs to guide motorists through the work zone).</td>
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**T-4:** The proposed project driveway would introduce potential conflicts between

**T-4:** **Driveway Safety Measures.** Prior to obtaining a certificate of occupancy, the applicant shall implement the following traffic safety measures to the satisfaction of the City’s Zoning Officer and Public Works staff:

- City of Berkeley Zoning Officer
- Prior to issuance of a certificate of occupancy.
### EIR IMPACTS AND MITIGATION MEASURES

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| vehicles accessing the site and pedestrians using the north-side sidewalk of Allston Way. Use of the proposed driveway within approximately 25 feet of a bus layover zone on Allston Way also could introduce conflicts between vehicles accessing the site and buses. These conflicts would cause a potentially significant impact without adequate sight distance provided at the project driveway and appropriate technology to minimize conflicts associated with the driveway. The project would result in a less than significant impact with mitigation incorporated. | ▪ Per City of Berkeley guidelines, maintain a minimum five foot by five foot sight distance triangle at the driveway entrance/exit;  
▪ Install “STOP” pavement markings and signage for exiting drivers to look both ways at the exit, prior to crossing the sidewalk;  
▪ Install convex mirrors at the project driveway to improve the visibility of exiting vehicles from the sidewalk;  
▪ Provide visual and/or audio warning devices that alert pedestrians when vehicles are exiting the driveway;  
The typical and standard treatments identified above should be sufficient to address potential conflicts. In addition, the following non-standard treatments may be considered and implemented at the determination of the City:  
▪ Provide visual warning devices that alert drivers when pedestrians are present on the sidewalk; and  
▪ Utilize a different surface treatment or special paving to define and highlight the driveway entrance within the public right-of-way. | City of Berkeley Planning and Development and Public Works Department | certificate of occupancy                  |
| **T-5**: Commercial and passenger loading activity associated with the project would introduce potential conflicts with other automobiles, buses, bicyclists, and pedestrians. If demand exceeds available space at the proposed commercial loading zone on the north side of Allston Way or at the existing passenger loading zone on the south side of the street, spillover loading activity could lead to illegal parking in red curb zones or double-parking. Large trucks parked in the proposed loading area. | **T-5a**: Commercial Loading Management Strategies. It shall be the responsibility of building management to monitor and report on on-street commercial loading activity. Building management shall assign an inspector who will be responsible for field monitoring and documenting observations on a monitoring report worksheet. The inspector will be responsible for the following activities:  
▪ On-site, day-to-day monitoring of commercial loading activities;  
▪ Recording instances of illegal stopping, double-parking, blockage of adjacent travel lanes, and conflicts with transit vehicles;  
▪ Acting in the role of contact for property owners or other affected persons who wish to register observations of commercial loading conflicts. The inspector shall be responsible for verifying any such observations and for developing any necessary corrective actions in consultation with City staff;  
▪ Maintaining a log of all significant interactions and enforceable violations and submitting a monthly monitoring report worksheet to the City’s Traffic Engineer for a period of one-year; and; | Project Applicant and designated inspector  
City of Berkeley Planning and Development Department and Public Works Department, Transportation Division | For a period of one year after construction          |
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| Zone also could temporarily block access to and from the proposed garage. The project would have a less than significant impact with mitigation incorporated to minimize traffic conflicts associated with loading activity. | - Obtaining assistance as necessary from technical experts in order to identify appropriate strategies to minimize conflicts. The City’s Traffic Engineer shall review the monitoring reports and identify recurring issues. If recurring issues are identified, for example, if commercial loading demand exceeds available supply and loading activity results in illegal stopping in red zones, blockage of adjacent travel lanes, or conflicts with transit vehicles on a regular basis (e.g., more than once per day), it shall be the responsibility of the building management to implement strategies to minimize conflicts. Strategies may also be required to be implemented at discretion of City staff, depending on the number and nature of conflicts observed. Appropriate strategies will vary depending on the characteristics and causes of the conflicts. Suggested strategies include, but are not limited to, the following:  
  - Coordinate with AC Transit and the City for additional loading space;  
  - Coordinate with AC Transit and the City to determine if the transit stop can be used for loading during certain hours;  
  - Restrict size of freight and delivery/service vehicles to no more than 25 feet in length;  
  - Limit deliveries to certain times of day, such as the early morning or late evening;  
  - Install meters and increase parking enforcement;  
  - Encourage deliveries during off-peak times;  
  - Establish nearby delivery areas or delivery stations to consolidate deliveries for a variety of users and utilize smaller vehicles and/or non-motorized modes for last-mile delivery;  
  - Install a reception desk, delivery lockers, and/or other delivery-supportive amenities on-site;  
  - Install delivery lockers and delivery-supportive amenities on-site;  
  - Schedule and coordinate loading activities through building management to ensure that any freight loading/service vehicles can be accommodated either in existing on-street loading spaces in the vicinity of the Project; and, | | |
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| EIR IMPACTS AND MITIGATION MEASURES | ▪ Actively manage the loading zone through use of attendants to direct freight and delivery/service vehicles to available spaces when the loading zone is in use.  
T-5b: Passenger Loading Management Strategies. It shall be the responsibility of building management to monitor and report on on-street passenger loading activity. Building management shall assign an inspector who will be responsible for field monitoring and documenting observations on a monitoring report worksheet. The inspector will be responsible for the following activities:  
▪ On-site, day-to-day monitoring of passenger loading activities during the weekday AM peak hour (7:00 AM to 9:00 AM), midday (11:00 AM to 1:00 PM), and PM peak hour (4:00 PM to 6:00 PM) periods, or other time periods determined by the City;  
▪ Recording instances of illegal stopping, double-parking, blockage of adjacent travel lanes, and conflicts with transit vehicles over a 20-minute period within the identified time periods;  
▪ Acting in the role of contact for property owners or other affected persons who wish to register observations of commercial loading conflicts. The inspector shall be responsible for verifying any such observations and for developing any necessary corrective actions in consultation with City staff;  
▪ Maintaining a log of all significant interactions and enforceable violations and submitting a monthly monitoring report worksheet to the City’s Traffic Engineer for a period of one year; and,  
▪ Obtaining assistance as necessary from technical experts in order to identify appropriate strategies to minimize conflicts.  
The City’s Traffic Engineer shall review the monitoring report and identify any recurring issues. If recurring issues are identified, for example, if passenger loading demand exceeds available supply and loading activity results in illegal stopping in red zones, blockage of adjacent travel lanes, or conflicts with transit vehicles on a regular basis (e.g., more than once per day), it shall be the responsibility of the building management to implement strategies to minimize conflicts. Strategies may also be required to be implemented at discretion of City staff, depending on the number and nature of conflicts. | | |
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<td>observed. Appropriate strategies will vary depending on the characteristics and causes of the conflicts. Suggested strategies include but are not limited to the following: ▪ Create a combined commercial/passenger loading zone on the Project frontage (e.g., through signage and use of alternating white and yellow color curb) in conjunction with implementation of time of day restrictions for delivery/service vehicle use of the proposed commercial truck loading zone; and, ▪ Coordinate with owners of nearby buildings to increase the amount of passenger loading (white curb) space available.</td>
<td>Project Applicant, City of Berkeley Planning and Development and Public Works Departments, Transportation Division</td>
<td>Prior to issuance of a demolition permit</td>
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<td>T-7: All streets and intersections on the route from the nearest fire stations to the project site are sufficiently wide enough to provide adequate emergency vehicle access to the site. Operation of the project would not substantially increase delays on emergency access routes. However, project construction would temporarily impede emergency access to the project site during construction. The project would have a less than significant impact related to emergency access with mitigation incorporated during construction.</td>
<td>Implement Mitigation Measure T-3 (see above).</td>
<td>Project Applicant and designated inspector, City of Berkeley Zoning Officer</td>
<td>Prior to issuance of a demolition permit and certificate of occupancy</td>
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<td>T-8: The project would not generate a substantial increase in transit ridership that results in result in overcrowding on local or regional transit systems. However, the temporary closure</td>
<td>Implement Mitigation Measures T-3, T-4, T-5a, T-5b (see above).</td>
<td>Project Applicant and designated inspector, City of Berkeley Zoning Officer</td>
<td>Prior to issuance of a demolition permit and certificate of occupancy</td>
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### Impact Statement

**Mitigation Measures**

**Monitoring Responsibility**

**Monitoring Timing**

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<td>of an AC Transit bus stop and layover zone would impede transit access during construction. Traffic conflicts with vehicles entering and leaving the proposed driveway and with loading activity also could delay buses on Allston Way. The project would have a less than significant impact on the performance of local and regional transit operations with mitigation incorporated to preserve local bus access during construction and to minimize traffic and loading conflicts with buses during operation.</td>
<td>Implement Mitigation Measures T-3 &amp; T-4 (see above).</td>
<td>City of Berkeley Planning and Development and Public Works Departments, Transportation Division</td>
<td>For a period of one year after construction</td>
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<td><strong>T-9:</strong> The project would not involve features that would result in permanent or substantial operational impacts to alternative modes of transportation. However, construction of the project would temporarily impact pedestrian and bicycle circulation. The project would have a less than significant impact with mitigation incorporated on local pedestrian and bicycle circulation.</td>
<td></td>
<td>Project Applicant City of Berkeley Zoning Officer City of Berkeley Planning and Development and Public Works Departments, Transportation Division</td>
<td>Prior to issuance of a demolition permit and certificate of occupancy</td>
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**INFILL INITIAL STUDY CHECKLIST IMPACTS AND MITIGATION MEASURES**

**TRIBAL CULTURAL RESOURCES**
### EIR IMPACTS AND MITIGATION MEASURES

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<td>TCR-1: Proposed excavation of the project site could potentially result in adverse effects on unanticipated tribal cultural resources. Impacts from the unanticipated discovery of tribal cultural resources during construction would be less than significant with mitigation incorporated.</td>
<td><strong>TCR-1: Unanticipated Discovery of Tribal Cultural Resources.</strong> In the event that cultural resources of Native American origin are identified during construction, the City shall consult with a qualified archaeologist and begin or continue Native American consultation procedures. If the City determines that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.</td>
<td>City of Berkeley Planning and Development Department</td>
<td>During construction period; work must stop immediately if resources are discovered, and consultation initiated as soon as practical</td>
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2190 Shattuck Avenue Mixed-Use Project

Pursuant to Sections 15091 and 15093 of the State CEQA Guidelines and Section 21081 of the Public Resources Code

The Final Environmental Impact Report (Final EIR) prepared by the City of Berkeley (City) for the 2190 Shattuck Avenue Mixed-Use Project (project) consists of the Draft Environmental Impact Report and the Final Environmental Impact Report Response to Comments Document. The Final EIR identifies significant environmental impacts that will result from implementation of the project. The City finds that the inclusion of certain mitigation measures as part of project approval will reduce all but one significant impact to levels that are less than significant. The significant and unavoidable impact will result from the exposure of nearby sensitive land uses to temporary noise during construction of the project. No feasible mitigation measures have been identified to reduce this impact to a less-than-significant level; therefore, construction noise will remain a significant and unavoidable impact of the project. However, this impact is consistent with the Downtown Area Plan (DAP) EIR’s finding for construction noise during the development of projects in the Plan Area as a whole. Furthermore, the impact is subject to a Statement of Overriding Considerations described in section 7 below.

As required by the California Environmental Quality Act (CEQA), the City, in adopting these CEQA Findings and Statement of Overriding Considerations, is also adopting a Mitigation Monitoring and Reporting Program (MMRP) for the project. The City finds that the MMRP, which is incorporated by reference, meets the requirements of Public Resources Code Section 21081.6 by providing for the implementation and monitoring of measures intended to mitigate potentially significant effects of the project. In accordance with CEQA and the CEQA Guidelines, the City adopts these findings as part of the project approval. Pursuant to Public Resources Code Section 21082.1(c)(3), the City also finds that the Final EIR reflects the City’s independent judgment as the lead agency for the project.

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SECTION 1: INTRODUCTION

1.1 Statutory Requirements for Findings

Section 15091 of the CEQA Guidelines states that:

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

In short, CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to avoid or mitigate significant environmental impacts that will otherwise occur with implementation of the project. Project mitigation or alternatives are not required, however, where they are infeasible or where the responsibility for modifying the project lies with another agency.1

For those significant effects that cannot be mitigated to a less-than-significant level, the public agency is required to find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.2 The CEQA Guidelines state in section 15093 that:

“If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered ‘acceptable.’”

1.2 Record of Proceedings

For purposes of CEQA and the findings set forth herein, the record of proceedings for the City’s decision on the project consists of: a) matters of common knowledge to the City, including, but not limited to, federal, State and local laws and regulations; and b) the following documents which are in the custody of the City:

- The Notice of Preparation and other public notices issued by the City in conjunction with the project (see Appendix A of the Draft EIR for the Notice of Preparation);
- The Draft Infill Environmental Checklist and supporting documentation prepared for the proposed project, dated August 2017 (see Appendix A of the Draft EIR for the Draft Infill Environmental Checklist);
- The Public Review Draft EIR, dated August 2017;
- All written and verbal comments submitted by agencies, organizations and members of the public during the public comment period and at public hearings on the Draft EIR and responses to those comments (see Response to Comments Document in Final EIR, dated January 2018);

---

1 CEQA Guidelines, 2017. Section 15091(a).

2 Public Resources Code Section 21081(b).
• The Mitigation Monitoring and Reporting Program;
• All findings and resolutions adopted by the City in connection with the project, and all documents cited or referred therein;
• Relevant final reports, studies, memoranda, maps, correspondence, and all planning documents prepared by the applicant, the City or their consultants, or responsible or trustee agencies with respect to: a) the City’s compliance with CEQA; b) development of the project site; or c) the City’s action on the project; and
• Relevant documents submitted to the City by agencies or members of the public in connection with development of the project.

1.3 Infill EIR

The EIR is a Project EIR pursuant to CEQA Guidelines Section 15161 and an Infill EIR pursuant to CEQA Guidelines Section 15183.3. Under CEQA Guidelines Section 15183.3(b), to be eligible for streamlined review, an infill project must:

1. Be located in an urban area on a site that either has been previously developed or that adjoins existing qualified urban uses on at least seventy-five percent of the site’s perimeter. For the purpose of this subdivision "adjoin" means the infill project is immediately adjacent to qualified urban uses, or is only separated from such uses by an improved public right-of-way;
2. Satisfy the performance standards provided in Appendix M; and
3. Be consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy...

In addition, Public Resources Code section 21099 of CEQA states that aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area are not to be considered significant environmental impacts.

As discussed in the Infill Environmental Checklist (Appendix A to the EIR), the proposed project qualifies as an infill project under CEQA Guidelines Section 15183.3. It is located in an urban area on a site that has been previously developed. In order to be eligible for streamlined review under Section 15183.3, a project must meet criteria in Appendix M of the CEQA Guidelines. Information and analysis demonstrating that this project satisfies the Appendix M performance standards is provided in the Infill Environmental Checklist in a section titled "Satisfaction of Appendix M Performance Standards."

The project is consistent with the general use designation, density, building intensity and applicable policies specified for the project area in the City’s DAP EIR. As documented in the Infill Environmental Checklist, potential development on the project site was within the DAP vision and is included in all aspects of the DAP EIR.

Under CEQA Guidelines Section 15183.3(c), for eligible infill projects (such as the 2190 Shattuck Avenue Mixed use project) CEQA does not require certain analyses that would otherwise be required:

• If a significant environmental effect was analyzed in a prior EIR for a planning level decision, then, with some exceptions, that effect need not be analyzed again for an individual infill project even when that effect was not reduced to a less than significant level in the prior EIR.
• An effect need not be analyzed, even if it was not analyzed in a prior EIR or is more significant than previously analyzed, if the lead agency makes a finding that uniformly applicable
development policies or standards, adopted by the lead agency or a city or county, apply to the infill project and would substantially mitigate that effect.

The EIR references pertinent City policies and guidelines, certified EIRs and adopted CEQA documents, and background documents prepared or relied upon by the City in preparing the CEQA analysis. A full reference list is contained in the EIR in Section 7, References and Report Preparers. The Infill Environmental Checklist makes reference to the uniformly applicable development policies or standards that would mitigate certain impacts identified in the Checklist, and also lists the mitigation measures from the DAP EIR (the prior EIR for a planning level decision) that would apply to the proposed project and address certain identified impacts. Those uniformly applicable development policies or standards and DAP EIR mitigation measures are discussed in the Infill Environmental Checklist and are listed with the project-specific mitigation measures discussed in sections 3 and 4 below.

1.4 Organization/Format of Findings
Section 2 of these findings sets forth the objectives of the project and contains a summary description of the project and project alternatives. Section 3 identifies the project’s potential environmental effects that were determined not to be significant, and do not require mitigation. Section 4 identifies the potentially significant effects of the project that have been determined to be mitigated to a less-than-significant level. All numbered references identifying specific mitigation measures refer to numbered mitigation measures found in the Infill Environmental Checklist or Draft EIR and Response to Comments Document. Section 5 identifies the significant impacts of the project, including cumulative impacts, that cannot be mitigated to a less-than-significant level even though feasible mitigation measures have been identified and incorporated into the project. Section 6 discusses the feasibility of project alternatives. Section 7 includes the City’s Statement of Overriding Considerations.
SECTION 2: THE 2190 SHATTUCK AVENUE MIXED-USE PROJECT

This section lists the objectives of the proposed project, provides a brief description of the project, and lists the alternatives evaluated in the Draft EIR and Final EIR.

2.1 Project Objectives

The objectives of the applicant for the proposed 2190 Shattuck Avenue Mixed-Use Project are to:

1. Implement the Downtown Area Plan and Street & Open Space Improvement Plan by taking advantage of the full development potential under Zoning Ordinance standards and in turn, generating the revenue necessary to support the amenities and community benefits envisioned in the Downtown Area Plan, and maintaining the financial feasibility of the Project.
2. Generate much-needed, highly livable, transit-oriented, and sustainable market rate housing; and contribute substantial affordable housing (and/or fees to support development of such housing) as required by Berkeley Municipal Code Section 22.20.065.
3. Assist the State, region and the City to achieve established housing production goals.
4. Design a project that is feasible and contributes positively to the economic, social, and environmental goals of the City.
5. Establish a thriving, livable and diverse residential neighborhood that maximizes transit-oriented density and establish an environmentally sustainable community with 400-450 new residents.
6. Stimulate and activate the pedestrian environment along Allston Way by replacing the existing structure, with vibrant, walkable retail and pedestrian amenities and offering diverse, walk-to destinations.
7. Upgrade and revitalize an important urban block in Downtown Berkeley into a walkable, retail-centered, transit-friendly, residential block with active, safe and visually engaging pedestrian amenities consistent with the Downtown Area Plan and the Streets and Open Space Improvement Plan, while respecting key historic resources on adjacent blocks.
8. Develop a superior building, integrating environmentally sustainable development practices in design, development, and construction.
9. Utilize ecologically beneficial landscaping techniques that complement and enhance the local environment and reinforce the City’s commitment to environmental sustainability, promote watershed health and create safe, comfortable, and inviting open spaces.
10. Actively encourage alternative modes of transportation by foot, by bicycle and via transit, for residents, employees, and retail customers by providing residents and employees with a range of Transportation Demand Management measures that are made possible by the income generated by the project’s size and scale, and prioritizing the safety, attractiveness and convenience of the pedestrian experience.
11. Generate significant new revenue streams for the City of Berkeley through increased property taxes and property-based revenues, economically sensitive revenues such as sales taxes and business license taxes, jobs creation, gross receipts taxes, and a new residential population that supports a successful mix of retail businesses, institutions and other attractions in Downtown Berkeley.

2.2 Project Description

The project is a proposed 211,590 square-foot residential and commercial mixed-use development in Downtown Berkeley. The project would involve demolition of an existing two-story commercial building that covers the entire project site and construction of an 18-story building with retail commercial ground-floor uses, residential upper-floor uses, and a two-level subterranean parking garage with 103 parking spaces. The completed project would include 274 residential units and 10,000 square feet of commercial space. The commercial storefronts would front on the Shattuck Avenue BART Plaza and wrap around to Allston Way on the south. A 677 square-foot community art space next to the residential lobby would be available for community events.

The proposed building would have components of various heights, with the highest portion reaching 180 feet, excluding rooftop architectural projections (a parapet and elevator enclosures) that would extend up to
approximately 190 feet. The project would maintain a continuous street wall at the edge of the abutting streets up to where the building would step back toward the interior of the site. At a height of approximately 72 feet (seven stories) above street level, the building would step back 15 feet from Shattuck Avenue and Allston Way. Above the 12th floor, the building would step back an additional 65 feet from Shattuck Avenue.

A more detailed description of the proposed project is provided in Section 2, Project Description, of the Draft EIR.

2.3 Alternatives

Based on the project objectives and anticipated environmental consequences, and pursuant to Section 15126.6 of the CEQA Guidelines, the following project alternatives were selected for analysis:

- **No Project Alternative.** This alternative assumes that the proposed project is not implemented and the existing two-story commercial building is left intact. This alternative assumes that the building occupancy would remain as is, including the Walgreens drug store and pharmacy on the ground floor and office uses on the second floor, while the basement would remain vacant.

- **Reduced Parking Alternative.** This alternative assumes that the proposed building would provide fewer off-street parking spaces for vehicles than would the proposed project but the same intensity of residential and commercial development (274 residential units and 10,000 square feet of retail commercial space). The garage would include 58 parking spaces as compared to 103 parking spaces under the proposed project. The 58 parking spaces would consist of the following:
  - 48 parking spaces in a three-tiered mechanical lift system
  - 4 independently accessible (non-tiered) parking spaces
  - 3 parking spaces accessible to persons with disabilities
  - 3 vehicle share parking spaces

While the proposed project would include a two-level subterranean parking garage, this alternative would provide either a one- or two-level garage to accommodate 58 parking spaces and building support systems.

- **14-Story Building Alternative.** This alternative would reduce the proposed building’s height from 18 to 14 stories and the number of dwelling units from 274 to approximately 250, for the purpose of minimizing the obstruction of scenic views from Campanile Way on the UC Berkeley campus. The building would have a maximum height of 142 feet, 2 inches, plus an additional 4 feet of rooftop architectural projections above rooftop residential units. Relative to the proposed project, the 14-Story Building Alternative would reduce the building’s maximum height by approximately 38 feet. Similar to the proposed project, this alternative would provide 10,000 square feet of commercial space and 103 parking spaces in a two-level underground garage.

This alternative would require several additional use permits compared to the proposed project pursuant to the City’s C-DMU Downtown Mixed Use District standards: to exceed the bulk height limit at 120 feet by 22 feet, 1 inch; to reduce usable open space below the amount required; and to reduce the front, rear, and interior side setbacks below the distance required. However, while the project would require an administrative use permit to allow architectural projections to exceed the maximum building height of 180 feet, this permit would be unnecessary for the reduced-height alternative. With approval of the additional use permits, the 14-Story Building Alternative would be consistent with zoning standards.

- **15-Story Building Alternative.** This alternative would reduce the proposed building’s height from 18 to 15 stories, for the purpose of reducing the obstruction of views from Campanile Way, while still maintaining the same number of dwelling units (274). The building would have a maximum height of 151 feet, 4 inches, plus an additional 14 feet of rooftop architectural projections. Relative to the proposed project, the 15-Story Building Alternative would reduce the building’s maximum height by approximately 29 feet. To provide the same residential density as the proposed project in fewer stories, the alternative would widen the proposed
upper floors. While the project’s upper tier would step back an additional 65 feet from Shattuck Avenue above the 12th floor, this alternative would eliminate that setback. Similar to the proposed project, this alternative would provide 10,000 square feet of commercial space and 103 parking spaces in a two-level underground garage.

This alternative would require several additional use permits to the proposed project pursuant to the City’s C-DMU Downtown Mixed Use District standards: to exceed the bulk height limit at 120 feet by 31 feet, 3 inches; and to reduce the rear and interior side setbacks below the distance required. However, while the project would require an administrative use permit to allow architectural projections to exceed the maximum building height of 180 feet, this permit would be unnecessary for the reduced-height alternative. With approval of the additional use permits, the 15-Story Building Alternative would be consistent with zoning standards.

A more detailed description of these alternatives, and required findings, are set forth in Section 6: Feasibility of Project Alternatives.
SECTION 3: EFFECTS DETERMINED TO BE LESS THAN SIGNIFICANT OR NOT SIGNIFICANT

The City finds that, based upon substantial evidence in the record, as discussed below, the following impacts associated with the project are not significant or are less than significant. The Infill Environmental Checklist included as Appendix A of the Draft EIR and Section 4.0 of the Draft EIR provide a detailed analysis of the less-than-significant impacts of the proposed project.

3.1 Agricultural and Forestry Resources

The project site and vicinity are located within an urban area in the city of Berkeley. There are no agricultural resources, Williamson Act-contracted land, or forest land located on or near the project site. The California Department of Conservation classifies the site and all surrounding properties classified as “Urban and Built-Up Land” (2014). The project would not convert agricultural land to non-agricultural uses or result in the loss of forest land or conversion of forest land to non-forest use. The site’s urban zoning designation would not change. Although there are seven street trees on Allston Way that would be removed during site preparation and construction, those ornamental trees are not considered forestry resources, and the project includes replacing them with approximately seven street trees of species acceptable to the City’s Street Trees and Urban Forestry Management Program. Therefore, the City finds that the proposed project will have no impact on agricultural or forestry resources.

3.2 Air Quality

The City of Berkeley and the project site are located in the San Francisco Bay air basin and are within the jurisdiction of the Bay Area Air Quality Management District (BAAQMD). The latest air quality plan, the 2017 Clean Air Plan, is a roadmap showing how the San Francisco Bay Area will achieve compliance with the state standard for atmospheric ozone levels over a one-hour period as expeditiously as practicable, and how the region will reduce transport of ozone and ozone precursors to neighboring air basins. A project’s consistency with BAAQMD quantitative thresholds demonstrates support for the CAP goals. The short-term and long-term emissions of the project are not anticipated to exceed BAAQMD thresholds. Furthermore, the project would be consistent with the growth assumptions in the Clean Air Plan. Therefore, the project would be consistent with the Clean Air Plan. Although construction emissions would be below BAAQMD project-level thresholds, the project would be subject to Mitigation Measure AIR-3 from the DAP EIR to minimize PM10 and PM2.5 construction emissions. Implementation of this measure would reduce air quality impacts to a less-than-significant level. On-site sensitive receptors would not be exposed to substantial levels of TACs that would significantly impact human health. In addition, the project would not generate substantial odors and its site is not located near any land uses considered by the 2012 BAAQMD CEQA Guidelines to have greater potential for offensive odors. Therefore, the project will have a less-than-significant impact on air quality.

3.3 Biological Resources

The project site and vicinity are located within an urban area in the city of Berkeley and within the DAP area. The setting information for the project site is the same as that described for the DAP area in the DAP EIR; there is virtually no vegetation on-site or adjacent other than non-native street trees on Allston Way and Shattuck Avenue, and no wetlands or riparian or other habitat on site or nearby. There is no suitable habitat for special status wildlife on site or adjacent. The project site does not provide a suitable corridor for wildlife movement, as it is completely developed with an existing building and not adjacent to habitat or wildlife movement areas. As existing street trees affected by the project would be replaced with an equal or greater number of street trees of species acceptable to the City’s Street Trees and Urban Forestry Management Program, no conflict with local policies or ordinances protecting biological resources, including trees, would occur. No adopted Habitat Conservation Plans, Natural Community Conservation Plans or other approved local, regional, or state habitat conservation plans apply to the project site.
The City of Berkeley has adopted bird-safe building standards that are “uniformly applicable development policies for multi-story buildings with the potential for significant bird strikes (City of Berkeley, Additional Amendments to the Master Use Permit Process, West Berkeley Project EIR, 2012). Pursuant to these standards, new buildings with the potential for significant bird strikes must adhere to specific design measures, which would be included in the conditions of approval for the proposed project, as applicable. Therefore, the City finds that the proposed project will have a less-than-significant impact on biological resources.

3.4 Cultural Resources

As discussed in the DAP EIR, no archaeological or paleontological resources are currently known to exist in the Downtown Area, which includes the project site. Nevertheless, the DAP EIR identified impacts to unrecorded subsurface archaeological and paleontological resources, and to human remains, as potentially significant but mitigable. The proposed excavation to a maximum depth of 41 feet below the existing street-level for the foundation beneath the elevator shaft could uncover previously undisturbed resources, if they are located on the site. The site is not known to have greater likelihood of containing subsurface archaeological and paleontological resources or human remains than the DAP area as a whole. Therefore, mitigation measures CUL-3 through CUL-5 would apply to the project, and would reduce impacts to less than significant levels. Therefore, the City finds that the proposed project will not result in significant impacts related to cultural resources beyond those described in Section 4 of this document with regard to historic resources.

3.5 Geology and Soils

As stated in the DAP EIR, the Downtown Area is not in an Alquist Priolo fault zone and is therefore not an area where structures are at significant risk from fault rupture; however, it is, like all of the East Bay, in an area at high risk from seismic shaking. However, the 2016 California Building Code (CBC), as adopted in Chapter 19.28 of the Berkeley Municipal Code, contains requirements for structural design, including seismic design specifications. Compliance with the mandatory building code structural specifications would result in a building that resists adverse effects from seismic ground-shaking. In addition, building design in compliance with the 2016 CBC would result in result in a building that resists adverse effects from seismic-related liquefaction. As stated in the DAP EIR, the Downtown Area is relatively flat and not subject to landslides. The use of standard soil erosion control measures during demolition and construction associated with the project would be expected to minimize erosion from exposed surfaces and reduce soil erosion impacts to a less than significant level. As stated in the DAP EIR, expansive soils may be present within the Downtown Area. However, the Geotechnical Feasibility Report prepared for the project did not identify expansive soils as a potential hazard at this site. Excavation to a maximum depth of 41 feet below the surface grade and removal of existing soil for the construction of building foundations would further reduce the risk of expansive soils to structural stability. The project also would not involve the use of septic systems. Therefore, the City finds that the proposed project will not result in significant impacts related to geologic and soil hazards beyond those described in Section 4 of this document.

3.6 Greenhouse Gas Emissions

The combined annual emissions from new development on the project site would total approximately 1,085 metric tons of carbon dioxide equivalent (CO₂e) per year, which does not exceed the BAAQMD threshold of 1,100 metric tons per year. The project’s GHG efficiency was calculated by dividing the project’s GHG emissions (1,085 MT CO₂e per year) by the service population (573), which equals 1.9 MT CO₂e per service population per year. This emissions rate would be 1.0 MT CO₂e below the region-specific efficiency metric of 2.9 MT CO₂e per service population per year. Therefore, the project would be consistent with the most recent State emissions goals. The project also would not conflict with California’s commitment to GHG reduction under AB 32, SB 32, or any other plan, policy or regulation intended to reduce GHG emissions. Therefore, the City finds that the proposed project will have a less-than-significant impact on greenhouse gas emissions.
3.7 Hazards and Hazardous Materials

As stated in the DAP EIR, the type of proposed commercial and residential uses can involve the use of hazardous materials associated with motor vehicle use and storage, and with periodic cleaning, repair, and maintenance or for landscape maintenance or pest control. The DAP EIR’s conclusion remains valid that, with existing regulations and normal standards of use, use of hazardous materials at commercial and residential land uses in the Downtown Area would not pose a significant risk to human health or the environment. While the project site is within roughly 490 feet (0.09 miles) of Berkeley High School, it would not emit hazardous emissions or pose a significant risk to this or any other school from hazardous materials releases. The existing commercial building that was constructed on the project site in 1958 would be demolished to accommodate the proposed mixed-use building. Based on the building’s age, it may contain Asbestos-Containing Material (ACM) and lead-based paint (LBP). Adherence to BAAQMD rules would ensure the proper handling and disposal of ACM.

The project site is not included on any list of hazardous materials sites compiled pursuant to Section 65962.5 of the Government Code, and active sites in the vicinity does not pose a threat to people on the project site. The proposed excavation at the project site to a depth of up to 41 feet below street level could, however unlikely, disturb contaminated soils from the sources discussed above or other. However, standard conditions of the City of Berkeley’s Toxics Management Division (TMD) require that a Soil and Groundwater Management Plan (SGMP) be submitted to the TMD with the Project’s building permit application and be approved by TMD prior to issuance of the building permit. Compliance with these standard City conditions would reduce these potential impacts. As stated in the DAP EIR, the Downtown Area is not near any airports or airstrips and therefore is not subject to substantial airport-related hazards. In the vicinity of the project site, the City has designated Allston Way and Shattuck Avenue as Emergency Access and Evacuation Routes. While the project would involve improvements to the pedestrian environment on Allston Way and Shattuck Avenue, these offsite actions would not result in any street closures that could impede emergency access or evacuation. Therefore, the City finds that the proposed project will have a less-than-significant impact related to hazards.

3.8 Hydrology and Water Quality

Construction activities on-site would have the potential to cause soil erosion from exposed soil, an accidental release of hazardous materials such as vehicle fuels and lubricant, or temporary siltation from stormwater runoff. In addition, the proposed building would have landscaping on terraces and the rooftop that could produce minor quantities of polluted runoff from sources such as chemical fertilizers. However, as stated in the DAP EIR, in order to prevent significant adverse impacts to water quality, construction contractors are responsible for implementing and monitoring erosion and sedimentation control/drainage plans to ensure that the above requirements are being met, and that contaminants are not released into urban runoff. Because the project site is already fully developed with impervious surfaces, the proposed mixed-use building would not increase the amount of impervious surfaces on-site or increase runoff. Therefore, the project would not create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff. No portion of the Downtown Area, including the project site, is located within a 100-year flood hazard area or an area subject to inundation in the event of a dam or levee failure. Any risk of inundation by seiche, tsunami or mudflow at the project site would be remote, and would not be increased as a result of project development. Therefore, the City finds that the proposed project will not result in significant impacts related to hydrology and water quality beyond those described in Section 4 of this document with regard to groundwater dewatering and stability of the Strawberry Creek culvert.

3.9 Land Use and Planning

The project would have no impact regarding division of an established community, as identified in the DAP EIR for the Plan as a whole. The Project would have no impact regarding Habitat Conservation Plans or Natural Community Conservation Plan, also as identified in the DAP EIR for the Plan as a whole. The proposed 180-foot-tall mixed-use building also would be within the overall buildout assumptions for both use and scale within the Core Area, which includes development on several Core sites with buildings of 120 to 180 feet in height. In addition, the proposed mixed-use building, with retail space and a high residential density near transit
opportunities, would be consistent with the Berkeley General Plan’s Downtown land use classification and with the DAP’s assumptions of development potential for 180-foot buildings in the Core Area. Although the project would be potentially inconsistent with General Plan policy to protect scenic views from the UC Berkeley campus, the aesthetic impacts of a mixed-use project on an infill site within a transit priority area may not be considered significant impacts on the environment. Therefore, the City finds that the project will not result in significant land use conflicts beyond those described in Section 4 of this document with regard to DAP policies for historic resource preservation and pedestrian safety.

3.10 Mineral Resources

The DAP EIR identified no known mineral deposits of local importance or value to the region or residents of the State, or locally-important mineral resource recovery sites, within the Downtown Area. The project site is located within an urban area on a developed site and impacts would remain as identified in the DAP EIR. Therefore, the City finds that the proposed project will result in a less-than-significant impact to mineral resources.

3.11 Noise

During operation of the project, on-site activities would generate noise that may periodically be audible to noise-sensitive receptors near the project site. On-site noise sources would include stationary equipment, such as rooftop ventilation and heating systems, and delivery and trash hauling trucks. However, on-site operational noise would not exceed ambient noise levels at nearby noise-sensitive receptors. Vehicle trips associated with operation of the project also would increase traffic volumes on Downtown Area roadways, resulting in greater traffic noise audible to existing noise-sensitive uses. However, the increase of vehicle trips from the project would be incremental and would not result in a substantial traffic noise increase. In addition, the project is not located within an airport land use plan, within two miles of a public airport or public use airport, or within the vicinity of a private airstrip. No impacts associated with airport noise would occur. Therefore, the City finds that the project will not result in significant noise or vibration impacts beyond those described in Section 4 and Section 5 of this document with regard to construction noise, vibration, and the exposure of new residents to ambient noise.

3.12 Population and Housing

The project would directly increase Berkeley’s population by adding 274 residential units to the project site. Based on the City’s average household size for rental units, this addition of residential units would result in an increase in the local population by an estimated 573 persons. The estimated population growth of 573 persons would not be considered substantial in the context of existing population in Berkeley, and would be within the DAP EIR’s projected population increase of 3,252 new residents under buildout of the Downtown Area Plan. In addition, the project does not include infrastructure improvements that would extend roadways or infrastructure into areas which do not currently support residential or other urban uses. Therefore, the project would neither directly nor indirectly increase population growth in Berkeley beyond that planned for by the City in the DAP. No occupied or vacant residential structures would be demolished to accommodate the project, so the project would not result in displace existing housing or people. Therefore, the City finds that the project will have a less-than-significant impact related to population and housing.

3.13 Public Services

Because the project would increase the local population by an estimated 573 persons, which is well within the projected total population growth attributed to the DAP of 3,252 new residents during the planning period, it would not result in substantial population or housing growth beyond that already anticipated under the DAP EIR. Therefore, like the DAP EIR itself, the project’s increase in demand for police, fire, school, recreational services, library services, and health and human services would not require the construction of new facilities. Therefore, the City finds that the project will have a less-than-significant impact on public services.
3.14 Recreation

Although the project would incrementally increase use of community and regional parks and recreation facilities, the City exceeds its goal of two park acres per 1,000 people, and the increase in use would be within that anticipated by the DAP EIR, and is not expected to result in substantial physical deterioration of these facilities. In addition, the project would include on-site outdoor common areas at terraces for use by project residents. The project would involve the redevelopment of the existing project site with residential and commercial uses. As discussed above, the project does not require the construction or expansion of off-site public recreational facilities; therefore, development of the project would not result in additional environmental effects beyond those described in this document. Therefore, the City finds that the project will have a less-than-significant impact on recreation.

3.15 Transportation and Traffic

Operation of the project would generate an estimated 33 net vehicle-trips (7 inbound, 26 outbound) during the weekday AM peak hour and 40 net vehicle trips (26 inbound, 14 outbound) during the weekday PM peak hour. With the addition of vehicle trips from the project, all intersections near the project site would continue to operate at an acceptable level of service of LOS D or better. In addition, the project would incorporate transportation demand management strategies that would help reduce vehicle trips associated with project operations. The project would generate vehicle trips in an area of Berkeley with low existing vehicle miles traveled relative to surrounding areas in Alameda County, and public transit would accommodate a substantial portion of the project’s travel demand. Therefore, the project will not have an adverse effect on vehicle miles traveled. Garbage, recycling, and green waste generated by the project would be placed curbside on Allston Way for periodic collection. Zero Waste trucks would have direct access to the curbside collection area. While storage bins would present a minor and temporary obstacle for pedestrians, they would not substantially affect pedestrian circulation on Allston Way. In addition, the project would not result in any change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks. As determined in the DAP EIR for the Plan as a whole, the project would have no impact from interference with air traffic patterns. Therefore, the City finds that the project will not result in significant impacts on transportation and traffic beyond those described in Section 4 of this document with regard to construction traffic, traffic conflicts, emergency access, transit operations, and pedestrian and bicycle circulation.

3.16 Utilities and Service Systems

The DAP EIR demonstrates that anticipated water demand in this area has been accounted for in EBMUD’s water demand projections and that development occurring under the DAP would not require any changes to those projections. Because the project would be within the maximum buildout as anticipated under the DAP, it is not anticipated that EBMUD would need new or expanded entitlements to serve the project. The project also would reduce water use relative to standard building practices by attaining a LEED Gold (or equivalent) rating. Construction of a lateral connection to the sewer main on Allston Way would result in noise and pollutant emissions from the operation of construction vehicles. These secondary impacts would be short-term, would occur within paved rights-of-way with previously disturbed soils. Given the already developed nature of the site, the project would not result in an increase in impervious surface. Moreover, the project would include features that slow the rate of stormwater runoff and improve water quality. As discussed in the DAP EIR, although construction could result in physical damage to streets and sidewalks, the City would require pre- and post-construction surveys of street conditions and repair or replacement of any damage to sidewalks at the property owner’s expense. Service by and consumption of gas, telecommunication, and electricity utilities would also be within the ranges considered in the DAP EIR. In addition, solid waste from the project site would be disposed of at the Vasco Road Landfill, which the DAP EIR found to have sufficient capacity to accommodate solid waste from the Downtown Area through the year 2024 including assumed buildout under the DAP. Therefore, the City finds that the project will have a less-than-significant impact on utilities and service systems.
SECTION 4: EFFECTS DETERMINED TO BE MITIGATED TO LESS-THAN-SIGNIFICANT LEVELS

The Infill Environmental Checklist and Draft EIR identified certain potentially significant effects that could result from the project. However, the City finds for each of the significant or potentially significant impacts identified in this section (Section 4) that based upon substantial evidence in the record, changes or alterations have been required or incorporated into the project; or mitigation measures from the DAP EIR would apply to the project; which avoid or substantially lessen the significant effects as identified in the Final EIR3 and, thus, that adoption of the mitigation measures set forth below will reduce these significant or potentially significant effects to less-than-significant levels. Adoption of the recommended mitigation measures will effectively make the mitigation measures part of the project. In addition, City Conditions of Approval and compliance with City and other regulations will further reduce project impacts. Impacts and mitigation measures identified in the Final EIR and the Infill Environmental Checklist are listed below.

4.1 Cultural Resources

Impact CR-1: Although the proposed demolition of the existing commercial building on-site would not directly affect an eligible historical resource, the proposed building design would adversely affect the setting of nearby historical resources, including the adjacent Shattuck Hotel and the greater proposed Shattuck Avenue Downtown Historic District. Impacts on the integrity of historical resources would be less than significant with incorporation of mitigation to enhance the compatibility of the proposed building’s design with surrounding historical resources.

Mitigation Measure CR-1a Slanted Wall Modifications. The project applicant shall modify the proposed design of the slanted walls composed of slotted aluminum panels at stories two through six along Shattuck Avenue and Allston Way to make them more compatible with the Shattuck Hotel and other contributors to the proposed Shattuck Avenue Downtown Historic District. Specifically, these slanted walls shall be replaced with a rectilinear wall system, i.e., one with predominant wall surfaces below the seventh-floor loggia being either parallel or perpendicular to the abutting property line.

Mitigation Measure CR-1b Wall Rhythm Modifications. The proportion and pattern of void to wall in the proposed wall treatments of the project shall be modified to more closely match that exhibited in the Shattuck Hotel. Potential ways to achieve this include, but are not necessarily limited to, replacing the window wall systems with punched curtain wall systems or breaking up the window wall systems with windowless bays.

Mitigation Measure CR-1c Wall Cladding Material Modifications. The project applicant shall modify the proposed design so as to incorporate wall cladding materials that are compatible with the Shattuck Hotel and other contributors to the proposed Shattuck Avenue Downtown Historic District. Such materials include brick, concrete, stucco, marble, granite, tile and terra cotta, and could be used in conjunction with the proposed glass fiber reinforced concrete (GFRC), glass panels, and metal screens.

Mitigation Measure CR-1d Roofline Modifications. The project applicant shall modify the proposed design so as to incorporate elements that more prominently accentuate the building’s roofline by differentiating it from the walls below. Potential ways to achieve this include, but are not necessarily limited to, adding a cornice element or employing a change in material, color or finish at the uppermost portions of the wall façades.

Mitigation Measure CR-1e Ground Floor Modifications. The project applicant shall modify the proposed design of the storefront along Shattuck Avenue and the ground-floor wall along Allston Way in a manner

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that visually divides the uninterrupted expanse of glazing at the ground floor into distinct bays that are between 15 and 30 feet in width.

Finding: The City finds that the foregoing mitigation measures have been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: With implementation of Mitigation Measures CR-1a through CR-1e, the project would substantially conform to the City’s Downtown Design Guidelines intended to preserve the integrity of contexts for historic resources. These measures would modify the building’s slanted walls, wall rhythm, wall cladding, roofline design, and the ground-floor storefront for improved compatibility with nearby historic buildings. Therefore, implementation of the foregoing mitigation measures will reduce the project’s compatibility impacts on historical resources to a less-than-significant level. The design has been substantially modified over several Design Review Committee (DRC) Meetings in early 2018 in response to the Design Mitigation Measures CR-1a through CR-1e, as well as design recommendations from the DRC.

Impact CR-2: The proposed demolition of the existing building on-site and construction of an 18-story mixed-use building with two levels of underground parking would produce ground vibration in the vicinity of existing historical resources. The levels of vibration that would be generated by project construction activities could potentially exceed thresholds for physical damage to historic structures. However, implementation of Mitigation Measure NOI-6 in the DAP EIR would be required to monitor and reduce vibration levels at the Shattuck Hotel from construction activity. Therefore, impacts would be less than significant with mitigation.

DAP EIR Mitigation Measure 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 structure 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 vibration.
Finding: The City finds that the foregoing mitigation measure from the DAP EIR has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: Mitigation Measure NOI-6 from the DAP EIR would require monitoring at the historic Shattuck Hotel of vibration levels generated by construction equipment on the project site and, if necessary, implementation of actions to reduce excessive vibration levels. Therefore, implementation of the foregoing mitigation measures will reduce the project’s potential impact on historical resources from vibration to a less-than-significant level.

4.2 Geology and Soils

Impact GEO-1: Construction of the project would occur within 25 feet of the centerline of the Strawberry Creek culvert. The presence of the culvert in proximity to the proposed building’s foundations could potentially result in instability of the proposed building’s foundations. Required compliance with Berkeley Municipal Code and California Building Code standards would reduce the potential for excavation, shoring and foundations to cause instability. However, improper installation of temporary shoring and tiebacks could result in damage to the culvert during project construction.

Mitigation Measure GEO-1 Temporary Shoring and Tieback Design Review. Prior to the issuance of a grading permit, the project applicant shall submit to the City of Berkeley Department of Planning & Development – Building and Safety Division for review and approval the results of a site-specific geotechnical investigation as well as final engineering and design plans for excavation, temporary shoring, tiebacks, and tieback anchors. The final engineering and design plans for the project shall demonstrate the precise location of the Strawberry Creek culvert, the location of all tiebacks and tieback anchors, the shoring design pressures, the bearing strength of the soil between the project and the culvert, and the construction sequencing. Excavation and temporary shoring shall be designed to limit horizontal and vertical ground deformations such that the stability of the adjacent culvert would not be affected. The installation of tiebacks and tieback anchors shall be designed to prevent damage to the adjacent culvert. The final design shall locate work as far from the edge of culvert as practicable at a distance equal to depth of culvert bottom.

Finding: The City finds that the foregoing mitigation measure has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: Implementation of Mitigation Measure GEO-1 above would provide for City review and approval of final engineering and design plans in accordance with performance standards, prior to commencement of construction activities. This would eliminate or substantially reduce the potential for project activities to adversely affect the Strawberry Creek culvert. Therefore, implementation of the foregoing mitigation measure will reduce the project’s potential impacts on structural stability related to the Strawberry Creek culvert to a less-than-significant level.

Impact GEO-2: Construction of the project would occur within the zone of influence of the adjacent BART station and tunnels. Improper construction within this zone could result in damage to, or destabilization of, the proposed project and the BART subway tunnel and station. Mitigation would be required to ensure that the construction design meets all applicable BART standards. With implementation of mitigation, the project would have a less than significant impact related to the structural integrity of BART substructures.

Mitigation Measure GEO-2 BART Zone of Influence Design Review: Prior to the issuance of a grading permit, the project applicant shall submit to the City of Berkeley Department of Planning & Development – Building and Safety Division for review and approval the results of a site-specific geotechnical investigation as well as final engineering and design plans for the building, including all subsurface and
above-ground elements of the project. The final engineering and design plans for the project shall demonstrate adherence to BART’s General Guidelines for Design and Construction Over or Adjacent to BART’s Subway Structures. Applicable elements of the General Guidelines may include, but are not limited to, the following:

- Minimum clearance of 7'6" between new construction and BART substructures
- Shoring for excavations in the Zone of Influence
- Monitoring of shoring to ensure that it maintains at-rest soil condition
- Monitoring of dewatering and recharging if the existing groundwater level is expected to drop by more than two feet
- Predrilling of piles to a minimum of 10 feet below the Line of Influence, which is a line from the critical point of a BART substructure at a slope of 1.5 horizontal to 1.0 vertical towards ground level

Finding: The City finds that the foregoing mitigation measure has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: Implementation of Mitigation Measure GEO-2 above would eliminate or substantially reduce the potential for improper construction within BART’s zone of influence to adversely affect the stability of the proposed building and the subway tunnel and station. Therefore, implementation of the foregoing mitigation measure will reduce the project’s potential impacts on stability related to BART structures to a less-than-significant level.

4.3 Noise

Impact N-2: Project construction would temporarily generate high vibration levels on and adjacent to the project site. Because construction would occur inside the hours allowed in the Berkeley Municipal Code, it would not generate vibration when people normally sleep. While vibration in excess of FTA thresholds may temporarily disturb daytime educational activities at Berkeley City College, the use of administrative controls including notification of neighbors and appropriate scheduling of vibrating-generating activities would minimize exposure to perceptible vibration. Vibration levels at the Shattuck Hotel could potentially exceed Caltrans thresholds for structure damage, but vibration monitoring pursuant to Mitigation Measure NOI-6 from the DAP EIR would reduce the likelihood of structure damage. Therefore, the project would have a less than significant vibration impact with mitigation.

DAP EIR Mitigation Measure NOI-6 (see above)

Finding: The City finds that the foregoing mitigation measure from the DAP EIR has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: Because vibration from construction activity could potentially exceed Caltrans thresholds for structure damage to historic structures in the Downtown Area including the Shattuck Hotel, Mitigation Measure NOI-6 in the DAP EIR requires measures to monitor and reduce vibration levels. Consistent with this measure, the applicant would develop a vibration monitoring and contingency plan for the Shattuck Hotel; set up a vibration monitoring schedule; define structure-specific monitoring limits; and address the need to conduct photo, elevation, and crack surveys to document before- and after-construction conditions. In addition, the applicant would identify contingencies for when vibration levels approach monitoring limits, in order to lower vibration levels or secure the affected structures. Mitigation Measure NOI-6 also requires the applicant to survey structures where monitoring has indicated high levels, and make appropriate repairs or compensation for damage. Therefore, implementation of the foregoing mitigation measure will reduce the project’s potential impact from construction-period vibration to a less-than-significant level.
Impact N-5: New residential units on the project site would be subject to noise levels in excess of the City of Berkeley noise compatibility guidelines. However, sound attenuation techniques would reduce ambient noise in the residential units to below the City’s standard of 45 dBA Ldn, ensuring that this impact would be less than significant with mitigation.

Mitigation Measure N-5 Sound Insulation: The applicant shall install exterior building materials with sufficient Sound Transmission Class (STC) ratings to reduce interior noise levels in habitable rooms to below 45 dBA Ldn, as required by California Code of Regulations, Title 24, Section 1207.4. All residential windows, exterior doors, and exterior wall assemblies shall meet the STC 30 rating to ensure the adequate attenuation of noise at a range of frequencies.

Finding: The City finds that the foregoing mitigation measure has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: Mitigation Measure N-5 above would implement the programmatic performance standards in the DAP EIR Mitigation Measure NOI-1 for reducing noise transmission by exterior building materials. This mitigation measure would require the applicant to install exterior building materials with sufficient noise-attenuating qualities to reduce interior noise levels in habitable rooms to below the State standard of 45 dBA Ldn. After implementation of Mitigation Measure N-5, new residents in the proposed building would be exposed to acceptable interior noise levels. Therefore, implementation of the foregoing measure will reduce the project's potential impacts from the exposure of new residents to ambient noise to a less-than-significant level. In addition, DAP EIR Mitigation Measure N-1 requires forced-air ventilation where ambient noise exceeds 70 dBA Ldn.

4.4 Transportation/Traffic

Impact T-3: Construction of the project, based on its expected duration and intensity, would result in a temporary reduction in roadway capacity, closure of portions of Allston Way, and relocation of AC Transit bus stops. These physical changes would have temporary adverse effects on vehicle, pedestrian, bicycle, and transit circulation. The project would have a less than significant impact with mitigation during construction.

Mitigation Measure T-3 Development and Implementation of a Construction Traffic Management Plan: Prior to the issuance of demolition permits, a construction traffic management plan shall be prepared and implemented during construction and shall include, but not be limited to, the following strategies to the satisfaction of the City’s Zoning Officer and Public Works staff:

1) Temporary Traffic Control Strategies
   - Coordinate with the City of Berkeley Public Works Department and construction manager(s)/contractor(s) for nearby developments, and with AC Transit, Bear Transit, and Alta Bates Shuttle, as applicable, to develop construction phasing and operations and detour plans that would result in the least amount of disruption that is feasible to transit operations, pedestrian and bicycle activity, and vehicular traffic.
   - Establish construction phasing/staging schedule and sequence that minimize impacts of a work zone on traffic by using operationally sensitive phasing and staging throughout the life of the project.
   - Coordinate and schedule utilities work to minimize potential work disruptions or interruptions and reduce overall construction duration.
   - Identify optimal delivery and haul routes to and from the site to minimize impacts to traffic, transit, pedestrians, and bicyclists.
   - Conduct monitoring for pavement damage and timing/coordination for completing repairs along construction truck routes
• Identify arrival/departure times for trucks and construction workers to avoid peak periods of adjacent street traffic and minimize traffic affects
• Specify timing, signage, location, and duration of necessary partial/complete sidewalk closures and identification of detour routes for pedestrians, bicyclists, and vehicles, as needed
• Preserve safe and convenient passage for pedestrians and bicyclists around construction areas. Provide alternate facilities for bicyclists and pedestrians (including those with disabilities) in places where the work zone impacts accessibility
• Provide for relocation of bus stops and ensure adequate wayfinding and signage to notify transit users
• Establish criteria for use of flaggers and other temporary traffic controls
• Preserve emergency vehicle access
• As necessary, obtain a transportation permit from Caltrans for transportation of heavy construction equipment and/or materials which requires the use of oversized transport vehicles on State highways

2) Transportation Operations and Transportation Demand Management Measures
• Encourage construction workers to use transit, carpool and other sustainable transportation modes when commuting to and from the site.
• Specify locations of construction worker employee parking.

3) Public Information Strategies
• Provide advance notification to affected property owners, businesses, residents, etc. of possible driveway blockages or other access obstructions and implement alternate access and parking provisions where necessary.
• Implement public awareness strategies to educate and reach out to the public, businesses, and the community concerning the project and work zone (e.g., brochures and mailers, press releases/media alerts).
• Provide a point of contact for residents, employees, property owners, and visitors to obtain construction information, and provide comments and questions.
• Provide current and/or real-time information to road users regarding the project work zone (e.g., changeable message sign to notify road users of lane and road closures and work activities, temporary conventional signs to guide motorists through the work zone).

Finding: The City finds that the foregoing mitigation measure has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: With implementation of the transportation construction plan required under Mitigation Measure T-3, the applicant would disseminate appropriate information to contractors and affected agencies with respect to coordinating construction activities to minimize overall disruptions and ensure that overall circulation in the project vicinity is maintained to the extent possible, with particular focus on ensuring transit, pedestrian, and bicycle connectivity. This would ensure that the project would be consistent with DAP Policies AC 2.1 and 2.2 to provide safe and accessible access to Downtown streets and Policies AC-4.2 to improve transit options and give transit priority over personal vehicles. Therefore, implementation of the foregoing mitigation measure will reduce the impact associated with construction traffic to a less-than-significant level.

Impact T-4: The proposed project driveway would introduce potential conflicts between vehicles accessing the site and pedestrians using the north-side sidewalk of Allston Way. Use of the proposed driveway within approximately 25 feet of a bus layover zone on Allston Way also could introduce conflicts between vehicles accessing the site and buses. These conflicts would cause a potentially significant impact without adequate sight distance provided at the project driveway and appropriate technology to minimize conflicts associated with the driveway. The project would result in a less than significant impact with mitigation incorporated.
Mitigation Measure T-4 Driveway Safety Measures: Prior to obtaining a certificate of occupancy, the applicant shall implement the following traffic safety measures to the satisfaction of the City’s Zoning Officer and Public Works staff:

- Per City of Berkeley guidelines, maintain a minimum five foot by five foot sight distance triangle at the driveway entrance/exit;
- Install “STOP” pavement markings and signage for exiting drivers to look both ways at the exit, prior to crossing the sidewalk;
- Install convex mirrors at the project driveway to improve the visibility of exiting vehicles from the sidewalk;
- Provide visual and/or audio warning devices that alert pedestrians when vehicles are exiting the driveway;

The typical and standard treatments identified above should be sufficient to address potential conflicts. In addition, the following non-standard treatments may be considered and implemented at the determination of the City:

- Provide visual warning devices that alert drivers when pedestrians are present on the sidewalk; and
- Utilize a different surface treatment or special paving to define and highlight the driveway entrance within the public right-of-way.

Finding: The City finds that the foregoing mitigation measure has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: Mitigation Measure T-4 would require the implementation of several traffic safety measures to minimize potential conflicts between motorists accessing the driveway to the proposed garage and pedestrians and AC Transit buses on Allston Way. In addition, this measure would ensure that the project complies with DAP Policy AC-3.3, Action b) to locate, design, and size entrances and exits to parking through traffic management, exit mirrors, and warning lights in order to minimize impacts on pedestrians. Therefore, implementation of the foregoing mitigation measure will reduce the impact associated with traffic safety hazards at the proposed driveway to a less-than-significant level.

Impact T-5: Commercial and passenger loading activity associated with the project would introduce potential conflicts with other automobiles, buses, bicyclists, and pedestrians. If demand exceeds available space at the proposed commercial loading zone on the north side of Allston Way or at the existing passenger loading zone on the south side of the street, spillover loading activity could lead to illegal parking in red curb zones or double-parking. Large trucks parked in the proposed loading zone also could temporarily block access to and from the proposed garage. The project would have a less than significant impact with mitigation incorporated to minimize traffic conflicts associated with loading activity.

Mitigation Measure T-5(a) Commercial Loading Management Strategies: It shall be the responsibility of building management to monitor and report on on-street commercial loading activity. Building management shall assign an inspector who will be responsible for field monitoring and documenting observations on a monitoring report worksheet. The inspector will be responsible for the following activities:

- On-site, day-to-day monitoring of commercial loading activities;
- Recording instances of illegal stopping, double-parking, blockage of adjacent travel lanes, and conflicts with transit vehicles;
- Acting in the role of contact for property owners or other affected persons who wish to register observations of commercial loading conflicts. The inspector shall be responsible for verifying any
such observations and for developing any necessary corrective actions in consultation with City staff;

- Maintaining a log of all significant interactions and enforceable violations and submitting a monthly monitoring report worksheet to the City’s Traffic Engineer for a period of one-year; and,

- Obtaining assistance as necessary from technical experts in order to identify appropriate strategies to minimize conflicts.

The City’s Traffic Engineer shall review the monitoring reports and identify recurring issues. If recurring issues are identified, for example, if commercial loading demand exceeds available supply and loading activity results in illegal stopping in red zones, blockage of adjacent travel lanes, or conflicts with transit vehicles on a regular basis (e.g., more than once per day), it shall be the responsibility of the building management to implement strategies to minimize conflicts. Strategies may also be required to be implemented at discretion of City staff, depending on the number and nature of conflicts observed. Appropriate strategies will vary depending on the characteristics and causes of the conflicts. Suggested strategies include, but are not limited to, the following:

- Coordinate with AC Transit and the City for additional loading space;
- Coordinate with AC Transit and the City to determine if the transit stop can be used for loading during certain hours;
- Restrict size of freight and delivery/service vehicles to no more than 25 feet in length;
- Limit deliveries to certain times of day, such as the early morning or late evening;
- Prohibit trucks with more than two axles from parking during peak hours;
- Limit duration of loading activity in the curbside commercial truck loading zone to 30 minutes or less;
- Install meters and increase parking enforcement;
- Encourage deliveries during off-peak times;
- Establish nearby delivery areas or delivery stations to consolidate deliveries for a variety of users and utilize smaller vehicles and/or non-motorized modes for last-mile delivery;
- Install a reception desk, delivery lockers, and/or other delivery-supportive amenities on-site;
- Schedule and coordinate loading activities through building management to ensure that any freight loading/service vehicles can be accommodated either in existing on-street loading spaces in the vicinity of the Project; and
- Actively manage the loading zone through use of attendants to direct freight and delivery/service vehicles to available spaces when the loading zone is in use.

Mitigation Measure T-5(b) Passenger Loading Management Strategies: It shall be the responsibility of building management to monitor and report on on-street passenger loading activity. Building management shall assign an inspector who will be responsible for field monitoring and documenting observations on a monitoring report worksheet. The inspector will be responsible for the following activities:

- On-site, day-to-day monitoring of passenger loading activities during the weekday AM peak hour (7:00 AM to 9:00 AM), midday (11:00 AM to 1:00 PM), and PM peak hour (4:00 PM to 6:00 PM) periods, or other time periods determined by the City;
- Recording instances of illegal stopping, double-parking, blockage of adjacent travel lanes, and conflicts with transit vehicles over a 20-minute period within the identified time periods;
- Acting in the role of contact for property owners or other affected persons who wish to register observations of commercial loading conflicts. The inspector shall be responsible for verifying any such observations and for developing any necessary corrective actions in consultation with City staff;
• Maintaining a log of all significant interactions and enforceable violations and submitting a monthly monitoring report worksheet to the City’s Traffic Engineer for a period of one year; and,
• Obtaining assistance as necessary from technical experts in order to identify appropriate strategies to minimize conflicts.

The City’s Traffic Engineer shall review the monitoring report and identify any recurring issues. If recurring issues are identified, for example, if passenger loading demand exceeds available supply and loading activity results in illegal stopping in red zones, blockage of adjacent travel lanes, or conflicts with transit vehicles on a regular basis (e.g., more than once per day), it shall be the responsibility of the building management to implement strategies to minimize conflicts. Strategies may also be required to be implemented at discretion of City staff, depending on the number and nature of conflicts observed. Appropriate strategies will vary depending on the characteristics and causes of the conflicts. Suggested strategies include but are not limited to the following:

• Create a combined commercial/passenger loading zone on the Project frontage (e.g., through signage and use of alternating white and yellow color curb) in conjunction with implementation of time of day restrictions for delivery/service vehicle use of the proposed commercial truck loading zone; and,
• Coordinate with owners of nearby buildings to increase the amount of passenger loading (white curb) space available.

Finding: The City finds that the foregoing mitigation measures have been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: Mitigation Measures T-5(a) and T-5(b) would require implementation of measures to reduce traffic conflicts associated with the project’s commercial and passenger loading activity. These strategies, such as reducing the size of commercial loading vehicles allowed and limiting the timing of deliveries, would minimize illegal parking in red curb zones and double-parking to the extent feasible. Therefore, implementation of the foregoing mitigation measures will reduce the impact associated with loading conflicts to a less-than-significant level.

Impact T-7: All streets and intersections on the route from the nearest fire stations to the project site are sufficiently wide enough to provide adequate emergency vehicle access to the site. Operation of the project would not substantially increase delays on emergency access routes. However, project construction would temporarily impede emergency access to the project site during construction. The project would have a less than significant impact related to emergency access with mitigation incorporated during construction.

Mitigation Measure T-3 (see above).

Finding: The City finds that the foregoing mitigation measure has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: The temporary traffic control strategies and transportation operations and demand management measures as required in Mitigation Measure T-3 would minimize delays to emergency access. Therefore, implementation of the foregoing mitigation measure will reduce the impact on emergency access during construction activities to a less-than-significant level.

Impact T-8: The project would not generate a substantial increase in transit ridership that results in overcrowding on local or regional transit systems. However, the temporary closure of an AC Transit bus stop and layover zone would impede transit access during construction. Traffic conflicts with vehicles entering and
leaving the proposed driveway and with loading activity also could delay buses on Allston Way. The project would have a less than significant impact on the performance of local and regional transit operations with mitigation incorporated to preserve local bus access during construction and to minimize traffic and loading conflicts with buses during operation.

Mitigation Measures T-3, T-4, T-5(a), T-5(b) (see above).

Finding: The City finds that the foregoing mitigation measures have been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: The temporary traffic control strategies required in Mitigation Measure T-3 would ensure a temporary relocation of the AC Transit bus layover zone next the project site during construction, preserving bus access in the project vicinity. This mitigation measure also would ensure consistency with DAP Policy AC-4.2, Actions c) and d) to work with AC Transit and shuttle providers to identify suitable bus stops and layover locations and avoid bus stop and layover locations that interrupt pedestrian movement or block clear views of sidewalks, plazas or storefronts. In addition, Mitigation Measure T-4 would require the installation of convex mirrors at the proposed driveway to improve the visibility of exiting vehicles and the maintenance of adequate sight distance, which would minimize vehicle/bus conflicts on Allston Way. Mitigation Measure T-5 also would minimize adverse effects on bus movement from loading activities including illegal parking in red curb zones and double-parking. Therefore, implementation of the foregoing mitigation measures will reduce the impact on transit operations during construction and operation of the project to a less-than-significant level.

Impact T-9: The project would not involve features that would result in permanent or substantial operational impacts to alternative modes of transportation. However, construction of the project would temporarily impact pedestrian and bicycle circulation. The project would have a less than significant impact with mitigation incorporated on local pedestrian and bicycle circulation.

Mitigation Measures T-3, T-4 (see above).

Finding: The City finds that the foregoing mitigation measures have been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: Mitigation Measure T-3 would require the implementation of temporary traffic control and public information strategies to maintain safe pedestrian and bicyclist access during construction of the project. In addition, Mitigation Measure T-4 would require driveway safety measures to protect pedestrians on the north side of Allston Way from vehicles entering and exiting the proposed garage. These measures would ensure project consistency with DAP Policy DAP Policies AC-2.1 and AC-2.2 regarding pedestrian safety and access to the Downtown and DAP Goal AC-5 promote bicycling in Downtown. Therefore, implementation of the foregoing mitigation measures will reduce the impact on pedestrian and bicyclist circulation from construction and operation of the project to a less-than-significant level.

4.5 Tribal Cultural Resources

As discussed in the Infill Environmental Checklist (Appendix A of the EIR), the City of Berkeley prepared and mailed formal notification letter in accordance with the provisions of AB 52 to the Native American Heritage Commission on February 17, 2017. No responses have been received and no tribal cultural resources have been identified on-site. However, proposed excavation of the project site could potentially result in adverse effects on unanticipated tribal cultural resources. Impacts from the unanticipated discovery of tribal cultural resources during construction would be less than significant with mitigation incorporated.
Mitigation Measure TCR-1 Unanticipated Discovery of Tribal Cultural Resources: In the event that cultural resources of Native American origin are identified during construction, the City shall consult with a qualified archaeologist and begin or continue Native American consultation procedures. If the City determines that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

Finding: The City finds that the foregoing mitigation measure has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Infill Environmental Checklist to a less-than-significant level.

Facts in Support of Finding: Consistent with the State requirements of AB 52, Mitigation Measure TCR-1 would require consultation with Native American groups and implementation of measures to protect tribal cultural resources in the event of their discovery during construction on the project site. Therefore, implementation of the foregoing mitigation measure will reduce the potential impact on tribal cultural resources to a less-than-significant level.
SECTION 5: SIGNIFICANT EFFECTS THAT CANNOT BE MITIGATED TO A LESS-THAN-SIGNIFICANT LEVEL

The project would result in a significant unavoidable impact related to noise. Although mitigation from the DAP EIR would be imposed to lessen the exposure of sensitive land uses to construction noise, this would not reduce the impact to a less-than-significant level.

5.1 Noise (from EIR)

**Impact N-1:** Project construction would temporarily generate high noise levels on and near the project site. Construction noise levels would intermittently exceed City standards for construction noise in commercial zones, particularly in the first months of construction during excavation and construction of the foundation system.

**Mitigation Measures:** The project developer would be required to implement a project-specific noise reduction program as described in Mitigation Measure NOI-5 of the DAP EIR, which requires appropriate time limits for construction (7:00 A.M. to 7:00 P.M. on weekdays and between the hours of 9:00 A.M. and 8:00 P.M. on weekends or holidays), the use of available control technology such as equipment mufflers and temporary noise barriers, locating stationary noise-generating equipment as far as possible from adjoining sensitive receptors, notification of neighbors, and other measures.

**Finding:** The City finds that the foregoing mitigation measure from the DAP EIR has been incorporated into the project; however, implementation of this measure would not avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level. Therefore, impacts to sensitive receptors from temporary noise generated by construction of the project will remain significant and unavoidable.

**Facts in Support of Finding:** Implementation of a noise reduction program as required by DAP EIR Mitigation NOI-5 would reduce the exposure of nearby sensitive receptors to construction noise. However, as found in the DAP EIR for new construction in the entire Downtown Area, the impact would remain significant and unavoidable as a result of the extended duration of construction (27-months), during which adjacent sensitive receptors would be exposed to construction noise that may exceed Berkeley noise standards for commercial zones.

5.2 Cumulative Impacts

As discussed in the Infill Environmental Checklist (Appendix A of the EIR), the project analyzed in the Draft EIR would not have cumulatively considerable impacts in the following environmental issue areas: Agricultural and Forest Resources, Biological Resources, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Population and Housing, Public Services, Recreation, Tribal Cultural Resources, and Utilities and Service Systems. Therefore, the project would also not have cumulative considerable impacts in these environmental issue areas. The Project’s potential cumulatively considerable impacts in several other issue areas were analyzed in the Draft EIR in Section 4.1, **Air Quality**; Section 4.2, **Cultural Resources**; Section 4.3, **Geology and Soils**; Section 4.4, **Noise and Vibration**; and Section 4.5, **Transportation/Traffic**.

Section 4.1, **Air Quality**, found that the project would not result in long-term emissions which exceed BAAQMD’s operational emissions thresholds. Therefore, the project would not conflict with or obstruct continued implementation of BAAQMD’s 2017 Clean Air Plan, which means that the project would not have a cumulatively considerable contribution to regional air quality, according to the agency’s guidance for Clean Air Plan consistency. Therefore, cumulative impacts to air quality would be less than significant.

Section 4.2, **Cultural Resources**, found that the project would not contribute to a significant and unavoidable cumulative impacts identified in the DAP EIR from the demolition of historic resources, since the project would not involve demolition of a historic building. As discussed in the Noise/Vibration section of the DAP EIR, the use of vibration-generation equipment during construction of projects in the Downtown Area could cause
structural damage of nearby historic buildings, resulting in a significant and unavoidable cumulative impact. However, vibration generated by construction of the project would not degrade the structural integrity of nearby historic buildings such as the Shattuck Hotel. Therefore, the project would not make a considerable contribution to this significant cumulative impact. The project also would adhere to the Downtown Berkeley Design Guidelines with mitigation incorporated to enhance the proposed building’s visual compatibility with the style of the Shattuck Hotel. Additionally, the project would not materially impair the eligibility of nearby resources such as Campanile Way for historic designation. Therefore, the project would not make a considerable contribution to a significant cumulative impact to historical resources.

Section 4.3, Geology and Soils, found that cumulative projects would involve excavation and construction in the Downtown Area that could destabilize the underlying geology and soils and potentially result in damage to nearby BART structures. If cumulative projects are located within BART’s zone of influence, then those projects would also be subject to BART review and approval of final design and engineering plans. Also, all cumulative projects would be subject to the requirements of the California Building Code, which would ensure that structures and foundations are designed and constructed in a manner that does not destabilize underlying or adjacent structures or soil. Compliance with the California Building Code and adherence to BART’s General Guidelines would reduce potential cumulative impacts related to the stability of BART substructures to a less than significant level. With implementation of Mitigation Measure GEO-2, project-specific impacts to BART substructure stability from construction of the project would be less than significant, and the project’s contribution to the already less than significant cumulative impact would not be cumulatively considerable.

Section 4.4, Noise and Vibration, found that construction noise and vibration are localized and rapidly attenuate within an urban environment. It is anticipated that construction of other projects would not be occurring at the same time and sufficiently close to the project site to result in a cumulative impact. In addition, all projects in the Downtown Area would need to comply with construction noise mitigation included in the DAP EIR, which would lessen cumulative construction noise in the project vicinity. Therefore, the project would not contribute considerably to temporary cumulative construction noise and vibration impacts. Traffic noise impacts associated with cumulative development through the year 2040 would incrementally increase noise levels along roadways. However, cumulative growth in traffic would not generate noise levels exceeding the DAP EIR’s cumulative threshold of 4 dBA Ldn or more over existing conditions. Therefore, the cumulative traffic noise impact would be less than significant, and the project would not contribute considerably to a significant cumulative impact. Cumulative development would also add sources of on-site operational (non-traffic) noise in the project vicinity. Although the operation of mechanical equipment such as HVAC units would have the potential to expose Downtown Area residents to excessive noise, the implementation of Mitigation Measure NOI-2 from the DAP EIR would ensure that commercial development complies with the City’s noise standards. Therefore, cumulative development would have a less than significant impact from on-site operational noise after mitigation.

The City finds that the proposed project, in conjunction with other foreseeable projects, will not result in any cumulatively considerable impacts beyond those identified in the DAP EIR.
SECTION 6: PROJECT ALTERNATIVES

6.1 Project Alternatives

The Final EIR included two alternatives: the No Project Alternative and the Reduced Parking Alternative. The City hereby concludes that the Final EIR sets forth a reasonable range of alternatives to the 2190 Shattuck Avenue Mixed-Use Project that address the significant impacts of the project, so as to foster informed public participation and informed decision making. The City finds that the alternatives identified and described in the Final EIR were considered and further finds them to be infeasible for the specific economic, social, or other considerations set forth below pursuant to Public Resources Code section 21081(c).

6.1.1 No Project Alternative. This alternative assumes that the proposed project is not implemented and the existing two-story commercial building is left intact. This alternative assumes that the building occupancy would remain as is, including the Walgreens drug store and pharmacy on the ground floor and office uses on the second floor, while the basement would remain vacant.

Findings. Because the No Project Alternative would retain the existing building, it would not involve construction activities and would avoid the proposed project’s significant and unavoidable impact from construction noise. The alternative would also reduce the project’s less than significant impacts with mitigation from the emission of air pollutants and disturbance of the BART substructure during construction. By retaining the existing building on-site, this alternative would avoid the project’s less than significant impact with mitigation from introducing a new building whose design could be incompatible with nearby historic buildings. In addition, by retaining existing retail commercial and office uses, this alternative would avoid the project’s increase in vehicle trips and further reduce the project’s less than significant impact on traffic congestion. No mitigation measures would be required for the No Project alternative. Overall impacts would be lower than those of the proposed project. Nonetheless, the No Project Alternative would not achieve any of the objectives of the proposed project, including the most basic objectives to develop market-rate housing in a transit-oriented area, help achieve housing production goals, revitalize a block in Downtown Berkeley, and generate increased revenue streams for the City. For these reasons, the City rejects the No Project Alternative.

6.1.2 Reduced Parking Alternative. This alternative assumes that the proposed building would provide fewer off-street parking spaces for vehicles than would the proposed project but the same intensity of residential and commercial development (274 residential units and 10,000 square feet of retail commercial space). The garage would include 58 parking spaces as compared to 103 parking spaces under the proposed project. The 58 parking spaces would consist of the following:

- 48 parking spaces in a three-tiered mechanical lift system
- independently accessible (non-tiered) parking spaces
- 3 parking spaces accessible to persons with disabilities
- 3 vehicle share parking spaces

While the proposed project would include a two-level subterranean parking garage, this alternative would provide either a one- or two-level garage to accommodate 58 parking spaces and building support systems.

Findings. While this alternative would involve construction of a mixed-use building the same size as the proposed project, it would provide fewer parking spaces and may reduce the proposed subterranean parking garage from one to two levels. Therefore, the amount of grading and excavation could be less than for the proposed project and construction-related emissions may be reduced. Similar to the proposed project, the impact on air quality during construction would be less than significant with mitigation. The Reduced Parking Alternative also would reduce the number of on-site parking spaces by 44%. As a result, this alternative would decrease the mode share of automotive trips by 35% relative to the proposed project and would generate fewer auto person-trips and vehicle-trips. Conversely, this alternative would increase the mode share of public transit and walking, thereby increasing transit users and reducing mobile emissions. Therefore, the Reduced
Park Alternative would further reduce the project’s already less than significant impact related to operational air pollution.

Relative to the project, the alternative would contribute fewer trips to the surrounding roadway network. Like the proposed project, traffic volumes with the project under Baseline and Cumulative Conditions would not exceed the traffic load and capacity thresholds for the surrounding roadway network. Therefore, this alternative would further reduce the proposed project’s already less than significant impact to vehicle intersection operating conditions.

Aside from incrementally lessening the project’s already less-than-significant impacts related to air quality and traffic congestion, the Reduced Parking Alternative would have similar environmental impacts to those of the proposed project. All mitigation measures to reduce the project’s impacts would also apply to this alternative.

This alternative would generally achieve all of the objectives of the proposed project. Although the substantial reduction in off-street parking spaces would be consistent with objectives to generate transit-oriented housing and to encourage alternative modes of transportation, it may not fully achieve Objective #4 to design a feasible project. Instead of the proposed 103 parking spaces, this alternative would provide substantially fewer (58) parking spaces for 274 residential units, which could arguably be inadequate to meet residential parking demand. Because this alternative would fully realize all of the project objectives to the same extent as the proposed project, and could be infeasible with regard to meeting residential parking demand, the City rejects the Reduced Parking Alternative.

6.1.3 14-Story Building Alternative. This alternative would reduce the proposed building’s height from 18 to 14 stories and the number of dwelling units from 274 to approximately 250, for the purpose of minimizing the obstruction of scenic views from Campanile Way on the UC Berkeley campus. The building would have a maximum height of 142 feet, 2 inches, plus an additional 4 feet of rooftop architectural projections above rooftop residential units. Relative to the proposed project, the 14-Story Building Alternative would reduce the building’s maximum height by approximately 38 feet. Similar to the proposed project, this alternative would provide 10,000 square feet of commercial space and 103 parking spaces in a two-level underground garage.

This alternative would require several additional use permits compared to the proposed project pursuant to the City’s C-DMU Downtown Mixed Use District standards: to exceed the bulk height limit at 120 feet by 22 feet, 1 inch; to reduce usable open space below the amount required; and to reduce the front, rear, and interior side setbacks below the distance required. However, while the project would require an administrative use permit to allow architectural projections to exceed the maximum building height of 180 feet, this permit would be unnecessary for the reduced-height alternative. With approval of the additional use permits, the 14-Story Building Alternative would be consistent with zoning standards.

Findings. In decreasing the number of dwelling units by approximately 9 percent, this alternative would result in an estimated 9 percent reduction in vehicle miles traveled by residents on the project site. Therefore, the 14-Story Building Alternative would incrementally reduce mobile emissions of air pollutants and would further reduce the project’s already less than significant impact related to operational air pollution. For similar reasons, the project could generate incrementally fewer vehicle trips during peak hours. Therefore, this alternative would further reduce the proposed project’s already less than significant impact to vehicle intersection operating conditions.

The 14-Story Building Alternative would obstruct scenic Bay views from the Campanile Way corridor to a similar extent as the proposed project. However, the reduced building height would result in less vertical intrusion on airspace above the Bay waters. For example, from the perspective of the steps at the base of the Campanile tower, the alternative would preserve existing views of the span of the Golden Gate Bridge. Similar to the proposed project, it would not result in a substantial adverse change to the cultural landscape of UC Berkeley’s Classical Core. Similar to the proposed project, the design of the new 14-story building’s commercial storefront, exterior wall cladding, and roof under this alternative could be incompatible with nearby
historic buildings. Implementation of mitigation measures CR-1a through CR-1e to modify slanted walls, the proportion of void to wall, wall cladding materials, and the storefront and rooftop design would reduce this alternative’s impact on the integrity of historical resources, including the adjacent Shattuck Hotel and the greater proposed Shattuck Avenue Downtown Historic District. Nonetheless, conceptual massing diagrams prepared for the alternative indicate that the building would have long, uninterrupted horizontal surfaces that are incompatible with historic buildings and inconsistent with the Downtown Berkeley Design Guidelines. Therefore, additional mitigation would be required for this alternative (Mitigation Measure CR-1f), modifying the building’s massing to avoid long, uninterrupted horizontal surfaces. Like the proposed project, impacts to cultural resources would be less than significant with mitigation. All other impacts would be similar to those of the proposed project.

Although the 14-Story Building Alternative would achieve most of the objectives of the proposed project, it would not fully achieve Objective #1 to take advantage of the site’s full development potential under the DAP. In addition, this alternative would not maximize transit-oriented density, per Objective #5. As a result, the alternative would not fully achieve the social and environmental benefits of meeting housing needs in a transit-oriented location. Furthermore, it would respect the historic character of the Shattuck Avenue corridor to a lesser extent, by eliminating the proposed stepbacks in building massing from the perspective of adjacent streets. As discussed above, additional mitigation and modifications to the building’s massing would be necessary to protect the setting of nearby historic resources.

The 14-story Alternative would not be financially feasible. Strategic Economics was commissioned by the City to peer review the applicant’s community benefits proposal and this review found that the return on investment for the proposed project is below that considered by other developers. The 14-story Alternative would result in fewer units and/or square footage which would have a direct, negative impact to project economics, as land and other project costs remain fixed. In addition, there would be considerably fewer units that could capture higher rents for their views. For the reasons listed above, the City rejects the 14-Story Building Alternative.

### 6.1.4 15-Story Building Alternative

This alternative would reduce the proposed building’s height from 18 to 15 stories, for the purpose of reducing the obstruction of views from Campanile Way, while still maintaining the same number of dwelling units (274). The building would have a maximum height of 151 feet, 4 inches, plus an additional 14 feet of rooftop architectural projections. Relative to the proposed project, the 15-Story Building Alternative would reduce the building’s maximum height by approximately 29 feet. To provide the same residential density as the proposed project in fewer stories, the alternative would widen the proposed upper floors. While the project’s upper tier would step back an additional 65 feet from Shattuck Avenue above the 12th floor, this alternative would eliminate that setback. Similar to the proposed project, this alternative would provide 10,000 square feet of commercial space and 103 parking spaces in a two-level underground garage.

This alternative would require several additional use permits to the proposed project pursuant to the City’s C-DMU Downtown Mixed Use District standards: to exceed the bulk height limit at 120 feet by 31 feet, 3 inches; and to reduce the rear and interior side setbacks below the distance required. However, while the project would require an administrative use permit to allow architectural projections to exceed the maximum building height of 180 feet, this permit would be unnecessary for the reduced-height alternative. With approval of the additional use permits, the 15-Story Building Alternative would be consistent with zoning standards.

**Findings.** The 15-Story Building Alternative would obstruct scenic Bay views from the Campanile Way corridor to a similar extent as the proposed project. While the reduced building height would result in less vertical intrusion on airspace above the Bay waters, the wider upper stories would obstruct slightly more of the Golden Gate Bridge from view. Similar to the proposed project, the alternative would not result in a substantial adverse change to the cultural landscape of UC Berkeley’s Classical Core. Similar to the proposed project, the design of the new 15-story building’s commercial storefront, exterior wall cladding, and roof under this alternative could be incompatible with nearby historic buildings. Implementation of mitigation measures CR-1a through CR-1e to modify slanted walls, the proportion of void to wall, wall cladding materials, and the storefront and rooftop design would reduce this alternative’s impact on the integrity of historical resources, including the
adjacent Shattuck Hotel and the greater proposed Shattuck Avenue Downtown Historic District. Nonetheless, conceptual massing diagrams prepared for the alternative indicate that the building may have long, uninterrupted horizontal surfaces that are incompatible with historic buildings and inconsistent with the Downtown Berkeley Design Guidelines. Therefore, additional mitigation would be required for this alternative (Mitigation Measure CR-1f), modifying the building’s massing to avoid long, uninterrupted horizontal surfaces. Like the proposed project, impacts to cultural resources would be less than significant with mitigation.

Although the 15-Story Alternative would generally achieve all of the objectives of the proposed project, it would respect the historic character of the Shattuck Avenue corridor to a lesser extent, by eliminating the proposed stepbacks in building massing from the perspective of adjacent streets. As discussed above, additional mitigation and modifications to the building’s massing would be necessary to protect the setting of nearby historic resources.

The 15-story Alternative would not be financially feasible. Strategic Economics was commissioned by the City to peer review the applicant’s community benefits proposal and this review found that the return on investment for the proposed project is below that considered by other developers. The 15-story Alternative would result in fewer units and/or square footage which would have a direct, negative impact to project economics, as land and other project costs remain fixed. In addition, there would be considerably fewer units that could capture higher rents for their views. For the reasons listed above, the City rejects the 15-Story Building Alternative.

6.2 Environmentally Superior Alternative. Section 15126.6(e)(2) of the CEQA Guidelines requires that an environmentally superior alternative be identified among the selected alternatives. While the No Project Alternative would be environmentally superior in the technical sense that contribution to the afore-mentioned impacts would not occur, the No Project Alternative would fail to achieve all of the project’s objectives.

Among the development options, Alternative 2 (Reduced Parking) would be environmentally superior to the proposed project, as it would substantially reduce vehicle trips such that air quality, traffic noise, and circulation impacts would be reduced. However, impacts related to air quality, traffic noise, and circulation were all found to be less than significant or less than significant with mitigation. The Reduced Parking Alternative would not change any impact conclusions. This alternative would still require mitigation for air pollutant emissions during construction, design compatibility with historic buildings, structural stability of the Strawberry Creek culvert and BART substructure, construction noise, vibration, construction-related impacts to circulation, and pedestrian safety.

Findings. The City finds that out of the development options, the Reduced Parking Alternative is the environmentally superior alternative. However, as discussed above, the City finds that this alternative would fail to fully realize all of the project objectives, particularly those related to designing a feasible project, to the same extent as the proposed project. Therefore, the City rejects the Reduced Parking Alternative.
SECTION 7: STATEMENT OF OVERRIDING CONSIDERATIONS

CEQA requires the decision-making agency to balance the benefits of a project against its significant unavoidable impacts when determining whether to approve a project. If the benefits of the project outweigh its unavoidable adverse environmental effects, those effects may be considered acceptable. CEQA requires the agency to state in writing the specific reasons for considering a project acceptable when significant impacts are not avoided or substantially lessened. Those reasons must be based on substantial evidence in the Final EIR or elsewhere in the administrative record. The proposed project will result in a significant unavoidable impact related to noise, even after incorporation of all feasible mitigation measures. This significant unavoidable impact is identified and discussed in Section 5 of these Findings. The City further finds that this impact is outweighed by the project’s benefits, each of which, independently of the others, constitutes overriding consideration warranting approval of the proposed project. Those benefits are as follows:

- The project will upgrade and revitalize an important urban block in Downtown Berkeley into a walkable, retail-centered, transit-friendly, residential block with active, safe and visually engaging pedestrian amenities consistent with the Downtown Area Plan and the Streets and Open Space Improvement Plan, while respecting key historic resources on adjacent blocks.
- The project advances DAP Environmental Sustainability Goal ES-3 and Land Use Goal LU-1, which encourage high intensity development near transit, by introducing high-quality, transit-oriented, and sustainable market rate housing and contributing substantial affordable housing (and/or fees to support development of such housing) as required by Section 22.20.065 of the Berkeley Municipal Code. High intensity development near transit will reduce regional vehicle miles traveled and associated greenhouse gas emissions from transportation, by reducing development pressure in outlying parts of the Bay Area and beyond.
- The project will assist the State, region, and the City to achieve established housing production goals.
- The project advances DAP Environmental Sustainability Goal ES-4, which promotes sustainable building practices, by constructing a building that integrates environmentally sustainable development practices in design, development, and construction, and uses ecologically beneficial landscaping techniques.
- The project activates the pedestrian environment along Allston Way, adjacent to the Downtown Berkeley BART Station, by replacing the existing commercial building which has limited openings and visual permeability/activity with a new building that offers pedestrian amenities such as art vitrines with glass display cases as well as streetscape upgrades. This advances DAP Goal ES-3, Historic Preservation and Urban Design Goal HD-4, which emphasizes pedestrian environments that are active, safe, and visually engaging, and Policy HD-4.1, which emphasizes improving the pedestrian experience.
- The project will complement Downtown’s traditional character by maintaining a continuous street wall, except for architectural expression at the site’s southeast corner and for usable open space, which is consistent with DAP Economic Development Goal ED-3; building wall treatments that complement those of the historic Shattuck Hotel; and stepped massing to minimize sight lines of the building from the perspective of people on Shattuck Avenue.
- The project will encourage alternative modes of transportation by foot, by bicycle and via transit, for residents, employees, and retail customers by providing residents and employees with a range of Transportation Demand Management measures that are made possible by the income generated by the project’s size and scale, and prioritizing the safety, attractiveness and convenience of the pedestrian experience.
- The Project will significant new revenue streams for the City of Berkeley through increased property taxes and property-based revenues, economically sensitive revenues such as sales taxes and business license

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4 CEQA Guidelines, 2017. Section 15093(a)
5 CEQA Guidelines, 2017. Section 15093(b)
taxes, jobs creation, gross receipts taxes, and a new residential population that supports a successful mix of retail businesses, institutions and other attractions in Downtown Berkeley.

- The Project will be required to provide Significant Community Benefits as per Berkeley Municipal Code Section 23.E.68.090.E, and will contribute to affordable housing, street and open space improvements or fees, school mitigation fees, bicycle parking, and other improvements required by the Berkeley Municipal Code.

On balance, the City finds that there are specific considerations associated with the project that serve to override and outweigh the project’s significant unavoidable effect. Therefore, pursuant to CEQA Guidelines Section 15093(b), this adverse effect is considered acceptable.
### Zoning Summary Table

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<tr>
<th>Zoning Code</th>
<th>Base Zoning</th>
<th>Allowed/Required</th>
<th>Up or AUP/Morphology</th>
<th>Proposed/Desired Density</th>
<th>Zoning Compliance</th>
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### Parking Calculations

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### Roof Top Architectural Elements Calls

### Open Space Calculations

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<tr>
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### Zoning Code Information

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<tr>
<td>UNITS</td>
<td>232</td>
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### List of Use Permits and AUP's

### Proposed Density Bonus Project Use Permits:
- Use Permit for construction for demolition of a non-residential building, under BMC 236.60.005.C.
- Use Permit for construction of a new main building with mixed-use development, under BMC 236.68.005.C.
- Use Permit for construction of 339,000 sf. gross floor area, under BMC 236.68.005.C.
- Administration use Permit to allow architectural projections (e.g. floor elevations) to exceed the height limit, under BMC 236.60.005.C.

### List of Density Bonus AUP's

### Proposed Density Bonus AUP's:
- Waiver to increase the maximum building height from the base project maximum height allowed with OUP and AUP's under the zoning ordinance of OBE (under BMC 236.40.005.C) to a density base height of 90 ft.
- Waiver to increase the roof area by 100 ft.
- Waiver to increase the required yard area by 100 ft.
- Waiver to increase the maximum required outdoor space under BMC 236.68.005.C.

### State Density Bonus Table (See A0.2A-D)

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<th>PROJECT NO</th>
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<tr>
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<td>UNITS</td>
<td>232</td>
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</tbody>
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### List of Density Bonus Concessions

### Proposed Density Bonus Concessions:
- Cost Reduction Concession A: The project requests a cost reduction. The cost of providing public parking and public space area.

---

**Note:** The text above is a natural language representation of the information found in the image. It includes tables, calculations, and other details relevant to the project's planning submissions in Berkeley, CA. The document contains information on zoning codes, parking calculations, bicycle parking, roof top architectural elements, open space calculations, dwelling unit types, and various use permits and density bonus agreements.
BERKELEY POLICY ON DENSITY BONUS BASE PROJECTS AND INCLUSION OF ALLOWABLE AUP AND UP MODIFICATIONS

BERKELEY POLICY ON DENSITY BONUS BASE PROJECTS AND INCLUSION OF ALLOWABLE AUP AND UP MODIFICATIONS

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PAGE 3

PAGE 4

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BERKELEY POLICY ON DENSITY BONUS BASE PROJECTS AND INCLUSION OF ALLOWABLE AUP AND UP MODIFICATIONS

PAGE 1

BERKELEY POLICY ON DENSITY BONUS BASE PROJECTS AND INCLUSION OF ALLOWABLE AUP AND UP MODIFICATIONS

PAGE 2

BERKELEY POLICY ON DENSITY BONUS BASE PROJECTS AND INCLUSION OF ALLOWABLE AUP AND UP MODIFICATIONS

PAGE 3

BERKELEY POLICY ON DENSITY BONUS BASE PROJECTS AND INCLUSION OF ALLOWABLE AUP AND UP MODIFICATIONS

PAGE 4

BERKELEY POLICY ON DENSITY BONUS BASE PROJECTS AND INCLUSION OF ALLOWABLE AUP AND UP MODIFICATIONS

PAGE 5
2211 Harold Way Mixed-Use Project

The zoning adjustments for 2211 Harold Way Mixed-Use Project are part of a proposed development proposal. The project includes a mixed-use building with retail space on the ground floor and residential units above. The project is located at 2211 Harold Way, Berkeley, CA.

Key Points:
- The project includes a retail space on the ground floor.
- Residential units are proposed on the upper floors.
- The project is subject to certain setbacks and building height requirements.

Notes:
- The project is subject to review and approval by the Berkeley Planning Commission.
- Details on setbacks and building heights can be found in the project proposal and zoning regulations.
- For more information, please contact the Berkeley Planning Department.
SHADOW STUDY - DEC 21: 2 HRS AFTER SUNRISE

SHADOW STUDY - DEC 21: NOON

SHADOW STUDY - DEC 21: 2-HRS BEFORE SUNSET

SHADOW STUDY - DEC 21: 2 HRS AFTER SUNRISE AXON

SHADOW STUDY - DEC 21: NOON AXON

SHADOW STUDY - DEC 21: 2-HRS BEFORE SUNSET AXON
PROJECT SITE
2190 SHATTUCK

ATTACHMENT 2
ZAB 03-30-2023
Page 12 of 43
ROOF DECK CAPACITY (OCCUPIABLE AREAS):

DECK: 7,322 sf @ 75 sf / OCCUPANT = 99
POOL: 450 sf @ 50 sf / OCCUPANT = 9
= 108 OCCUPANTS TOTAL

**NOTE: SOME AREAS OF THE 9,679 SF ROOF DECK OPEN SPACE ARE NOT "OCCUPIABLE AREAS" PER THE CALIFORNIA BUILDING CODE OCCUPANCY CALCULATION PROCEDURES (PLANTERS, ETC.).

STAIR EXIT CAPACITY
50" WIDE @ 0.2" / OCCUPANT = 250 OCCUPANTS PER STAIR
= 300 OCCUPANTS TOTAL

NOTE: 500 OCCUPANTS TOTAL

PRIVATE, EXCLUSIVE USE OF THE LAND IN ROOF DECK OPEN SPACE AND NOT "OCCUPIABLE AREAS" PER THE CALIFORNIA BUILDING CODE OCCUPANCY CALCULATION PROCEDURES (PLANTERS, ETC.)

STAIR EXIT CAPACITY
50" WIDE @ 0.2" / OCCUPANT = 250 OCCUPANTS PER STAIR
= 300 OCCUPANTS TOTAL

PRIVATE, EXCLUSIVE USE OF THE LAND IN ROOF DECK OPEN SPACE AND NOT "OCCUPIABLE AREAS" PER THE CALIFORNIA BUILDING CODE OCCUPANCY CALCULATION PROCEDURES (PLANTERS, ETC.)
VIEW LOOKING SOUTH ALONG SHATTUCK
ATTACHMENT 2
ZAB 03-30-2023
Page 30 of 43
VIEW ALONG ALLSTON LOOKING WEST
VIEW ALONG ALLSTON LOOKING EAST

ATTACHMENT 2
ZAB 03-30-2023
Page 32 of 43

TRACHTENBERG
ARCHITECTS
2190 SHATTUCK
AVE.
Berkeley, CA
2129
04.27.2022 PLANNING SUBMITTAL
05.30.2022 PLANNING RESUBMITTAL
07.26.2022 PLANNING RESUBMITTAL
12.15.2022 DRC PREVIEW
02.07.2023 DRC RESUBMITTAL

2129
04.27.2022 PLANNING SUBMITTAL
05.30.2022 PLANNING RESUBMITTAL
07.26.2022 PLANNING RESUBMITTAL
12.15.2022 DRC PREVIEW
02.07.2023 DRC RESUBMITTAL

CONCEPTUAL
RENDERINGS
A3.9
PHOTO SIMULATIONS

A3.10
ATTACHMENT 2
ZAB 03-30-2023
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### CUT AND FILL CALCULATIONS

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**Notes:**
1. Earthwork quantity is a rough estimate based on the building pad elevation 5" below the level of the basement. Quantities may vary due to final structural foundations and pavement thickness.
2. Earthwork quantities do not take into account soil drainage, soil stabilization, trench spoil, or overhead excavation requirements.

### CONCEPTUAL GRADING PLAN

**Legend:**
- **Green Dash Line:** Line of existing basement below, shown dashed. Green, 15,380 SF
- **Blue Dashed Line:** Line of proposed basement below, shown dashed. Blue, 19,031 SF

**Elevations:**
- 1.9%
- 7.1%
- 7.2%
- 7.4%

**Datum:**
- ELEV 5

**Area:**
- 1. A4.1

**Contact Information:**
- TRACHTENBERG ARCHITECTS
- 2190 Shattuck Ave.
- Berkeley, CA 94710
- 510.649.1414
- www.TrachtenbergArch.com
STORMWATER TREATMENT PLANTER (AT LEVEL 2)

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>TOTAL GRID SF</th>
<th>PERVIOUS SELF-TREATING AREA</th>
<th>IMPERVIOUS TREATMENT AREA</th>
<th>%</th>
<th>TOTAL PLANTER AREA</th>
<th>MECH TREATMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>ELEVATOR ROOF</td>
<td>250</td>
<td>0</td>
<td>250</td>
<td>4%</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>MAIN ROOF AREA</td>
<td>1,550</td>
<td>176</td>
<td>1,374</td>
<td>4%</td>
<td>564</td>
<td>702</td>
</tr>
<tr>
<td>LEVEL 2/3/4</td>
<td>3,051</td>
<td>818</td>
<td>2,343</td>
<td>4%</td>
<td>645</td>
<td>1 MECH 6.3%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>5,851</td>
<td>1,094</td>
<td>4,757</td>
<td>4%</td>
<td>1,213</td>
<td>815</td>
</tr>
</tbody>
</table>

1) Note: since there are no exclusion areas on the ground level, it is feasible to install flow through planters below the level 2 floor to treat that area.

SPECIAL PROJECTS

1. Roof deck planters (per previous self-treating areas) 1,730 SF

2. Stormwater treatment planters (at level 2) 815 SF

3. Elevation rooftop area 2,157 SF

4. Stormwater treatment planter at level 2 815 SF

ATTACHMENT 2 
ZAB 03-30-2023 
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SITE PLAN

Legend
- Building Foundation Planting
- Existing Trees - To Remain
- Pre-fab Linear Planters
- Existing Linear Pavers
- 24" Dia. Pre-fab Pots

- Bike Rack (Qty. 12)
- Decorative Rock
- Proposed Linear Paving to match existing
- Scored Concrete
- Pre-fab Bench
- Transformer Vault

- Downtown Berkeley Station
- Dog Run Perimeter Fence
- Dog Waste Receptacle
- Sloped Lounge Area
- ADA Spa Lift
- Spa Perimeter Fence

- 24" Dia. Pre-fab Pots
- Pre-fab Linear Planters
- Pre-fab Study Table
- Electric BBQ Grill
- Spray Painted Paw Prints on Turf
- Landscape Floating Benches
- Artificial Turf
- Madera Stone Paver
- Table Tennis
- Foosball
- 2421 Fourth Street
- 510.649.1414
- www.TrachtenbergArch.com

SHATTUCK AVE.
Berkeley, CA

ATTACHMENT 2
ZAB 03-30-2023
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LANDSCAPE PLAN

L1.0

2190 SHATTUCK
AVE.
SITE PLAN
Legend
1. Spa Hot Tub (440 sq. ft.)
2. Spa Hot Tub Stairs and Handrail
3. Spa Hot Tub Lift
4. Built-in Planter
5. Pre-fab Planter

6. Pre-fab Bench
7. Pre-fab Screen Panel
8. Concrete Pavers - Multi Tone
9. Concrete Twig bench
10. Adirondack chairs
11. Electric BBQ Grill
12. Electric Heaters suspended from Structure above
13. Pet Drinking Fountain
14. Dog Waste Receptacle
15. Dog Run Perimeter Fence
16. ADA Spa Lift
17. Spa Perimeter Fence

LIGHTING SPHERE
Lighting Spheres

Landscape Floating Benches
Spray Painted Paw Prints on Turf
Concrete BBQ Grill
Pre-Fab Study Table

Artificial Turf
Modern Stone Power
Table Tennis
Outdoor Media Wall
Wood Benchs

Shuffleboard
Pre-fab Study Table

PAVING COLOR CHART

BERKELEY, CA
2190 SHATTUCK AVE.
Berkeley, CA

TRAUCHENBERG
510.649.1414
Berkeley, California 94710
2421 Fourth Street

Provided Landscape
Usable Open Space
Req. Landscape (40%)

USABLE OPEN SPACE CALCULATION
7,332 sq. ft.
Provided Landscape
4,155 sq. ft. (56.6%)
Usable Open Space
2,932.8 sq. ft.

L1.0
L1.1
L1.0

ATTACHMENT 2
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Betula Occidentalis

Water Birch

is a species in the Betulaceae family native to western North America. In California its distribution is somewhat patchy, being found in the southern Sierras, Siskiyou and Modoc counties. It typically occurs along streams in mountainous regions from 2,000 ft. to over 11,000 ft. It is a deciduous shrub or small tree growing to 10 meter high, usually with multiple trunks.

Wildlife: Bees, Butterflies, and Moths

Cercis Occidentalis

Western Redbud

The Western Redbud is a small deciduous tree or shrub found in the foothills and mountains of California. In the northern, rainier part of its range, it grows more often on dry slopes in mountain foothills. In the southern and drier part of its range, it grows most often near higher elevation creeks, canyon bottoms and other moister areas.

Wildlife: Bees, Butterflies, and Pollinators

Ray Hartman Ceanothus

Ray Hartman ceanothus is one of the largest ceanothuses in the world. It is a species in the Fabaceae family native to the western United States in California and Oregon, where it is widely distributed coastal scrub and sand dunes. It is a perennial growing to 1.5 meters tall on dry, open hillsides.

Wildlife: Bees, Butterflies, and Pollinators

Lupinus arboreus

Coastal Bush Lupine

is a species Fabaceae (Legume) family native to the western United States in California and Oregon, where it is widely distributed coastal scrub and sand dunes. Because it has been widely introduced, there is some uncertainty about its native range; it is thought to be native from Point Reyes National Seashore south to San Luis Obispo County.

Wildlife: Bees, Butterflies, and Pollinators

Arctostaphylos 'Emeral Carpet'

Arctostaphylos 'Emeral Carpet'

is an agave found only along the Pacific coast of Baja California, extending slightly north into the coastal chaparral of southernmost California. It is a small-to-medium agave, with green oval leaves 20-50 centimeter long and 8-20 centimeter wide, and a variable pattern of marginal teeth. Individual rosettes flower after 20-30 years of growth.

Wildlife: Butterflies and Moths

Dudleya edulis

Dudleya edulis

is an agave found only along the Pacific coast of Baja California. In the southern and drier part of its range, it occurs along streams in mountainous regions from 2,000 ft. to over 11,000 ft. It is a deciduous shrub or small tree growing to 10 meter high, usually with multiple trunks.

Wildlife: Bees, Butterflies, and Pollinators
MEMORANDUM

To: David Phillips, Landmark Properties
From: Benjamin C. Sigman and Chinmay Damle
Subject: 2190 Shattuck Ave. Community Benefits Feasibility Analysis; EPS #221007
Date: June 7, 2022

Landmark Properties retained Economic & Planning Systems, Inc. (EPS) to prepare a market review and pro forma financial analysis of the proposed development at 2190 Shattuck Avenue in Berkeley, California. EPS previously completed a similar analysis of 2190 Shattuck in 2018, for Mill Creek Residential, though the project has been significantly reconfigured since then. The purpose of this analysis is to assess the economic feasibility of the development project and the appropriate funding level for community benefits.

Under Berkeley’s Downtown Area Plan (DAP), Landmark Properties’ proposed project at 2190 Shattuck Avenue triggers a provision that requires the project applicant to provide “significant community benefits.” This element of Berkeley’s DAP is based, in part, on the concept of “value capture.” The City seeks to share in the value that is created when project entitlement exceeds the “base case,” which allows projects up to 75 feet. As laid out in Berkeley’s Resolution No. 67,172, applicants seeking entitlement above 75 feet in height must provide pro forma financial analyses for two development scenarios, (1) a base case project not exceeding 75 feet and (2) the proposed scenario in excess of 75 feet. The Resolution further provides that “community benefits must not result in project infeasibility.” As described here, EPS has analyzed the feasibility of both development scenarios, to assess the level of community benefits that might be provided by Landmark Properties to secure entitlement of the proposed project.

This memorandum presents findings from the EPS analysis, and also includes an overview of the Berkeley DAP requirements for community benefits, a real estate market review, and pro forma financial analyses of the base case and proposed development scenarios. It is anticipated that Landmark Properties will rely on this memorandum to communicate to the City of Berkeley the financial feasibility of the proposed project and associated community benefits, consistent with the guidance of Resolution No. 67,172.
Key Findings

The financial analysis presented in this memorandum finds that the proposed high-rise development at 2190 Shattuck likely is feasible with Significant Community Benefits. Fundamental principles of real estate economics dictate that the value of commercial land is commensurate with a landowner’s ability to capitalize on land use. The financial feasibility of a real estate development project depends critically on the price the developer pays for the development site. In the case of 2190 Shattuck, the site's cost basis reflects a fully leased commercial asset with a national credit tenant anchor and the potential for higher-density redevelopment. Assuming today's market conditions and a highly competitive project, EPS analysis of Landmark’s proposed high-rise project indicates that the proposed high-rise project supports land value of roughly $28.3 million, accounting for the Project Labor Agreement (PLA) required during construction. This supportable land value estimate exceeds the $28 million site cost reported to EPS by Landmark.\(^1\) However, this land cost renders the mid-rise base case financially infeasible for Landmark, with that project alternative generating supportable land value of only about $16.3 million.

The pro forma financial analysis detailed in this memorandum reveals that the proposed project generates a residual land value that is $12.0 million greater than the base case scenario, but feasibility constraints limit the degree to which the project can provide additional community benefits. The majority of the community benefits would come in the form of a PLA, which is included in the financial feasibility analysis. The PLA is valued at $9.6 million, based on Resolution No. 67,172 guidance that a PLA generates significant community benefits equal to 5 percent of construction costs. In addition, the project will deliver a 680-square-foot community room, which would be worth about $850,000 as retail space. After accounting for the PLA’s cost to the project and foregone retail revenue associated with the community room, the financial analysis estimates that an additional $300,000 for further significant community benefits may be feasible, assuming very robust lease rates are achieved. Beyond that, additional community benefit contributions are likely to create financial feasibility challenges for the proposed project.

The Downtown Berkeley residential rental market has been affected by the coronavirus pandemic and increasing residential inventory. While downtown the Berkeley residential rental market exhibited healthy performance over the decade leading up to 2019, UC Berkeley’s transition to remote learning in 2020 had a dramatic effect on vacancy downtown. Market strength is evidenced by the 30 percent growth in residential rents at newer projects (those built since 1998) over the past ten years. Despite this market momentum, the vacancy rate at these downtown residential rental buildings increased to over 30 percent in 2020 and remains at nearly 15 percent. In 2022, rents are yet to rebound the highs seen in 2019. The EPS financial analysis presented in this memorandum reflects optimistic value potential for the proposed project, reflective of current market data from downtown Berkeley but also inclusive of significant value premiums that may result from the proposed project’s unique characteristics and associated market competitiveness. The analysis assumes an optimistic “upside” project value in which the project’s location, design, amenities, height, and other factors support rents that exceed current local market performance.

The findings of the pro forma financial analysis indicate that the project is feasible with a Project Labor Agreement but limiting additional requirements for significant community benefits will improve the likelihood of project development. Community benefits programs that rely on project-specific financial analysis to determine benefits

\(^1\) Land cost reflects Landmark’s pricing agreement with the current property owner, PGIM, Inc.
requirements are responsive to current market conditions, but these programs can become ineffective during periods of market weakness. Analysis of today’s market reveals that a well executed high-rise project at 2190 Shattuck likely is feasible. Relying optimistic value assumptions, the analysis find that the project may be capable of providing the desired community benefits. However, moderating requirements for significant community benefits will improve the likelihood that the project can be financed and constructed.

**DAP Context**

The City of Berkeley initiated its DAP effort in 2005 and in early 2012 after six years of effort and nearly two hundred public meetings the City Council adopted the plan. The DAP includes the provision that all new buildings must provide public benefits and that buildings over 75 feet must provide additional, significant community benefits.

The DAP allows seven buildings to be built in the downtown area that exceed 75 feet, including three buildings up to 180 feet in height in the DAP “Core Area.” An additional four buildings up to 120 feet may be located in the “Core” and “Outer Core” areas. The community benefits package required for projects over 75 feet must include affordable housing, supportive social services, green building features, open space, transportation demand features, job training, employment opportunities, and/or other significant community benefits. Community benefits are to be included as conditions of approval and the owner shall enter into a written agreement that is binding on all successors in interest. To date the City of Berkeley has approved four private projects over 75 feet pursuant to the DAP (2211 Harold Way, a prior application for 2190 Shattuck, 1951 Shattuck, and 2129 Shattuck). Only two projects have moved forward as entitled by the City, with the hotel at 2129 Shattuck now open now and the residential mixed-use project at 1951 Shattuck under construction.

The Harold Way project, known as the Residences at Berkeley Plaza, was a residential mixed-use project that is comparable to the proposed 2190 Shattuck project. It was the first project over 75 feet to request approval under the DAP. The project applicant submitted Documentation of Project Significant Community Benefits for the City of Berkeley on October 20, 2014, offering community benefits including a Project Labor Agreement, retention of an existing cinema, transportation demand management features, and privately owned public open space. Ultimately the Zoning Adjustments Board (ZAB) approved a public benefit requirement that exceeded the developer’s proposal. After more than three years of entitlement activities, the Berkeley Plaza project achieved entitlement. However, the significant community benefits requirements resulted in a financially infeasible project and the project was never constructed. Similar to Harold Way, the prior approval of 2190 Shattuck in 2018 proved to be unattractive to investors.

**Residential Rental Real Estate Market Review**

EPS has prepared a review of real estate market conditions relevant to Landmark Properties’ proposed project at 2190 Shattuck Avenue. EPS conducted independent market research, which relies on data from CoStar Group, a leading provider of commercial real estate data. EPS also corresponded with leasing agents at local rental buildings.

To assess market potential, EPS identified 33 relevant multifamily apartment complexes within the Downtown Berkeley inventory. The existing rental inventory includes apartment buildings up

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2 Downtown Area Plan (pg. LU-10)
to 10 stories in height, though most are six stories or less and none are as tall as the proposed 2190 Shattuck project. Of critical importance to this analysis, market data from nearby rental projects reveal current lease rates in the downtown. Overall, the selected apartment complexes in downtown Berkeley achieve an average rent of about $3,430 per unit, or approximately $4.90 per square foot per month. Figure 1 presents market data for the 33 apartment projects. Figure 2 is a map of selected projects that are comparable to the proposed development 2190 Shattuck in terms of location and development type.

**Figure 1**  
Selected Downtown Berkeley Apartments Rental Rates

<table>
<thead>
<tr>
<th>Building Name</th>
<th>Year Built</th>
<th>Units</th>
<th>Vacancy Rate</th>
<th>Effective Rent $ / Unit</th>
<th>Effective Rent $ / Sqft.</th>
<th>Average Unit Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Aquatic Shattuck</td>
<td>2021</td>
<td>78</td>
<td>3.8%</td>
<td>$3,250</td>
<td>$4.89</td>
<td>664</td>
</tr>
<tr>
<td>Sterling University Ave</td>
<td>2004</td>
<td>35</td>
<td>N/A</td>
<td>$3,315</td>
<td>$6.71</td>
<td>493</td>
</tr>
<tr>
<td>Berkeley Central</td>
<td>2012</td>
<td>143</td>
<td>4.9%</td>
<td>$3,845</td>
<td>$4.48</td>
<td>858</td>
</tr>
<tr>
<td>Bachenheimer</td>
<td>2004</td>
<td>44</td>
<td>8.8%</td>
<td>$3,615</td>
<td>$5.65</td>
<td>640</td>
</tr>
<tr>
<td>Addison Arts Apartments</td>
<td>2016</td>
<td>69</td>
<td>2.8%</td>
<td>$3,909</td>
<td>$5.08</td>
<td>770</td>
</tr>
<tr>
<td>The Addison</td>
<td>2020</td>
<td>107</td>
<td>4.6%</td>
<td>$4,181</td>
<td>$5.42</td>
<td>770</td>
</tr>
<tr>
<td>Sterling Addison</td>
<td>2002</td>
<td>27</td>
<td>N/A</td>
<td>$4,050</td>
<td>$5.63</td>
<td>719</td>
</tr>
<tr>
<td>Sterling Allston</td>
<td>2000</td>
<td>91</td>
<td>33.8%</td>
<td>$4,258</td>
<td>$6.75</td>
<td>630</td>
</tr>
<tr>
<td>The URSA</td>
<td>2020</td>
<td>50</td>
<td>N/A</td>
<td>$3,062</td>
<td>$4.97</td>
<td>615</td>
</tr>
<tr>
<td>Blake at Berkeley</td>
<td>2021</td>
<td>84</td>
<td>70.6%</td>
<td>$3,374</td>
<td>$5.23</td>
<td>645</td>
</tr>
<tr>
<td>Varsity Berkeley</td>
<td>2015</td>
<td>79</td>
<td>6.1%</td>
<td>$4,661</td>
<td>$5.77</td>
<td>808</td>
</tr>
<tr>
<td>The Southgate</td>
<td>2016</td>
<td>44</td>
<td>1.4%</td>
<td>N/A</td>
<td>N/A</td>
<td>716</td>
</tr>
<tr>
<td>The Dwight</td>
<td>2017</td>
<td>99</td>
<td>4.8%</td>
<td>$3,849</td>
<td>$5.68</td>
<td>677</td>
</tr>
<tr>
<td>Dwight Way Apartments</td>
<td>2002</td>
<td>8</td>
<td>6.4%</td>
<td>N/A</td>
<td>$0.00</td>
<td>N/A</td>
</tr>
<tr>
<td>Stadium Place</td>
<td>2006</td>
<td>74</td>
<td>11.2%</td>
<td>$3,163</td>
<td>$4.99</td>
<td>605</td>
</tr>
<tr>
<td>Sterling Haste</td>
<td>2004</td>
<td>101</td>
<td>30.4%</td>
<td>$3,295</td>
<td>$5.91</td>
<td>557</td>
</tr>
<tr>
<td>K Street Flats</td>
<td>2006</td>
<td>176</td>
<td>16.7%</td>
<td>$2,572</td>
<td>$3.93</td>
<td>654</td>
</tr>
<tr>
<td>Oxford Plaza</td>
<td>2009</td>
<td>97</td>
<td>N/A</td>
<td>$1,561</td>
<td>$2.03</td>
<td>769</td>
</tr>
<tr>
<td>Stranda Apartments</td>
<td>2015</td>
<td>21</td>
<td>1.8%</td>
<td>N/A</td>
<td>N/A</td>
<td>833</td>
</tr>
<tr>
<td>Stonefire Berkeley</td>
<td>2017</td>
<td>98</td>
<td>8.9%</td>
<td>$4,711</td>
<td>$5.29</td>
<td>890</td>
</tr>
<tr>
<td>Sterling Oxford</td>
<td>1998</td>
<td>56</td>
<td>29.8%</td>
<td>$4,443</td>
<td>$6.61</td>
<td>673</td>
</tr>
<tr>
<td>Parker Apartments</td>
<td>2016</td>
<td>155</td>
<td>3.8%</td>
<td>$3,000</td>
<td>$4.23</td>
<td>709</td>
</tr>
<tr>
<td>Hillside Village</td>
<td>2005</td>
<td>94</td>
<td>3.2%</td>
<td>$2,966</td>
<td>$4.31</td>
<td>688</td>
</tr>
<tr>
<td>Oxford Street LLC</td>
<td>2014</td>
<td>15</td>
<td>6.4%</td>
<td>$2,466</td>
<td>$3.69</td>
<td>650</td>
</tr>
<tr>
<td>Shattuck Studios</td>
<td>2018</td>
<td>21</td>
<td>0.3%</td>
<td>$2,496</td>
<td>$8.32</td>
<td>300</td>
</tr>
<tr>
<td>Telegraph Avenue Apartments</td>
<td>2004</td>
<td>20</td>
<td>0.0%</td>
<td>$3,786</td>
<td>$4.22</td>
<td>896</td>
</tr>
<tr>
<td>Acton Courtyard</td>
<td>2003</td>
<td>71</td>
<td>5.1%</td>
<td>$4,077</td>
<td>$6.17</td>
<td>669</td>
</tr>
<tr>
<td>Sterling Jefferson</td>
<td>1998</td>
<td>34</td>
<td>N/A</td>
<td>$3,255</td>
<td>$4.42</td>
<td>735</td>
</tr>
<tr>
<td>The Overture</td>
<td>2016</td>
<td>40</td>
<td>2.8%</td>
<td>$3,109</td>
<td>$4.66</td>
<td>666</td>
</tr>
<tr>
<td>New Californian</td>
<td>2010</td>
<td>148</td>
<td>0.5%</td>
<td>$2,538</td>
<td>$3.62</td>
<td>701</td>
</tr>
<tr>
<td>2070 University Avenue</td>
<td>1998</td>
<td>20</td>
<td>15.2%</td>
<td>$1,796</td>
<td>$4.07</td>
<td>441</td>
</tr>
<tr>
<td>Modera Berkeley</td>
<td>2021</td>
<td>205</td>
<td>60.1%</td>
<td>$3,838</td>
<td>$4.91</td>
<td>781</td>
</tr>
<tr>
<td>Allston Place</td>
<td>2002</td>
<td>60</td>
<td>6.4%</td>
<td>N/A</td>
<td>N/A</td>
<td>735</td>
</tr>
</tbody>
</table>

**Weighted Average**

- **2,464**  
- **14.7%**  
- **$3,428**  
- **$4.90**  
- **705**

Source: CoStar, Economic & Planning Systems, Inc
Figure 2 Map of Selected Downtown Berkeley Apartment Characteristics

Source: CoStar, Economic & Planning Systems

The EPS market review also offers data concerning Downtown Berkeley apartment market trends over time. As shown in Figure 3 and Figure 4, rental rates rose steadily between 2010 and 2019. Excluding lower rents achieved in 2020 through 2023 due to coronavirus pandemic impacts and increasing local inventory, the local data reveal that average rent rose by 41 percent between 2010 and 2019. Between 2010 to 2022, average market rent increased 37 percent.

It also is notable that the Downtown Berkeley residential rental market has seen significant increases in new inventory over the past decade, with major rental projects adding over 1,300 units since 2010. The delivery of new units into the marketplace in recent years has created an environment where vacancy rates have fluctuated, a consequence of the changing rental stock. While vacancy rates have shown increases immediately following the entry of a new residential product, they have historically tended to decrease the following year as the new apartments are successfully absorbed into the market, as was the case 2012-13 and 2016-17.

The most recent surge in new apartment deliveries has been complicated by coronavirus pandemic, which had a significant impact on UC Berkeley and Downtown Berkeley following the March 2020 suspension of in-person instruction at the UC Berkeley campus. Vacuum rates in 2020 increased to over 30 percent, a dramatic jump from the 3.6 percent vacancy rate in 2019. However, the University resumed in-person instruction in 2021 and campus is returning to its full
capacity. Vacancy rates fell to 16.6 percent in 2021 and were 14.7 percent in the first quarter of 2022.

Figure 3  Downtown Berkeley Apartment Market Trend

<table>
<thead>
<tr>
<th>Year</th>
<th>Vacancy</th>
<th>Rent Per Unit</th>
<th>Rent Per SF</th>
<th>Inventory Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>9.9%</td>
<td>$2,488</td>
<td>$3.53</td>
<td>1,156</td>
</tr>
<tr>
<td>2011</td>
<td>6.1%</td>
<td>$2,532</td>
<td>$3.59</td>
<td>1,156</td>
</tr>
<tr>
<td>2012</td>
<td>11.1%</td>
<td>$2,634</td>
<td>$3.74</td>
<td>1,299</td>
</tr>
<tr>
<td>2013</td>
<td>4.5%</td>
<td>$2,751</td>
<td>$3.90</td>
<td>1,299</td>
</tr>
<tr>
<td>2014</td>
<td>4.2%</td>
<td>$2,836</td>
<td>$4.02</td>
<td>1,314</td>
</tr>
<tr>
<td>2015</td>
<td>5.8%</td>
<td>$3,051</td>
<td>$4.33</td>
<td>1,414</td>
</tr>
<tr>
<td>2016</td>
<td>13.3%</td>
<td>$3,139</td>
<td>$4.45</td>
<td>1,722</td>
</tr>
<tr>
<td>2017</td>
<td>5.8%</td>
<td>$3,225</td>
<td>$4.57</td>
<td>1,919</td>
</tr>
<tr>
<td>2018</td>
<td>5.5%</td>
<td>$3,322</td>
<td>$4.71</td>
<td>1,940</td>
</tr>
<tr>
<td>2019</td>
<td>3.6%</td>
<td>$3,518</td>
<td>$4.99</td>
<td>1,940</td>
</tr>
<tr>
<td>2020</td>
<td>30.3%</td>
<td>$3,214</td>
<td>$4.55</td>
<td>2,097</td>
</tr>
<tr>
<td>2021</td>
<td>16.6%</td>
<td>$3,401</td>
<td>$4.82</td>
<td>2,464</td>
</tr>
<tr>
<td>2022 YTD</td>
<td>14.7%</td>
<td>$3,427</td>
<td>$4.86</td>
<td>2,464</td>
</tr>
</tbody>
</table>

Sources: CoStar; Economic & Planning Systems, Inc.

Figure 4  Downtown Berkeley Apartment Rental Rate Trend

Source: CoStar; Economic & Planning Systems, Inc.
Pro Forma Financial Analysis

In 2015 the City of Berkeley passed Resolution Number 67,172-N.S. – Establishing a Process and Standards for Evaluating “Significant Community Benefit” Packages for Buildings over 75 Feet in the Downtown. According to the resolution, applications for buildings over 75 feet shall include:

...a pro forma showing pre-development, soft, and hard cost estimates, as well as the projected rate of return the applicant expects the project to generate, based on revenues (sale prices or rental income stream) anticipated once the project is completed. This analysis shall cover two scenarios: (1) a base case building of 75’ or less; and (2) a high-rise building over 75’. This analysis shall reflect trends in rental income in determining the dollar range of benefits the City could reasonably request. The total value of benefits must bear a reasonable relationship to the value generated by the project.

The resolution also provides a General Principal guiding the evaluation of benefits:

The total value of community benefits must not result in project infeasibility.

When the public sector creates value by augmenting the development potential of land, landowners enjoy a financial gain in the form of higher land value, which is realized when they sell or develop their land. Accordingly, measuring the land value created by up-zonings and regulatory flexibility represents an appropriate approach to quantifying the maximum community benefit that Landmark might offer the City in return for the desired project density increase, over the regulatory baseline.

Notably, though, evaluation of the financial feasibility of the project development depends on the price of the development site. In the case of 2190 Shattuck, the land cost is reported by Landmark to be $28 million, based on an acquisition agreement with current owner PGIM. PGIM paid $23 million for the property in 2015. The site price reflects the value of the existing fully leased commercial asset with a national credit tenant anchor. The $28 million land cost is a key financial feasibility factor considered in each of the feasibility tests reported below.

The EPS pro forma financial analysis relies on a feasibility assessment of both the base case and proposed development using optimistic market conditions and current construction cost estimates. The pro forma analysis uses the well-accepted “static” (i.e., stabilized year) financial feasibility framework to estimate a residual land value and supportable community benefit value. This approach compares real estate development value at project stabilization (after the project is fully leased up) with the cost of project development, in 2022 dollars.

The financial analysis determines supportable real estate development cost based on assumptions including lease rates that factor in potential market value premiums, as well as operating cost assumptions, and the required development investment yield. Development cost assumptions reflect project-specific construction costs, typical project soft costs (e.g., architecture and engineering), financing costs, leasing costs, and an appropriate developer fee for project overhead and administration. The assumptions relied on by this analysis reflect EPS research, third-party data, and cost data provided to EPS by Landmark Properties.

3 Base case costs derived from Marshall & Swift Building Cost Data. Proposed project costs reported to EPS by Landmark Properties.

4 The hurdle rate for investment yield is assumed to be 5 percent.
The value potential of market-rate residential units in the proposed high-rise project have been adjusted upward from rental rates observed at comparable projects in the market to reflect the premium rents that are (1) achieved by the newest product in the market and (2) anticipated view premiums likely to be achieved on floors seven through 25 of the tower. Overall, the analysis assumes that market rate units in the proposed project will rent for $6.46 per square foot (per month) on average, significantly above other projects currently renting in the local market. The analysis also includes below-market-rate units which rent for $1.32 per square foot on average.

The financial feasibility analysis assumes the minimum return on investment requirement that likely would be necessary to attract investors to the real estate investment opportunity. In EPS experience, residential rental real estate development in the Bay Area requires a minimum investment yield of about 5 percent (i.e., stabilized net operating income as a percentage of total development cost), commensurate with the risk factors associated with such investments.

**Figure 5** presents an overview of the mid-rise base case and high-rise alternatives considered by this pro forma analysis. The base case is an as-of-right project that fulfils affordable housing requirements by paying the City’s affordable housing fee. The Proposed Project is a “state density bonus” project that provides a sufficient number of Very Low-Income housing units to

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**Residual Land Value** Calculation

The **Pro Forma Financial Analysis Model Calculates:**

1. **Supportable Development Value**
   
   Value is determined through analysis of lease rates and operating expenses. Net operating income and an investment yield “hurdle rate” are used to establish the maximum development budget for the project.

2. **Less** all development costs except land
   
   Costs are determined through available cost data from the applicant, third-party sources, and EPS experience, including construction costs and architecture, engineering, permits, fees, financing, and other costs.

3. **Less** land cost incurred to acquire the site for new development
   
   Reported land cost of $28M (site acquisition agreement with PGIM)

4. **Model Output = Project Residual (Feasible Community Benefits Value)**
   
   Additional community benefits value (cost to the project) that is achievable while still maintaining the project’s development feasibility.

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EPS analysis assumes apartments on floors two through six are priced similarly to market comparables found in the Downtown submarket, plus a new product premium of 10 percent. In addition, above floor six, a 1 percent price premium is applied for each additional floor. The view/height premium is based on analysis by Concord Group and results in similar price premiums to those identified by AECOM in their analysis for the City (Evaluation of Multifamily Residential Rent Premiums for High Rise Buildings in Downtown Berkeley, July 14, 2015).
qualify for the 46.25 percent bonus allowed by state law, and also pays a portion of the City’s affordable housing fee to fully satisfy City affordable housing requirements.

**Figure 5  Development Scenarios (Base Case and Proposed Project)**

<table>
<thead>
<tr>
<th>Item</th>
<th>Base Case</th>
<th>Proposed Project</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Height</td>
<td>75’</td>
<td>280’</td>
</tr>
<tr>
<td>Residential Units</td>
<td>68</td>
<td>326</td>
</tr>
<tr>
<td>Gross Retail Sq. Ft.</td>
<td>7,500</td>
<td>7,500</td>
</tr>
<tr>
<td>Parking Spaces</td>
<td>26</td>
<td>51</td>
</tr>
<tr>
<td>Project Labor Agreement</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

A financially feasible level of value creation is determined by measuring the difference between the land value supported by each alternative, and the $28 million price Landmark Properties has agreed to pay for the site. Estimated residual land value for both the mid-rise base case and proposed high-rise project is shown in **Figure 6** below.

**Financial Feasibility Analysis Results**

The financial analysis relies on the scenarios shown in **Figure 5** and assumes the proposed high-rise project is built with a Project Labor Agreement and a community room, both of which are significant community benefits to the City of Berkeley, valued at $9.7 million and $850,000, respectively. As shown in **Figure 6**, the analysis finds that the proposed high-rise project is feasible, yielding residual land value that is slightly above the land price. However, the mid-rise residential development scenario is financially infeasible, with residual land value that falls short of land cost. **Figure 6** also reveals the increase in value generated by the proposed project over the base case is about $12.0 million. However, in addition to the PLA and community room, the analysis finds that additional contributions to significant community benefits must be limited to about $300,000 to preserve the financial viability of the proposed project.

In total, including the PLA, community room, and $300,000 in additional significant community benefits, the analysis estimates a total contribution to significant community benefits of a about $10.7 million are achievable, without creating project costs that clearly result in infeasibility. However, as discussed above, the analysis relies on optimistic revenue projections that assume the proposed project outperforms existing projects in the market. The $10.7 million in community benefits represents an upper bound on community benefits potential and does not factor in any “downside” risks (e.g., a market shift or underperformance of the project). Moderating community benefits to a level below the estimated maximum will improve the likelihood that the project can be financed and constructed.
**Figure 6  Residual Value Estimates**

<table>
<thead>
<tr>
<th>Item</th>
<th>Base Case</th>
<th>Proposed</th>
<th>Value Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mid-Rise</td>
<td>High-Rise</td>
<td></td>
</tr>
<tr>
<td>Supportable Development Value</td>
<td>$75,900,107</td>
<td>$301,127,975</td>
<td>$225,227,867</td>
</tr>
<tr>
<td>Estimated Project Costs (Excluding Land)</td>
<td>-$59,577,603</td>
<td>-$272,830,959</td>
<td>-$213,253,355</td>
</tr>
<tr>
<td>Residual Land Value</td>
<td>$16,322,504</td>
<td>$28,297,016</td>
<td>$11,974,512</td>
</tr>
<tr>
<td>Land Cost Basis</td>
<td>-$28,000,000</td>
<td>-$28,000,000</td>
<td>-</td>
</tr>
<tr>
<td>Estimated Project Residual</td>
<td>-$11,677,496</td>
<td>$297,016</td>
<td>$11,974,512</td>
</tr>
</tbody>
</table>

**Total Significant Community Benefits**

- Project Labor Agreement (Estimated at 5% per Resolution Number 67,172-N.S.) $9,579,738
- Community Room (Estimated value as retail space = $1,254 PSF) $848,958
- Additional Feasible Community Benefits Contribution $297,016
- **Total Community Benefits** $10,725,712

**Appendix A** provides detailed pro forma financial calculations.
APPENDIX A
### Table 1  Mid-Rise Base Case Pro Forma Financial Analysis Summary

#### DEVELOPMENT PROGRAM ASSUMPTIONS

<table>
<thead>
<tr>
<th>Dwelling Units</th>
<th>68</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Residential Area (Square Feet)</td>
<td>1,357 per Unit</td>
</tr>
<tr>
<td>Gross Retail Area (Square Feet)</td>
<td>7,500</td>
</tr>
<tr>
<td>Rentable Area (Square Feet)</td>
<td>78% of GBA</td>
</tr>
<tr>
<td>Structured Parking Spaces</td>
<td>26</td>
</tr>
</tbody>
</table>

#### ESTIMATED BUILDING VALUE

<table>
<thead>
<tr>
<th>Gross Potential Rent (Res.)</th>
<th>$5.99 per SF/Month</th>
<th>$5,069,335</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Potential Rent (Retail)</td>
<td>$5.50 per SF/Month (NNN)</td>
<td>$495,000</td>
</tr>
<tr>
<td>Losses to Vacancy</td>
<td>5.0% of GPR</td>
<td>-$278,217</td>
</tr>
<tr>
<td>Gross Revenue - Res. &amp; Retail</td>
<td>$5,286,118</td>
<td></td>
</tr>
<tr>
<td>Operating Expenses</td>
<td>29% of Gross Revenue</td>
<td>-$1,553,513</td>
</tr>
<tr>
<td>Net Operating Income - Res. &amp; Retail</td>
<td>$3,732,605</td>
<td></td>
</tr>
<tr>
<td>Net Operating Income - Res. Parking</td>
<td>$200 per Space/Month</td>
<td>$62,400</td>
</tr>
<tr>
<td><strong>Net Operating Income</strong></td>
<td>$3,795,005</td>
<td></td>
</tr>
<tr>
<td><strong>Supportable Development Value</strong></td>
<td>5.00% Yield Requirement</td>
<td><strong>$75,900,107</strong></td>
</tr>
</tbody>
</table>

#### ESTIMATED PROJECT COST

<table>
<thead>
<tr>
<th>Construction Costs</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Direct Cost</td>
<td>$372 Cost/SF (GBA)</td>
</tr>
<tr>
<td>Structured Parking Direct Cost</td>
<td>$81,000 per Space</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>$39,211,262</td>
</tr>
<tr>
<td>Tenant Improvement / Apartment FF&amp;E</td>
<td>0% of Total Const. Cost</td>
</tr>
<tr>
<td>PLA Cost Premium</td>
<td>0% of Total Const. Cost</td>
</tr>
<tr>
<td><strong>Total Construction Cost</strong></td>
<td>$40,862,467</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Soft Costs</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Architecture and Engineering</td>
<td>4.0% of Construction Cost</td>
</tr>
<tr>
<td>Other Professional Services</td>
<td>3.0% of Construction Cost</td>
</tr>
<tr>
<td>Permits and Fees</td>
<td>$83,272 per Dwelling Unit</td>
</tr>
<tr>
<td>Taxes and Insurance</td>
<td>3.0% of Construction Cost</td>
</tr>
<tr>
<td>Financing</td>
<td>8.0% of Construction Cost</td>
</tr>
<tr>
<td>Marketing/Leasing</td>
<td>3.0% of Construction Cost</td>
</tr>
<tr>
<td>Developer Overhead Fee</td>
<td>4.0% of Construction Cost</td>
</tr>
<tr>
<td><strong>Total Soft Costs</strong></td>
<td>$15,878,108</td>
</tr>
<tr>
<td>Development Contingency</td>
<td>5.0% of Hard and Soft Costs</td>
</tr>
<tr>
<td><strong>Total Project Cost Excl. Land</strong></td>
<td><strong>$59,577,603</strong></td>
</tr>
</tbody>
</table>

#### RESIDUAL LAND VALUE

| Residual Land Value | $16,322,504 |
### Table 2  Proposed High-Rise Pro Forma Financial Analysis Summary

<table>
<thead>
<tr>
<th>DEVELOPMENT PROGRAM ASSUMPTIONS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling Units</td>
<td>326</td>
</tr>
<tr>
<td>Gross Residential Area (Square Feet)</td>
<td>423,311</td>
</tr>
<tr>
<td>Gross Retail Area (Square Feet)</td>
<td>7,500</td>
</tr>
<tr>
<td>Rentable Area (Square Feet)</td>
<td>328,404</td>
</tr>
<tr>
<td>Structured Parking Spaces</td>
<td>51</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>ESTIMATED BUILDING VALUE</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Potential Rent (Res.)</td>
<td>$5.96 per SF/Month</td>
</tr>
<tr>
<td>Gross Potential Rent (Retail)</td>
<td>$5.50 per SF/Month</td>
</tr>
<tr>
<td>Losses to Vacancy</td>
<td>5.0% of GPR</td>
</tr>
<tr>
<td>Gross Revenue - Res. &amp; Retail</td>
<td>$22,284,360</td>
</tr>
<tr>
<td>Operating Expenses</td>
<td>33% of Gross Revenue</td>
</tr>
<tr>
<td>Net Operating Income - Res. &amp; Retail</td>
<td>$14,933,999</td>
</tr>
<tr>
<td>Net Operating Income - Res. Parking</td>
<td>$200 per Space/Month</td>
</tr>
<tr>
<td>Net Operating Income</td>
<td>$15,056,399</td>
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<tr>
<td>Supportable Development Value</td>
<td>5.00% Yield Requirement</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>ESTIMATED PROJECT COSTS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Costs</td>
<td></td>
</tr>
<tr>
<td>Building Direct Cost</td>
<td>$399 per SF (GBA)</td>
</tr>
<tr>
<td>Structured Parking Direct Cost</td>
<td>$81,000 per Space</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$176,233,142</td>
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<tr>
<td>Tenant Improvement / Apartment FF&amp;E</td>
<td>$5,781,881</td>
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<tr>
<td>PLA Cost Premium</td>
<td>5% of Total Const. Cost</td>
</tr>
<tr>
<td>Total Construction Cost</td>
<td>$191,594,761</td>
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<table>
<thead>
<tr>
<th>Soft Costs</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Architecture and Engineering</td>
<td>4.0% of Construction Cost</td>
</tr>
<tr>
<td>Other Professional Services</td>
<td>3.0% of Construction Cost</td>
</tr>
<tr>
<td>Permits and Fees</td>
<td>$62,410 per Dwelling Unit</td>
</tr>
<tr>
<td>Taxes and Insurance</td>
<td>3.0% of Construction Cost</td>
</tr>
<tr>
<td>Financing</td>
<td>8.0% of Construction Cost</td>
</tr>
<tr>
<td>Marketing/Leasing</td>
<td>3.0% of Construction Cost</td>
</tr>
<tr>
<td>Developer Overhead Fee</td>
<td>4.0% of Construction Cost</td>
</tr>
<tr>
<td>Total Soft Costs</td>
<td>$68,244,247</td>
</tr>
<tr>
<td>Development Contingency</td>
<td>5.0% of Hard and Soft Costs</td>
</tr>
<tr>
<td>Total Project Cost Excluding Land</td>
<td>$272,830,959</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RESIDUAL LAND VALUE</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Residual Land Value</td>
<td>$28,297,016</td>
</tr>
</tbody>
</table>
## Table 3  Development Permits and Fees Detail (Proposed Project)

<table>
<thead>
<tr>
<th>Item</th>
<th>Fee</th>
<th>Fee Basis</th>
<th>Total</th>
<th>Total per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>CITY OF BERKELEY FEES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plan Check Fees&lt;sup&gt;1&lt;/sup&gt;</td>
<td>$1,215,522</td>
<td></td>
<td>$3,729</td>
<td></td>
</tr>
<tr>
<td>Building Permit Fees&lt;sup&gt;1&lt;/sup&gt;</td>
<td>$2,776,172</td>
<td></td>
<td>$8,516</td>
<td></td>
</tr>
<tr>
<td>Affordable Housing Fee&lt;sup&gt;2&lt;/sup&gt;</td>
<td>$39,746 unit</td>
<td>$6,597,836</td>
<td>$20,239</td>
<td></td>
</tr>
<tr>
<td>SOSIPs (Res.)</td>
<td>$2.23 gsf</td>
<td>$943,984</td>
<td>$2,896</td>
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</tr>
<tr>
<td>SOSIPs (Comm.)</td>
<td>$1.68 gsf</td>
<td>$12,600</td>
<td>$39</td>
<td></td>
</tr>
<tr>
<td>SOSIP (Credit for Existing Use)</td>
<td>$1.68 gsf</td>
<td>-37,373</td>
<td>-$115</td>
<td></td>
</tr>
<tr>
<td>1% for Arts&lt;sup&gt;2&lt;/sup&gt;</td>
<td>0.80% eligible cost</td>
<td>$680,000</td>
<td>$2,086</td>
<td></td>
</tr>
<tr>
<td>Wastewater Capacity Fee Residential</td>
<td>$1,972 unit</td>
<td>$642,760</td>
<td>$1,972</td>
<td></td>
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<tr>
<td>Sewer Connection Fee</td>
<td>$161 fixture unit</td>
<td>$1,855,146</td>
<td>$5,691</td>
<td></td>
</tr>
<tr>
<td>Public Works Fees&lt;sup&gt;2&lt;/sup&gt;</td>
<td>0.65% eligible cost</td>
<td>$552,590</td>
<td>$1,695</td>
<td></td>
</tr>
<tr>
<td>Use Permit &amp; CEQA Fees</td>
<td>$300,000</td>
<td></td>
<td>$920</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td></td>
<td></td>
<td>$15,539,236</td>
<td>$47,666</td>
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<tr>
<td>BERKELEY UNIFIED SCHOOL DISTRICT</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residential Fee</td>
<td>$3.48 gsf</td>
<td>$1,473,122</td>
<td>$4,519</td>
<td></td>
</tr>
<tr>
<td>Comercial Fee</td>
<td>$0.56 gsf</td>
<td>$4,200</td>
<td>$13</td>
<td></td>
</tr>
<tr>
<td>Comercial Fee (Credit for Existing Use)</td>
<td>gsf</td>
<td>-4,200</td>
<td>-$13</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td></td>
<td></td>
<td>$1,473,122</td>
<td>$4,519</td>
</tr>
<tr>
<td>UTILITIES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PG&amp;E</td>
<td></td>
<td>$850,000</td>
<td>$2,607</td>
<td></td>
</tr>
<tr>
<td>Water Service Installation (1&quot; Meter)</td>
<td>$4,932 install</td>
<td>$4,932</td>
<td>$15</td>
<td></td>
</tr>
<tr>
<td>Water Service Installation (4&quot; Meter)</td>
<td>$23,557 install</td>
<td>$23,557</td>
<td>$72</td>
<td></td>
</tr>
<tr>
<td>Fire Service Installation (6&quot; Service)</td>
<td>$20,830 install</td>
<td>$20,830</td>
<td>$64</td>
<td></td>
</tr>
<tr>
<td>Fire Service Installation (6&quot; Hydrant)</td>
<td>$3,160 install</td>
<td>$3,160</td>
<td>$10</td>
<td></td>
</tr>
<tr>
<td>System Capacity Charge Retail (1&quot;)</td>
<td>$47,120 install</td>
<td>$47,120</td>
<td>$145</td>
<td></td>
</tr>
<tr>
<td>System Capacity Charge Residential</td>
<td>$7,291 unit</td>
<td>$2,376,800</td>
<td>$7,291</td>
<td></td>
</tr>
<tr>
<td>System Capacity Charge Irrigation</td>
<td>$6,800 install</td>
<td>$6,800</td>
<td>$21</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td></td>
<td></td>
<td>$3,333,199</td>
<td>$10,225</td>
</tr>
<tr>
<td>TOTAL PERMIT AND FEE BURDEN</td>
<td></td>
<td></td>
<td>$20,345,557</td>
<td>$62,410</td>
</tr>
</tbody>
</table>

[1] Plan Check, Building Permit, Public Art, and Traffic Engineering fees are based on eligible construction costs estimated at $85 million.

October 7, 2022

Ms. Sharon Gong  
Planning and Development, Land Use Division  
City of Berkeley  
1947 Center St., 2nd Floor  
Berkeley, CA 94704

Re: Peer Review for Revised Community Benefits Package for 2190 Shattuck Avenue

Dear Ms. Gong:

Strategic Economics is pleased to provide this letter, which includes a limited peer review of the community benefits feasibility analysis submitted for 2190 Shattuck Avenue by Economic and Planning Systems, Inc. (EPS) in June 2022. This letter represents an update to the more comprehensive peer review Strategic Economics submitted to the City in August 2018. The comprehensive review examined an earlier version of the feasibility analysis performed by EPS, including market assumptions that were contemporaneous to that analysis.

As outlined in the Scope of Work for this limited review, Strategic Economics has reviewed two key assumptions, reflecting current market conditions, in the financial pro forma submitted by the Applicant this year:

- **Market rents.** Strategic Economics performed its own analysis of area market rents to validate the comparable rents collected and used by EPS as the basis of its project revenue assumptions.
- **Developer Financial Yield Requirement.** Strategic Economics reviewed the 5 percent yield on cost requirement assumed in the financial pro forma submitted by EPS in light of current market capitalization rates and a developer return consistent with standard practice.

### Market Rents

The feasibility study performed by EPS accurately reflects average market rental rates in downtown Berkeley, but the rent premium assumed for a newly built high-rise development may be optimistic.

Figure 1 shows market data collected for 24 apartment buildings constructed since 1998 in downtown Berkeley. The data is from CoStar, which is the same source used by EPS. Strategic Economics used a narrower geography than EPS, however, to define the relevant properties and their average asking rents. Unlike the EPS analysis, Strategic Economics did not consider any apartment units south of Dwight Way, where the longer distance from downtown and the BART station may depress leasing rates. Even with the slightly narrower geography, Strategic Economics found an average monthly rental rate of $4.98 per square foot, a difference from what EPS reported by less than two percent (Figure 2). As shown, these average rents are...
significantly lower than what was found in the extremely tight rental market of 2018, before the COVID-19 pandemic caused area rents to fall beginning in 2020.

As shown in Figure 2, EPS assumes the average rent for 2190 Shattuck will be $5.99 per square foot, or 22 percent higher than the area rents cited in the study. As stated in the pro forma analysis, the premium reflects two factors: 1) higher rents achievable for new construction; and 2) higher achievable rents on the upper floors of the tower that command views. Data have shown that newer, centrally located high-rises can command higher rents than older, more peripheral buildings without views. It is important to note, however, that the assumed rent premium (22 percent) is significantly higher than the assumption in the 2018 pro forma (14 percent).

Developer Financial Yield Requirement

EPS has assumed a yield on development cost of five percent, which is historically low but in line with current market conditions.

The yield requirement for a development project reflects the developer’s minimum required return on investment and will vary based on the strength of the market, project risk, and the cost of capital. EPS has assumed a minimum yield of five percent, which means that the net operating income (estimated in Table 1 of the submitted pro forma) must be at least five percent of total development costs (referenced as “Supportable Development Value” in Table 1).

To validate this assumption, Strategic Economics drew upon past experience with development pro formas in Berkeley and recognized that developer yield on cost requirements are closely related to market capitalization rates. Whereas the yield metric draws a relationship between a project’s income and its development cost, the capitalization rate relates the income to the (finished) value of the development. The two metrics are thus correlated, with the spread between them representing the developer’s return on investment.

Strategic Economics reviewed multifamily capitalization rates estimated by CoStar and by Lee & Associates (Figure 3). Capitalization rates ranged from 4.0 to 4.1 percent, the lowest rates experienced in the market in more than a decade (Figure 4). This range in the cap rate is historically low and reflects investors’ continued confidence in a very strong market for multifamily developments in the San Francisco Bay Area. A cap rate in this range is consistent with a yield assumption of five percent and would allow for a project return on investment that is consistent with typical residential investment returns. However, a reversal in the downward trending cap rates, a possible outcome of higher interest rates or other factors, could endanger the feasibility of this project.

Sincerely,

Dena Belzer
President
### FIGURE 1: MARKET DATA FOR APARTMENT BUILDINGS OF AT LEAST TEN UNITS IN DOWNTOWN BERKELEY

<table>
<thead>
<tr>
<th>Building Name</th>
<th>Year Built</th>
<th>Units</th>
<th>Vacancy Rate</th>
<th>Effective Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Rate</td>
<td>$/Unit</td>
</tr>
<tr>
<td>2070 University Avenue</td>
<td>1998</td>
<td>20</td>
<td>15.0%</td>
<td>$1,880</td>
</tr>
<tr>
<td>Addison Arts Apartments</td>
<td>2016</td>
<td>69</td>
<td>N/A</td>
<td>$3,942</td>
</tr>
<tr>
<td>Allston Place</td>
<td>2002</td>
<td>60</td>
<td>6.6%</td>
<td>$3,195</td>
</tr>
<tr>
<td>Bachenheimer</td>
<td>2004</td>
<td>44</td>
<td>6.8%</td>
<td>$3,782</td>
</tr>
<tr>
<td>Berkeley Central</td>
<td>2012</td>
<td>143</td>
<td>1.3%</td>
<td>$4,197</td>
</tr>
<tr>
<td>Helios Corner</td>
<td>2007</td>
<td>80</td>
<td>1.9%</td>
<td>$1,185</td>
</tr>
<tr>
<td>K Street Flats</td>
<td>2006</td>
<td>176</td>
<td>2.2%</td>
<td>$3,126</td>
</tr>
<tr>
<td>Modera Berkeley</td>
<td>2021</td>
<td>205</td>
<td>47.4%</td>
<td>$4,373</td>
</tr>
<tr>
<td>New Californian</td>
<td>2010</td>
<td>148</td>
<td>8.1%</td>
<td>$2,695</td>
</tr>
<tr>
<td>Oxford Plaza</td>
<td>2009</td>
<td>97</td>
<td>N/A</td>
<td>$1,566</td>
</tr>
<tr>
<td>Oxford Street LLC</td>
<td>2014</td>
<td>15</td>
<td>6.6%</td>
<td>$2,389</td>
</tr>
<tr>
<td>Sterling Addison</td>
<td>2002</td>
<td>27</td>
<td>N/A</td>
<td>$4,075</td>
</tr>
<tr>
<td>Sterling Allston</td>
<td>2000</td>
<td>91</td>
<td>33.6%</td>
<td>$4,273</td>
</tr>
<tr>
<td>Sterling Haste</td>
<td>2004</td>
<td>101</td>
<td>30.2%</td>
<td>$3,307</td>
</tr>
<tr>
<td>Sterling Jefferson</td>
<td>1998</td>
<td>34</td>
<td>N/A</td>
<td>$3,266</td>
</tr>
<tr>
<td>Sterling Oxford</td>
<td>1998</td>
<td>56</td>
<td>19.4%</td>
<td>$4,433</td>
</tr>
<tr>
<td>Sterling University Ave</td>
<td>2004</td>
<td>35</td>
<td>N/A</td>
<td>$3,327</td>
</tr>
<tr>
<td>Stonefire Berkeley</td>
<td>2017</td>
<td>98</td>
<td>7.1%</td>
<td>$4,585</td>
</tr>
<tr>
<td>Stranda Apartments</td>
<td>2015</td>
<td>21</td>
<td>1.6%</td>
<td>N/A</td>
</tr>
<tr>
<td>The Addison</td>
<td>2020</td>
<td>107</td>
<td>17.8%</td>
<td>$4,091</td>
</tr>
<tr>
<td>The Dwight</td>
<td>2017</td>
<td>99</td>
<td>18.2%</td>
<td>$3,465</td>
</tr>
<tr>
<td>The Overture</td>
<td>2016</td>
<td>40</td>
<td>N/A</td>
<td>$3,211</td>
</tr>
<tr>
<td>The URSA</td>
<td>2020</td>
<td>50</td>
<td>3.9%</td>
<td>$3,573</td>
</tr>
<tr>
<td>Varsity Berkeley</td>
<td>2015</td>
<td>79</td>
<td>2.4%</td>
<td>$4,805</td>
</tr>
<tr>
<td>Weighted Average</td>
<td>1,895</td>
<td></td>
<td>15.5%</td>
<td>$3,533</td>
</tr>
</tbody>
</table>

Sources: CoStar 2022, Strategic Economics 2022.

### FIGURE 2: COMPARISON OF AVERAGE RENT ASSUMPTIONS WITH 2018 AND 2022 EPS STUDIES

<table>
<thead>
<tr>
<th></th>
<th>Average Rent per sf, Comparable Buildings</th>
<th>Average Rent per sf, Incl Premium</th>
<th>Percent Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPS Study, June 2018</td>
<td>$5.41</td>
<td>$6.16</td>
<td>14%</td>
</tr>
<tr>
<td>EPS Study, June 2022</td>
<td>$4.90</td>
<td>$5.99</td>
<td>22%</td>
</tr>
<tr>
<td>Strategic Economics review, Sept 2022</td>
<td>$4.98</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

Sources: EPS, 2018, 2022; CoStar 2022, Strategic Economics 2022.
FIGURE 3: COMPARISON OF ESTIMATED CAPITALIZATION RATES

<table>
<thead>
<tr>
<th>Source</th>
<th>Market Area</th>
<th>Analysis Period</th>
<th>Estimated Capitalization Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lee &amp; Associates Multifamily Overview</td>
<td>San Francisco East Bay</td>
<td>Q2 2022</td>
<td>4.10%</td>
</tr>
<tr>
<td>CoStar</td>
<td>Berkeley</td>
<td>2022 YTD</td>
<td>4.00%</td>
</tr>
</tbody>
</table>


FIGURE 4: ESTIMATED CAPITALIZATION RATES FOR MULTIFAMILY DEVELOPMENTS IN BERKELEY

![Graph showing estimated capitalization rates from 2012 to 2022 YTD in Berkeley.]

Hi Anne. Re-reading the Downtown Area Plan I found this policy that supports the DRC requiring the applicant to submit an accurate “simulation” of the view from the Campanile to the Golden Gate:


**Design and position new buildings to avoid significant adverse solar-, visual- or wind-related impacts on important public open spaces.** Also provide for adequate natural light in residential units through appropriate building form (see Policies ES-3.3 and LU-4.2, and Table LU-1).

a) Strengthen standards and guidelines to better address potential solar access and wind impacts.

b) For buildings exceeding 85 feet, use solar, visual and wind simulations to evaluate and refine design alternatives.

Policy HD-4.3: Urban Open Spaces. Create,

Best regards,
Virginia Warheit

Sent from my iPad

Sent from my iPad
From: Virginia Warheit <virginia.warheit@me.com>
Sent: Sunday, February 12, 2023 9:21 AM
To: Burns, Anne M <ABurns@cityofberkeley.info>
Cc: BAHA <baha@berkeleyheritage.com>; All Council <council@cityofberkeley.info>; Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; capitalstrategies@berkeley.edu
Subject: 2190 Shattuck Avenue, view from the Campanile

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear members of the Design Review Committee,

It would be premature for the DRC to make a recommendation on this project when it has not yet received an accurate view of the proposed building from the Campanile. When it does receive an accurate view, it will be clear that the proposed building blocks the view of the Golden Gate from the Campanile, an iconic view that the University has protected for nearly one hundred and fifty years because of its importance as a central organizing element in the design of the UC Berkeley campus.

Detailed information provided during review of a previous building proposed for this site documented that the blocking of this view is a significant adverse environmental impact, calling into question the accuracy and validity of the EIR.

Members of the DRC may wonder why proposals for a tall building on this parcel continue to come before them, given this impact. The reason, which was uncovered during the previous review process, is that while the Downtown Plan identified that blocking this view would be a significant environmental impact, it then misrepresented the effect of a tall building on this particular site by providing a false view taken from the top of the Campanile instead of at ground level. We are still suffering the consequences of that dishonesty.

I realize that we are all supposed to become Philistines, put no importance on such things as culture and views, and bow down to the new god of housing (for those who can afford it). But for the sake of good form, the DRC should not make a recommendation on this project without first seeing an accurate view from the Campanile.

Sincerely,
Virginia Warheit
Berkeley resident
MCP, City and Regional Planning, UCB

Sent from my iPad
2190 Shattuck Avenue

Use Permit Modification #ZP2022-0026 to modify the project originally approved under #ZP2016-0117, to construct a 25-story (268 feet, 6 inches), 397,212-square-foot mixed-use building with up to 326 dwelling units (including up to 32 Very Low-Income Density Bonus qualifying units), approximately 7,500 square feet commercial space, and approximately 51 underground parking spaces.

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.

When: Thursday, March 30, 2023, 7:00 pm
Where: Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

Please see the Agenda for details: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-03-30_ZAB_Agenda.pdf

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: DT – Downtown; Downtown Area Plan
  - Zoning: C-DMU (Core) – Downtown Mixed-Use Commercial District – Core Sub-area
B. Zoning Permits Required:
- Use Permit under Berkeley Municipal Code (BMC) Section 23.404.070(B) to modify an approved permit
- Use Permit under BMC Section 23.204.130(E)(2) to construct a building that exceeds the district height limit, and that is over 120 feet but not more than 180 feet
- Use Permit under BMC Section 23.204.130(E)(3)(b) to modify front, side, and rear setback requirements
- Use Permit under BMC Section 23.204.130(E)(3)(b)(i) to exceed 120 feet in width in diagonal measurement
- Use Permit under BMC Section 23.204.130(E)(6)(a)(i) to pay a fee in lieu of providing Privately-Owned Public Open Space
- Administrative Use Permit under BMC Section 23.304.050(A) to allow architectural projections to exceed district height limits

C. Concessions and Waivers Requested Pursuant to State Density Bonus Law (California Government Code Section 65915):
- Concession to reduce the commercial parking requirement – to provide zero, where 11 is required
- Concession to reduce the car share requirement – to provide zero, where two is required
- Waiver of BMC Section 23.204.130(E)(2) to exceed building height limits – to be 264 feet (plus 5-foot parapet, by right), where 180 feet (plus 5-foot parapet, by right) is the limit
- Waiver of BMC Section 23.204.130(E)(3)(b) to modify front, side, and rear setbacks above 75 feet in height – see Table 4 for details
- Waiver of BMC Section 23.204.130(E)(3)(b)(i) to exceed 120 feet in width in diagonal measurement – to be 238 feet in width
- Waiver of BMC Section 23.204.130(E)(4) to reduce the usable open space requirement – to be 22,719 square feet, where 26,080 square feet is required
- Waiver of BMC Section 23.204.130(E)(4) to reduce the Privately-Owned Public Open Space (POPOS) – to be 0 square feet, where 150 square feet is required

C. CEQA Recommendation: It is staff’s recommendation that the Zoning Adjustments Board (ZAB) adopt the Addendum to the certified 2190 Shattuck Mixed-Use Project Final EIR (SCH #2017012011) and Revised Mitigation Monitoring and Reporting Program (Revised MMRP) pursuant to the California Environmental Quality Act (CEQA).

D. Parties Involved:
- Applicant: Trachtenberg Architects, 2421 Fourth Street, Berkeley, CA 94701
- Property Owner: PR III Shattuck LLC c/o PGIM Real Estate, 101 California Street, 40th Floor, San Francisco 94111
Further Information:
All application materials are available online at:

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, Sharon Gong, at (510) 981-7429 or sgong@cityofberkeley.info.

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

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@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board.

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

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:
- **Correspondence received by 5:00 PM two days before this public hearing**, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before this public hearing**, will be saved in the project administrative record.
Accessibility Information / ADA Disclaimer:
To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) 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 fourteen (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 ninety (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 ninety (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.