



Office of the City Manager

PUBLIC HEARING  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Director, Planning & Development Department  
 Subject: ZAB Appeal: 2065 Kittredge Street, Use Permit #ZP2021-0193

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board decision to approve Use Permit # ZP2021-0193 to demolish portions of existing City Landmark commercial buildings and construct an eight-story, mixed-use building at 2065 Kittredge Street with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces, and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On July 26, 2021, William Schrader submitted a Preliminary Application to vest rights pursuant to Senate Bill (SB) 330, the Housing Crisis Act of 2019 (Government Code Sections 65941.1 and 66300), for a housing development project.

On October 25, 2021, William Schrader submitted an application for Use Permit #ZP2021-0193 to construct an eight-story, mixed-use building with 187 dwelling units, 4,993 square feet commercial space and 43 parking spaces. The applicant also submitted an application for Landmark Structural Alteration Permit #LMSAP2021-0004 for the alteration of a City Landmarked site.

On June 1, 2022, the use permit application was deemed complete.

On April 21, 2022, the Design Review Committee (DRC) conducted a DRC Referral review for LMSAP2021-0004, and forwarded advisory comments for the Landmarks Preservation Commission (LPC) and Zoning Adjustments Board (ZAB).

On June 2, 2022 the LPC conducted a review of Structural Alteration Permit (SAP) #LMSAP2021-0004, and continued the discussion to a second meeting. On August 4, 2022, the LPC conducted a second meeting, approved the SAP for demolition and new

construction at the landmark site, adopted an Addendum to a previously certified and adopted Environmental Impact Report (EIR), and added a required condition of approval that the project obtain Final Design Review.

On September 22, 2022, the ZAB conducted a public hearing for the use permit application. After hearing public comments and holding discussion, the ZAB adopted the EIR Addendum and Revised Mitigation Monitoring and Reporting Program (MMRP) and approved the use permit by a vote of 7-0-0-1 (Yes: Duffy, Kahn, Kim, Sanderson, Thompson, Vincent, Tregub; No: None; Abstain: None; Absent: O' Keefe).

On October 11, 2022, staff issued a Notice of Decision of the ZAB approval.

On October 25, 2022, the City Clerk received an appeal filing from Adams, Broadwell Joseph and Cardozo, on behalf of East Bay Residents for Responsible Development.

On January 17, 2023, staff posted the public hearing notice at the site and three nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal.

### BACKGROUND

The project site is located within the Downtown Mixed-Use District (C-DMU), Core Sub-Area, as identified in the City's Downtown Area Plan (DAP). Directly adjacent to the project site and on the same block is the Shattuck Hotel, a City of Berkeley Landmark, whose main lobby and entrance are on Allston Way but which also occupies the airspace above the ground floor retail along the entire block's frontage on Shattuck Avenue. Below the hotel rooms along Shattuck Avenue is a row of commercial storefronts, as well as the entrance to the former commercial occupant known as Shattuck Cinemas, which is now closed.

Commercial land uses and a public parking structure are located north of the project site across Allston Way. South of the project site on Shattuck Avenue and across Kittredge Street is the Berkeley Central Library, a City of Berkeley and National historic landmark. West of the project site across Harold Way are the Dharma College and the Mangalam Center, both City of Berkeley Landmarks.

The project site is a single parcel that encompasses an entire City block with street frontage on Allston Way (north), Shattuck Avenue (east), Kittredge Street (south) and Harold Way (west) that is subdivided into commercial airspace condominium parcels A, B, and C of Parcel Map 6889. The project site is Unit B of the condominium subdivision, Parcel Map 6889, which was created in December, 2020. Entitlements were previously obtained for the project site in 2015 (UP13-10000010 and LM13-40000002, under the address 2211 Harold Way) to demolish historic structures and construct an 18-story, 302-unit, mixed-use building, with approximately 10,877 square feet of commercial space, a ten-theater cinema complex, and 177 underground parking spaces. Building

permits were never obtained for the project, and the City deemed the entitlements expired on January 17, 2020.

The proposed project would demolish a portion of the City Landmark Shattuck Hotel (the 1913 expansion) and fully demolish the City Landmark Hink's department store expansions completed in 1926 and 1959, and construct an eight-story, mixed-use building with 187 dwelling units.

The project is eligible for a density bonus under Government Code Section 65915, by including nine Very Low-income units (five percent of the base project), and qualifies for a 20 percent density bonus, or 33 bonus units, of which 24 are utilized, resulting in a 187-unit density bonus project, with a concession to reduce the usable open space requirement, and waivers of height maximums, front yard setback minimums, the landscaped usable open space minimum, and the commercial parking minimum. The ZAB found the project to be compliant with all vested and applicable, objective general plan and zoning standards, and without specific adverse impact on public health or safety, and approved it on September 22, 2022 without reductions to project's density, pursuant to the State Housing Accountability Act (HAA), Government Code Section 65589.5(j).<sup>1</sup>

For additional project background, please see Attachment 3, the ZAB staff report for this project.

#### RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's letter and staff's responses follow. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the appeal letter (Attachment 2) for the full text.

#### Issue:

**The appellants assert that the Project was approved by the ZAB without meeting the "non-detriment" finding in Berkeley Municipal Code Section 23.406.040(E)(1)<sup>2</sup>, and the project is detrimental to the general welfare of the City, its residents, and**

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<sup>1</sup> The Housing Accountability Act (HAA), 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 the development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

<sup>2</sup> Berkeley Municipal Code Section 23.406.040(E)(1) Findings for Approval:

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

- (a) Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use; and
- (b) Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City."

**its workers, in violation of the City’s zoning code. Specifically, they assert that the Project Applicant has made no commitment to build using a local skilled and trained workforce, to provide apprenticeship training opportunities for City of Berkeley or East Bay residents, or to provide healthcare for its construction workforce. The appellants believe that the Project is therefore inconsistent with City plans, policies, and goals which seek to ensure that the City has an adequate supply of decent housing and living wage jobs. Further, the project previously approved on this site – the 2211 Harold Way Mixed Use Project – was approved with a community benefits package that included a labor agreement with other benefits.**

**The appellants further assert that the ZAB approval is inconsistent with the analyses presented in the staff report written in support of Council’s recent Referral to draft the Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (“HARD HATS”) Ordinance, which, if enacted, would implement apprenticeship program requirements and healthcare security for workers on General Plan area projects.**

Response:

Although the Berkeley Municipal Code (BMC) requires findings of general non-detriment for approval of discretionary permits, and the General Plan (GP) and Downtown Area Plan (DAP) goals and policies broadly guide development in the downtown zoning district, BMC non-detriment findings and GP/DAP goals and policies are not objective standards; they cannot provide a basis for denial of (or reduction in density for) a housing project due to protections provided by the HAA. Pursuant to the HAA, the City cannot deny or reduce the density of a housing development that is compliant with objective standards, unless it can meet the strict finding of specific adverse impact<sup>3</sup> on public health or safety – a level of impact which the State Department of Housing and Community Development considers to be rare.<sup>4</sup>

The project applicant submitted a Preliminary Application pursuant to SB 330 (Government Code Sections 65941.1 and 66300) to vest in policies, standards and fees in effect on July 26, 2021, when the application was determined to be complete, for the pendency of the project approval. Upon review of the SB 330 use permit application, the ZAB determined that the project was compliant with all vested and applicable objective general plan and zoning standards, that the findings for specific adverse impact on

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<sup>3</sup> Per Government Code Section 65589.5(d)(2), a “specific, adverse impact” means “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”

<sup>4</sup> Housing Accountability Act Technical Assistance Advisory (Government Code Section 65589.5), p. 20; State Department of Housing and Community Development.

public health or safety in order to deny (or reduce) the project could not be made, and approved the project in accordance with SB 330 and the HAA.

In addition, though the project site is located in the C-DMU, Mixed Use Commercial District, where a “community benefits” package that includes a Project Labor Agreement is required of proposed buildings which exceed 75 feet in height, this project is not subject to the requirement because its Base Project<sup>5</sup> height does not exceed 75 feet, unlike the 2211 Harold Way project that the appellants reference.

Finally, the HARDHATS ordinance referenced in the appeal letter is not yet City policy. If the Berkeley City Council in the future were to adopt the proposed ordinance in its current form, it would still not be relevant to a land use permit review process, as “HARDHATS” is framed as a requirement of all projects of a certain size, not as a discretionary review criterion.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23.410.040(G), the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB’s decision, or (3) remand the matter to the ZAB.

#### Action Deadline:

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

#### CONTACT PERSONS

Jordan Klein, Director, Planning & Development Department, (510) 981-7534  
Steven Buckley, Land Use Planning Manager, (510) 981-7411  
Sharon Gong, Project Planner, (510) 981-7429

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<sup>5</sup> Pursuant to Government Code Section 65915, the Base Project in a density bonus project is the objective standards-compliant project that represents the maximum allowable density on the site before adding the density bonus units, which are conferred by-right if the minimum amount of below-market-rate units are included in the project.

ZAB Appeal: 2065 Kittredge Street  
Use Permit #ZP2021-0193

PUBLIC HEARING  
January 31, 2023

Attachments:

1. Draft Resolution

- Exhibit A.1: Findings and Conditions
- Exhibit A.2: Mitigation Monitoring and Reporting Program, Revised July 2022
- Exhibit A.3: SAP Findings and Conditions
- Exhibit B: Project Plans, received September 1, 2022
- Exhibit C: EIR Addendum for 2065 Kittredge Mixed-Use Project
- Exhibit D: Supplemental Analysis Memorandum to EIR Addendum, dated September 8, 2022

2. Appeal Letter, dated received October 25, 2022

3. September 22, 2022 ZAB Hearing Staff Report

4. Index to Administrative Record

5. Administrative Record

6. Public Hearing Notice

Referenced Link:

2211 Harold Mixed-Use Project Final EIR and Statement of Overriding Considerations, available at: <https://aca.cityofberkeley.info/CitizenAccess/Default.aspx>. Click on Zoning tab; enter permit number ZP2021-0193; select permit ZP2021-0193; click on the "Record Info" drop down menu; click on Attachments for a list of all application materials.

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD APPROVAL OF USE PERMIT #ZP2021-0193 TO DEMOLISH PORTIONS OF EXISTING CITY LANDMARK COMMERCIAL BUILDINGS AND CONSTRUCT AN EIGHT-STORY, MIXED-USE BUILDING AT 2065 KITTREDGE STREET WITH 187 DWELLING UNITS (INCLUDING FOUR LIVE/WORK UNITS AND NINE VERY LOW-INCOME UNITS), 4,993 SQUARE FEET COMMERCIAL SPACE AND 43 PARKING SPACES, AND DISMISS THE APPEAL

WHEREAS, on July 26, 2021, William Schrader (“applicant”) submitted a Preliminary Application to vest rights pursuant to Senate Bill (SB) 330, the Housing Crisis Act of 2019 (Government Code Sections 65941.1 and 66300), for a housing development project.

WHEREAS, on October 25, 2021, William Schrader submitted an application for Use Permit #ZP2021-0193 to demolish portions of existing City Landmark commercial buildings and construct an eight-story, mixed-use building with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces (“project”); and also submitted an application for Landmark Structural Alteration Permit #LMSAP2021-0004 for the alteration of a City Landmarked site; and

WHEREAS, on June 1, 2022, staff deemed this application complete and determined that the level of California Environmental Quality Act (“CEQA”) review would be an Addendum to the certified 2211 Harold Way Mixed-Use Project Final Environmental Impact Report (“EIR”); and

WHEREAS, on April 21 2022, the Design Review Committee (DRC) conducted Design Review Referral for LMSAP2021-0004, and forwarded advisory comments for the LPC and ZAB.

WHEREAS, on June 2, 2022 the Landmarks Preservation Commission (LPC) conducted a review of Structural Alteration Permit #LMSAP2021-0004, and continued the discussion to a second meeting; and

WHEREAS, on August 4, 2022, the LPC and conducted a second meeting, approved the SAP for demolition and new construction at the landmark site, adopted an Addendum to the previous EIR, and conditioned the project for Final Design Review; and

WHEREAS, on September 8, 2022, staff mailed and posted a Notice of Public Hearing for the project at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area; and

WHEREAS, on September 22, 2022, the Zoning Adjustments Board (ZAB) conducted a public hearing for the Use Permit. After hearing public comments and holding discussion, the ZAB adopted the EIR Addendum and Revised Mitigation Monitoring and Reporting Program, and approved the Use Permit by a vote of 7-0-0-1 (Yes: Duffy, Kahn, Kim,

Olson, Sanderson, Thompson, Vincent, Tregub; No: None; Abstain: None; Absent: O' Keefe); and

WHEREAS, on October 11, 2022, staff issued the notice of the ZAB decision; and

WHEREAS, on October 25, 2022, the City Clerk received an appeal filing from Adams, Broadwell Joseph and Cardozo, on behalf of East Bay Residents for Responsible Development; and

WHEREAS, on or before January 17, 2023, staff mailed and posted a Notice of Public Hearing at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area; and

WHEREAS, on January, 31, 2023, the Council held a public hearing to consider the ZAB's decision, and in the opinion of this Council, the facts stated in, or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A.1 to affirm the decision of the ZAB to approve Use Permit #ZP2021-0193, adopts the conditions of approval in Exhibits A.1, A.2 and A.3; adopts the project plans in Exhibit B; adopts the EIR Addendum and Supplemental Analysis Memo in Exhibits C and D; and dismisses the appeal.

#### Exhibits

- Exhibit A.1: Findings and Conditions
- Exhibit A.2: Mitigation Monitoring and Reporting Program, Revised July 2022
- Exhibit A.3: SAP Findings and Conditions
- Exhibit B: Project Plans, received September 1, 2022
- Exhibit C: EIR Addendum for 2065 Kittredge Mixed-Use Project
- Exhibit D: Supplemental Analysis Memorandum to EIR Addendum, dated September 8, 2022



ATTACHMENT 1, EXHIBIT A.1

FINDINGS AND CONDITIONS  
SEPTEMBER 22, 2022

## 2065 Kittredge Street

Use Permit #ZP2021-0193 to demolish portions of existing City Landmark commercial buildings and construct an 8-story, mixed-use building with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces. Project utilizes State Density Bonus.

### PERMITS REQUIRED

- Use Permit under BMC Section 23.326.070(A) to demolish a non-residential building
- Use Permit under BMC Section 23.204.020(A) to construct a new mixed-use development
- Use Permit under BMC Section 23.204.020(A) to construct dwelling units
- Use Permit under BMC Section 23.204.030(B)(1) to create new floor area of 10,000 square feet or more
- Use Permit under BMC Section 23.204.130(E)(1) to exceed the maximum building height limits, up to 75 feet (plus 5-foot parapet, by right)

### CONCESSIONS/WAIVERS UNDER GOVERNMENT CODE SECTION 65915-65918

- Concession to reduce the usable open space requirement – to provide 11,916 square feet where 14,960 square feet is required
- Waiver of BMC Section 23.204.130(E)(1) to exceed building height limits – to be 87 feet (plus 5-foot parapet, by right), where 75 feet is the limit (plus 5-foot parapet, by right, with a use permit)
- Waiver of BMC Section 23.204.130(E)(3) to reduce setbacks to 0 feet, where 15 feet is required, where above 75 feet in height
- Waiver of BMC Section 23.204.130(E)(3) to increase front setback maximum to 0-20 feet, where 5 feet is required, at 0-20-foot building height
- Waiver of BMC Section 23.304.090(B)(7) to reduce the landscaped usable open space to 25 percent, where from 40 percent minimum is required
- Waiver of BMC Section 23.304.050(A) to exceed building height limits with rooftop architectural elements which exceed the maximum height limit for the district
- Waiver of BMC Section 23.322.030(B)(1) to reduce the minimum commercial parking requirement to zero, where eight is required

### I. CEQA FINDINGS

1. Pursuant to the California Environmental Quality Act (CEQA), the City prepared an EIR Addendum 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 EIR Addendum, potential impacts associated with the modified project (the proposed changes compared to the project evaluated in the Final EIR) are consistent with potential impacts characterized and mitigated for in the Final EIR. 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(a) requiring preparation of a subsequent EIR would not be met.

- B. EIR Addendum and Revised MMRP: An Addendum to the 2211 Harold Way Mixed-Use Project (UP 13-10000010) Final EIR, which was certified in December 2015, was prepared to evaluate the potentially significant environmental impacts of the proposed project, pursuant to the California Environmental Quality Act. The Addendum considered the Final EIR and Statement of Overriding Considerations, and evaluated the modified project. The modified project was found to be smaller and less impactful than the Final EIR project. The impacts related to demolition and alteration of historic buildings, would remain significant and unavoidable, and the same overriding considerations would apply to the modified project, except that the project is no longer required to provide community benefits, and cultural resource impacts were addressed in the modified design.

The Addendum described the changes in the modified project, and addressed the following issues in detail: Air Quality, Cultural Resources, Greenhouse Gas Emissions, Noise, Transportation, and Utilities and Service Systems. All other environmental issues were evaluated for impact from the modified project as well, with the conclusion that impacts to these areas will be less than significant with mitigation, similar to the original project. For each of the above-listed areas of evaluation, the EIR 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 will be necessary for any of these evaluated areas. 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 a reduction in building height, design strategies to break up massing with varied rooflines and materials, and the projection of the second-floor level above the double-height street level, aligning with the cornice of the 1912 portion of the Shattuck Hotel. These design modifications have responded to the design measures adopted in Mitigation Measures CR-2(a), (b) and (c) of the Final EIR; therefore the measures do not apply to the modified project. In particular, the modified project avoids impact to the Allston Way elevation, in response to Mitigation Measure CR-2(a); the redesign of the Kittredge Street “hyphen” responds to Mitigation Measure CR-2(b); and the

removal of large-scale use of aluminum glazing systems responds to Mitigation Measure CR-2(c).

In conclusion, similar to the original project, cultural resource impacts from the modified project will be less than significant with mitigation, with the exception of impacts related to demolition and alteration of historic buildings, which will remain significant and unavoidable. Mitigation Measures CR-2(a) through (c) will be removed from the Mitigation Monitoring and Reporting Program (MMRP). All other measures adopted in the Final EIR for the purposes of mitigating cultural resources impacts remain applicable.

Revisions to the project were made after the LPC meeting on August 4, 2022, including the elimination of one unit (two bedrooms), the addition of 812 square feet of commercial area, and other minor revisions. The City reviewed the revised plans and concluded that the revisions did not change the conclusions of the EIR Addendum.

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 2211 Harold Way 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 cultural resources are acceptable in light of the project's benefits. These benefits were set forth in the statement of overriding considerations that was adopted in connection with the 2211 Harold Way project, and, with the exception of that statement's inclusion of benefits regarding maintaining a cinema and community benefits required per BMC Section 23.E.68.090.E for the tower aspect of that project, the benefits and considerations in that statement are applicable to the modified project. The benefits set forth therein constitute overriding considerations warranting approval of the modified project, independent of the other benefits, despite each and every unavoidable impact.

The EIR Addendum, 2211 Harold Mixed-Use Project Final EIR and Statement of Overriding Considerations are available at this link: <https://aca.cityofberkeley.info/CitizenAccess/Default.aspx>. Click on Zoning tab; enter permit number ZP2021-0193; select permit ZP2021-0193; 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 164 units;
  - B. The project will provide at least nine (9) Very Low-Income (VLI) qualifying units in the 163-unit "base project", as more fully set forth in Condition 70;
  - C. The project is entitled to a density increase of 20 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 one

concession or incentive. This equates to a density bonus of 24 units (33 units maximum) above the Base Project, for a total of 187 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 usable open space requirement – to provide 11,916 square feet where 14,960 square feet 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)(1) to exceed building height limits – to be 87 feet (plus 5-foot parapet, by right), where 75 feet is the limit (plus 5-foot parapet, by right, with a use permit)
  - B. Waiver of BMC Section 23.204.130(E)(3) to reduce setback to 0 feet, where 15 feet is required, where above 75 feet in height
  - C. Waiver of BMC Section 23.204.130(E)(3) to increase front setback maximum to 0-20 feet, where 5 feet is required, at 0-20 foot building height
  - D. Waiver of BMC Section 23.304.090(B)(7) to reduce the landscaped usable open space to 25 percent, where from 40 percent minimum is required
  - E. Waiver of BMC Section 23.304.050(A) to exceed building height limits with rooftop architectural elements which exceed the maximum height limit for the district
  - F. Waiver of BMC Section 23.322.030(B)(1) to reduce the minimum commercial parking requirement to zero, where 8 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 187 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. Shadow impacts will affect commercial uses only, and will not affect residential uses; 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 the project will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

#### **IV. OTHER FINDINGS FOR APPROVAL**

- 8. As required by Section 23.326.070(D) of the BMC, the Zoning Adjustments Board finds that the proposed demolition of the existing building at 2065 Kittredge Street will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and meets the finding that demolition is required to allow a proposed new building or other proposed new use.
- 9. 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: DAP Goals ES-3, UL-1 AC-1, AC-4. The project provides higher-density development in proximity to regional transit, shops and amenities, and it will improve options to increase access to Downtown on foot, by bicycle and via transit will promote transit as an efficient and attractive choice through its location and through its Transportation Demand Management Plan and other associated Conditions of Approval.

- b. Land Use: DAP Goal LU-1 (Policies LU-1.1 and LU-1.3). The Project will include residential, and commercial uses that allow people who live, work and learn in the Downtown to meet daily needs on foot.
  - c. Historic Preservation and Urban Design: The LPC referred the project to DRC for design review recommendations, and considered the project in relation to its urban context, focusing on the application of the Downtown Design Guidelines, which implement the objectives and policies of the Historic Preservation and Urban Design chapter of the DAP. The LPC approved the SAP with findings for consistency with Landmarks Preservation, the Secretary of Interior standards for rehabilitation, and DAP design review standards. (See section IV.B for details.)
  - d. Streets and Open Space: DAP Goal OS-1. The project will enhance public open spaces and streets to benefit pedestrians, improve Downtown's livability, and foster a sense of place.
  - e. Housing and Community Health and Services: DAP Goals HC-1, HC-2, HC-3. The project will encourage Downtown as a thriving, livable, diverse residential neighborhood with a mix of supportive uses, and play a significant role in meeting Berkeley's continuing need for additional housing.
  - f. Economic Development: DAP Goal ED-1. The project will serve the needs of the neighborhood and the City, make Downtown a more attractive regional destination, by promoting successful retail businesses and other attractions, with daytime and night-time populations to support them.
- B. Is compatible with surrounding uses and buildings:
- a. The project site currently includes office and retail uses. (Previous cinema and museum uses no longer occupy the site.) The proposed project will change uses on the site to ground-floor commercial (retail and food service) and residential uses above. Uses on the surrounding properties include retail, public parking, office, library, hotel, and residential. The project will not introduce new land uses that do not already exist in the Downtown, and as described above, will further the vision and goals of the DAP.
  - b. The DRC forwarded a positive recommendation for the project design, and the LPC voted to approve the SAP, with findings for consistency with Landmarks Preservation, the Secretary of Interior standards for rehabilitation, and DAP design review standards.
-

## **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. Pay Transparency Acknowledgement (BMC Section 13.104.030)**

Prior to the issuance of a building permit for any Project subject to this Chapter:

- A. A Responsible Representative of the Permittee shall certify under penalty of perjury that:  
(1) the Permittee has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (2) the Permittee will be responsible for demonstrating compliance with this Chapter.
- B. The Permittee shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. A Responsible Representative of the Permittee shall certify under penalty of perjury that the Contractor and all Qualifying Subcontractors performing work on the Project will comply with Chapter 13.104 of the Berkeley Municipal Code and with Labor Code sections 226(a) and 2810.5 for each employee who works on the Project.

**10. Pay Transparency Attestations Following Project Completion (BMC Section 13.104.040)**

Within 10 days of the approved final inspection of any Project subject to this Chapter, each Permittee shall provide to the City for each Contractor and Qualifying Subcontractor a Pay Transparency Attestation on a form approved by the City. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor shall attest under penalty of perjury that the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code and Labor Code sections 226(a) and 2810.5 for each employee who performed work on the Project. The City will maintain Pay Transparency Attestation forms for period of at least three years after their date of receipt by the City.

**11. Posting of Ordinance (BMC Section 13.104.050)**

Each day work is performed on the Project, each Permittee shall post, and keep posted in a conspicuous location where it may be easily read by employees during the hours of the workday, a notice that: (A) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (B) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (C) provides current contact information, including office address, telephone number, and email address of the Labor Commissioner of the State of California.



**12. Conditions of Approval (BMC Section 13.104.060)**

The requirements of Sections 13.104.030 through 13.104.050 shall be included as conditions of approval of any Use Permit or Zoning Certificate for any Project that is subject to this Chapter. Failure to comply with the requirements of any provision of this Chapter shall be grounds for issuance of an administrative citation under Chapter 1.28 and/or the revocation or modification of any Use Permit issued for the Project under Chapter 23B.60.

**13. 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:**

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

**Project Liaison** \_\_\_\_\_  
Name Phone #

**15. Final Geotechnical Report.** The Project Geotechnical Consultant shall coordinate with the project team and complete the analysis necessary to provide final recommendations and a signed and stamped report for the proposed project. Final recommendations shall consider final floor elevations and potential grading concepts. The final report shall include specifications for engineered fill for basement backfill where shallow footings may be proposed, and provide recommended bearing pressures for footings embedded into this engineered fill, if applicable. The applicant shall consider the benefits of drilling a boring along the northern side of the

property to investigate the subsurface conditions in the vicinity of the historic Strawberry Creek channel and installing and monitoring a piezometer(s) to better document groundwater conditions before and during construction. The Final Geotechnical Report shall be compiled, signed and stamped by the Project Geotechnical Consultant and submitted to the City for review by the City Geotechnical Consultant and City Engineer as part of building permit plan check.

16. Geotechnical Plan Review. The applicant's geotechnical consultant shall review and approve all geotechnical aspects of the final project building and grading plans (i.e., site preparation and grading including removal and replacement/treatment of expansive soils, site surface and subsurface drainage improvements including site runoff discharge, and design parameters for foundations and retaining walls, etc.) to ensure that their recommendations have been properly incorporated and to ensure that the project concept has not changed significantly since preparation of their report. The results of the plan review should be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.
17. Vapor Intrusion. Submit a vapor intrusion report (including subslab vapor samples and indoor air samples at the northwestern portion of the basement level of the Site) to the Toxics Division for review. See the project Phase I report, dated February 5, 2021 for details on the required report scope.
18. Final Design Review. The Project requires approval of a Final Design Review application by the Design Review Committee.
19. 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.
20. 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.
21. 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 spalls; 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.

22. 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)**

23. Fee Deferrals. All zoning project application fees that were deferred at the time of application submittal shall be paid in full.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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](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/> 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/>

**Prior to Issuance of Any Building (Construction) Permit**

29. Privately Owned Public Open Space (POPOS). The applicant shall submit proof of measures taken (i.e. signage, etc..) to ensure that the POPOS area at Allston and Harold Way are accessible to the public for the life of the project.
30. 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.
31. 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.
32. 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 Harold Way, Kittredge Street, 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.
33. 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.
34. 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.
35. 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.

36. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET<sub>o</sub>) for Berkeley is 41.8.
37. 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).
38. 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).
39. 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.
40. 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:**

41. 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:**

42. 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.
43. 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.

44. 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.
45. 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.
46. 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.

**47. 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.

**48. 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.

**49. 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.

- 50.** 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.
- 51.** 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.
- 52.** 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.

- 53.** 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.
- 54.** 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.
- 55.** 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.
- 56. 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.
- 57. 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.
- 58. 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.
- 59. 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.
- 60. 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.
- 61. 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:**

- 62. 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.

- 63. Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **September 1, 2022**, except as modified by conditions of approval.
- 64. Geotechnical Construction Inspections.** The geotechnical consultant shall inspect, test (as needed), and approve all geotechnical aspects of the project construction. The inspections shall include, but not necessarily be limited to: site preparation and grading including the removal and replacement of undocumented fill, site surface and subsurface drainage improvements, and excavations for foundations and other improvements prior to the placement of steel and concrete. The Consultant should be allowed to inspect site excavations to confirm areas of undocumented fill including areas of potential fill associated with the historic alignment of Strawberry Creek. The results of these inspections and the as-built conditions of the project shall be described by the geotechnical consultant in a letter and submitted to the City Engineer for review prior to final (granting of occupancy) project approval.
- 65. 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).

- 66. 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**

- 67. Number of Below Market Rate Units.** The project shall provide **nine (9) 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.
- 68. 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](mailto:affordablehousing@cityofberkeley.info) for review and approval.
- 69.** 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.
- 70. 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:

Unit Size	AMI Standard
Studio unit	AMI for a one person household
One-bedroom unit	AMI for a two person household
Two-bedroom unit	AMI for a three person household
Three-bedroom unit	AMI for a four person household

71. 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.
72. 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.
73. 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.
74. 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 All Times:**

75. 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.
76. 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.
77. 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.
78. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Landmarks Preservation Commission approval.



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79. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
80. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
81. 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.
82. 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.
83. Tenant Notification. The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and entertainment uses, and that each occupant shall not seek to impede their lawful operation.
84. 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.
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## ATTACHMENT 1, EXHIBIT A.2

### MITIGATION MONITORING & REPORTING PROGRAM – JULY 2015

REVISED JULY 2022

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This Draft Mitigation Monitoring and Reporting Program (MMRP) was formulated based upon the findings of the Environmental Impact Report (EIR) and Infill Initial Study Checklist prepared for the 2211 Harold Way Mixed-Use Project. The MMRP, which is provided in Tables 1 and 2 of this section, lists mitigation measures recommended in the EIR and the Infill Checklist 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.

*July 27, 2022*

*This MMRP was revised to reflect the findings in the EIR Addendum prepared for the 2065 Kittredge Mixed-Use Project (ZP2021-0193 & LMSAP2021-0004). Specifically, Cultural Resource Mitigation Measures CR-2(a) through (c) were deleted (because they no longer apply due to changes in the project design).*

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MITIGATION MONITORING AND REPORTING PROGRAM

July 30, 2015 – Revised July 2022

**Table 1: 2211 Harold Way Mixed-Use Project EIR Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Date and Initials)
<b>I. CULTURAL RESOURCES</b>				
<p><b>CR-1</b> The proposed project would involve demolition of the 1926 addition to the Hotel. Both of these additions contribute to the hotel's historical significance and are included in the property's local landmark designation.</p>	<p><b>CR-1(a) Documentation.</b> In consultation with the City of Berkeley Planning and Development, the project applicant shall complete Historic American Building Survey (HABS) Level II documentation of the Shattuck Hotel and its setting. This documentation shall include drawings, photographs, and a historical narrative.</p> <ul style="list-style-type: none"> <li>• Drawings: Existing historic drawings of the Shattuck Hotel (including the original 1910 building and the 1912, 1913, and 1926 additions), if available, shall be photographed with large-format negatives or photographically reproduce on Mylar. In the absence of existing drawings, full-measured drawings of the complex's plan, exterior elevations, and courtyard elevations should be prepared.</li> <li>• Photographs: Photo-documentation of the Shattuck Hotel (including the original 1910 building and the 1912, 1913 and 1926 additions) shall be prepared to HABS standards for archival photography. HABS standards require large-format black-and-white photography, with the original negatives having a minimum size of 4 x 5 inches. Digital photography, roll film, film packs, and electronic manipulation of images are not acceptable. All film prints, a minimum of 4 x 5 inches, must be hand-processed according to the manufacturer's specifications and printed on fiber base single weight paper and dried to a full gloss finish. A minimum of 12</li> </ul>	<p>City of Berkeley Planning Department, Land Use Division</p>	<p>Prior to the issuance of a demolition permit</p>	

MITIGATION MONITORING AND REPORTING PROGRAM

July 30, 2015 – Revised July 2022

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Date and Initials)
	<p>photographs must be taken, detailing the site, building exteriors, and building interiors. Photographs must be identified and labeled using HABS standards. Color 35mm non-archival photographs of the historical building and grounds shall be taken to supplement the limited number of archival photographs required under the HABS standards described above. Photographs should include overall views of the site; individual views of important building features; exterior elevations of each façade of the complex; views of interior courtyard spaces; and detail views of specific materials or elements.</p> <ul style="list-style-type: none"> <li>• Historical Overview: In consultation with the City of Berkeley Planning and Development Department, a qualified historian or architectural historian shall assemble historical background information relevant to the Shattuck Hotel and its setting. Much of this information may be drawn from the Historic Context Report that architecture + history LLC has prepared for the property. The project applicant shall submit three hard copies and six electronic copies of the drawings and historical overview, along with two sets of photographic negatives, to the City of Berkeley. To ensure its public accessibility, the City of Berkeley will distribute the documentation to the Berkeley Public Library, UC Berkeley's Environmental Design Archives, Berkeley Architectural Heritage Association, the Berkeley Historical Society, and the Northwest</li> </ul>			

MITIGATION MONITORING AND REPORTING PROGRAM

July 30, 2015 – Revised July 2022

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Date and Initials)
	Information Center of the California Historical Resources Information System (CHRIS).			
	<p><b>CR-1(b) Salvage.</b> The project applicant shall salvage materials from the 1913 and 1926 additions to the Shattuck Hotel for reuse on-site if feasible , as determined by the Zoning Officer, and given local historical societies the opportunity to salvage remaining materials for public information or reuse in other locations. This effort is expected to focus on the additions' multi-pane, metal-sash windows (currently painted over) as well as the ceiling plasterwork in the entry arcade. All salvaged materials shall be stripped of lead-based paint using safe handling methods. If, after 30 days, none of the societies is able and willing to salvage the materials, the materials shall be offered to local architectural salvage companies by placing an advertisement in a website and newspaper of general circulation for at least 30 days. Demolition may proceed only after any significant historic features or materials have been identified (at the applicant's cost) and their removal completed, unless none of the above organizations are interested in salvaging the materials.</p>	City of Berkeley Planning Department, Land Use Division	Prior to the issuance of a demolition permit	
	<p><b>CR-1(c) Onsite Interpretation.</b> The project applicant shall incorporate a wall display featuring historic photos of the Shattuck Hotel property and a description of its historical significance into the publicly accessible portion of any subsequent development on the site. This display shall be developed by professionals meeting the Secretary of the Interior's Professional Qualifications (as verified by City of Berkeley planning staff) and experienced in creating such historical exhibits, with the assistance of City of Berkeley planning staff.</p>	City of Berkeley Planning Department, Land Use Division	Plans for the exhibit shall be approved by the LPC prior to the issuance of a building permit.	

MITIGATION MONITORING AND REPORTING PROGRAM

July 30, 2015 – Revised July 2022

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Date and Initials)
	<p><b>CR-1(d) Contribution to the Historic Preservation Fund.</b> The project applicant shall contribute funds to the City to be applied to future historic preservation activities within Downtown Berkeley, including survey work; property research; and evaluation in accordance with the Secretary of the Interior’s Standards.</p>	<p>City of Berkeley Planning Department, Land Use Division</p>	<p>Prior to the issuance of a building permit.</p>	
<p><b>CR-2</b> The proposed project would alter the setting of historic landmarks adjacent to and facing the project, including the Shattuck Hotel, the Public Library, and the former Elks Lodge and Armstrong College buildings because the project’s design elements would be partially inconsistent with the Secretary of the Interior’s Standards and the Downtown Berkeley Design Guidelines.</p>	<p><b>CR-2(a) Allston Way Elevation.</b> New construction on the Allston Way elevation shall incorporate horizontal façade elements that reference the roofline of the adjacent 1912 restaurant addition to the Shattuck Hotel. Specifically, new construction shall incorporate a horizontal belt course along its Allston Way façade that corresponds to the cornice and parapet of the 1912 addition. This belt course shall include a cornice element or other horizontal embellishment that projects from the face of the building. (This element could consist of a simple projecting molding, for example, that is stylistically in keeping with the contemporary design of the proposed project.) By incorporating this belt course, the proposed project, despite being considerably taller than the Shattuck Hotel, would better maintain the scale and feel of the historic building frontage along Allston Way.</p>	<p>City of Berkeley Planning Department, Land Use Division</p>	<p>Plans and designs for the Allston Way elevation shall be approved by LPC in Final Design Review (FDR) prior to the issuance of a building permit.</p>	

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	<p><b>CR-2(b) Kittredge Street Elevation.</b> At the Kittredge Street elevation, the proposed project includes a two-story “hyphen” that separates the Shattuck Hotel from the 12- and 18-story portions of the project to the west. Project drawings show the Kittredge Street façade of this portion of the project as a blank wall, potentially covered in vegetation. Such wall treatment is incompatible with the historic setting. Perforations (such as a door or windows) or other architectural elements shall be incorporated into the design of this wall so as to maintain an active street frontage that is more in keeping with the ground floors of the nearby historical resources and the larger Shattuck Avenue Commercial Corridor.</p>	<p>Final Design Review  City of Berkeley Planning Department, Land Use Division</p>	<p>Plans and designs for the Kittredge Street elevation with architectural elements to maintain an active street frontage shall be approved by LPC in FDR prior to the issuance of a building permit.</p>	
	<p><b>CR-2(c) Glazed Aluminum Window Wall Systems.</b> While the glazed aluminum window wall systems proposed for much of the project would clearly differentiate the proposed project from nearby historical resources, the design of these wall systems needs to be modified to make them more compatible with those resources. The proportion and pattern of void to wall in the wall treatments of the proposed project shall be modified to more closely match Library, the former Elks Lodge and the former Armstrong College building. Potential ways to achieve this include replacing the window wall systems with punched curtain wall systems similar to those used elsewhere in the project, or breaking up the window wall systems with windowless bays.</p>	<p>City of Berkeley Planning Department, Land Use Division</p>	<p>Plans and designs for the glazed aluminum window wall systems with translucent panels shall be approved by LPC in FDR prior to the issuance of a building permit.</p>	
<p><b>CR-4</b> Construction activities associated with demolition of the 1959 Hink’s building and the 1926 addition to the Shattuck Hotel, and partial removal of the 1913 addition to the Shattuck Hotel,</p>	<p><b>CR-4(a) Foundations Investigation.</b> A registered structural engineer with a minimum of 5 years of experience in the rehabilitation and restoration of historic buildings, meeting the Secretary of the Interior’s Professional Qualifications, shall investigate the existing relationship of the foundations of the</p>	<p>Applicant’s historical architecture and structural engineering consultants</p>	<p>Prior to the issuance of a demolition permit</p>	

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<p>could produce ground vibration or soil movement under the existing foundation of nearby historic resources, compromising the historic building's structural stability.</p>	<p>various portions of the Shattuck Hotel property. Any required test excavations shall be performed only in the presence of the structural engineer. The structural engineer shall prepare a report of findings that specifies modifications to the project design and/or associated construction activities that are necessary to retain the structural integrity of the Shattuck Hotel (including the original 1910 building, the 1912 addition, and the portion of the 1913 addition proposed for retention).</p> <p>In consultation with a historic preservation architect meeting the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, Professional Qualifications Standards, the structural engineer (with geotechnical consultation as necessary) shall determine whether, due to the nature of the excavations, soils, method of soil removal and the existing foundations of the Shattuck Hotel, the potential for settlement would require underpinning and/or shoring. If underpinning and/or shoring is determined to be necessary, appropriate designs shall be prepared and submitted for review and approval.</p> <p>Foundation and shoring shall not use driven or vibration piles. Only cast-in-place or auger piles or micropiles shall be used for shoring, underpinning, and/or new foundations. The existing structure shall be shored at each side of the location where the western portion of the hotel is to be demolished. After the existing structure is shored, an air gap shall be cut between the building to remain and the portion of the building to be demolished at the roof, floor levels and through the above grade walls prior to the demolition of the western portion of the building. The air gap shall</p>	<p>City of Berkeley Planning Department, Land Use Division</p>		



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	<p>be a minimum of 12 inches wide and also be wide enough that no debris can lodge in the gap and transfer vibrations into the portion of the building to remain. The contractor may elect to demolish an entire bay of the existing structure between two column lines so that additional shoring may be minimized or eliminated. This will prevent the transmission of vibrations from the demolition through the existing structural members and, therefore, limit the potential for structural damage due to the vibrations from the demolition. Any debris that becomes lodged in the gap shall be removed as soon as is safely possible.</p> <p>All documents prepared in accordance with this Measure shall be submitted to the City of Berkeley Planning and Development Department for approval, and all work required by this Measure shall be at the project sponsor's expense</p>			
	<p><b>CR-4(b) Construction Monitoring.</b> Prior to demolition, the historic preservation architect and structural engineer referenced in Mitigation Measures CR-4(a) shall undertake an existing condition study of the Shattuck Hotel, including the location and extent of any visible cracks or spalls. Any existing damage to the hollow clay tile that could cause structural damage due to construction vibrations shall be noted. This initial survey will serve as a baseline to determine if any damage would occur during demolition or construction of the new building. The documentation shall take the form of written descriptions and photographs, and shall include those physical characteristics of the resource that conveys its historic significance and that justify its inclusion on the local register. The documentation shall be reviewed and</p>	<p>Applicant's historical architecture and structural engineering consultants</p> <p>City of Berkeley Planning Department, Land Use Division</p>	<p>Prior to the issuance of a demolition permit</p>	

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	<p>approved by the City of Berkeley Planning and Development Department.</p> <p>The historical architect and structural engineer shall monitor the Shattuck Hotel during construction and report any changes to existing conditions, including, but not limited to, expansion of existing cracks, new spalls, or other exterior deterioration. Any new cracks, new spalls, or other exterior deterioration shall be repaired to the pre-existing condition as indicated at the end of this section. Monitoring reports shall be submitted to the City of Berkeley Planning and Development Department on a periodic basis. The structural engineer shall consult with the historic preservation architect, especially if any problems with character-defining features of a historic resource are discovered. If in the opinion of the structural engineer, in consultation with the historic preservation architect, substantial adverse impacts to historic resources related to construction activities are found during construction, the historical architect and structural engineer shall so inform the project sponsor or sponsor’s designated representative responsible for construction activities.</p> <p>Vibrations shall be limited during demolition of the existing below grade wall and foundation concrete so as not to transmit significant vibrations to the remaining structures. The use of jackhammers and smaller hoe-rams with lower impact force shall be used wherever possible to limit vibrations. Larger hoe-rams (rated at greater than 2,000 foot-pounds) shall not be used without a written determination by a qualified testing agency that such rams will not cause vibrations greater than 0.2 inches per second of</p>			

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	<p>vertical movement at the existing hotel. Measurements for vibrations shall be taken at the same distance to the vibration source as the Shattuck Hotel building will be from the source during use for construction or demolition. The testing agency used for measuring vibrations shall be experienced in measuring vibrations, as determined by the City of Berkeley Planning and Development Department.</p> <p>The areas where the demolition will be closest to the existing building and therefore most likely to propagate vibrations to the remaining structures are: demolition of the eastern end of the existing cinema building along Kittredge Street; demolition for the new construction below the hotel at the corner of Shattuck Avenue and Kittredge Street; and demolition of the eastern portion of the former Hink’s Department Store addition at Allston Way and Harold Way. At these areas where demolition of below grade concrete will be close to the remaining structures, the concrete shall be demolished using methods that limit vibrations, such as the use of jackhammers and small hoe-rams with lower impact force, even if it is determined that larger hoe-rams can be used elsewhere on the site.</p> <p>The structural engineer shall consult with the historic preservation architect, especially if any problems with character- defining features of a historic resource are discovered. Because of the inherent unpredictability of large-scale excavation and construction, there is an unlikely but possible chance that unforeseen damage would occur. If substantial adverse impacts to historic resources related to construction activities are found during construction, and if in the opinion of the structural engineer, in consultation with the historic</p>			

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	<p>preservation architect, the historical architect and the structural engineer (monitoring team) shall so inform the project sponsor or sponsor’s designated representative responsible for construction activities. The historical architect and the structural engineer shall make specific recommendations to the project sponsor, including whether work should stop and whether construction activities should be modified.</p> <p>Once the historic architect and the structural engineer inform the project sponsor, the project sponsor shall adhere to the monitoring team’s recommendations for corrective measures, including halting construction or using methods which cause less vibration, in situations where construction activities would imminently endanger historic resources. The City of Berkeley Planning and Development Department shall establish the frequency of monitoring and reporting. The project sponsor shall respond to any claims of damage by inspecting the affected property promptly, but in no case more than 5 working days after the claim was filed and received by the project sponsor. A sign shall be posted in a visible place onsite and a letter shall be sent to the hotel owner or manager specifying the monitoring team’s contact information prior to the start of construction activities.</p> <p>Any new cracks or other changes in the Shattuck Hotel shall be compared to pre-construction conditions and a determination made as to whether the proposed project could have caused such damage. In the event that the project is demonstrated to have caused any damage, such damage shall be repaired to the pre-existing condition. Site visit reports and documents associated with claims processing shall be provided to</p>			

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	<p>the City of Berkeley Planning and Development Department.</p> <p>Monitoring reports shall be submitted to the City of Berkeley Planning and Development Department on a periodic basis. All work required by this Measure shall be at the project sponsor's expense.</p>			
	<p><b>CR-4(c) Training Program.</b> The historic preservation architect referenced in Mitigation Measures CR-4(a) shall establish a training program for construction workers involved in the project that emphasizes the importance of protecting historic resources. This program shall include information on recognizing historic fabric and materials, and directions on how to exercise care when working around and operating equipment near the Shattuck Hotel, including storage of materials away from the historic building. It shall also include information on means to reduce vibrations from demolition and construction, and monitoring and reporting any potential problems that could affect the historic resource. A provision for establishing this training program shall be incorporated into the general contractor's contract with the project applicant regarding construction of the project, and the contract provisions shall be reviewed and approved by the City of Berkeley Planning and Development Department. All work required by this Measure shall be at the project sponsor's expense.</p>	<p>Applicant's preservation architecture and structural engineering consultants</p> <p>City of Berkeley Planning Department, Land Use Division</p>	<p>Prior to the issuance of a demolition permit</p>	
<b>II. TRANSPORTATION/TRAFFIC</b>				
<p>T-2 Development facilitated by the proposed project would increase future (years 2020 and 2035) traffic levels on the local circulation system. One of the 10 studied</p>	<p><b>T-2 Dedicated Right-Turn Pocket at Shattuck Avenue/Durant Avenue Intersection.</b> The northbound outside lane at the intersection of Shattuck Avenue and Durant Avenue shall be restriped to</p>	<p>Applicant shall obtain a permit for the restriping of this intersection</p>	<p>Prior to issuance of Certificate of Occupancy.</p>	

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intersections would operate at levels of service that exceed its performance standards under the Year 2035 scenario.	provide a dedicated right-turn pocket by the applicant prior to issuance of Certificate of Occupancy.	City of Berkeley Public Works Department to review		

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Table 2: 2211 Harold Way Mixed-Use Project Infill Checklist Mitigation Monitoring and Reporting Program

Impacts	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Date and Initials)
<b>I. AIR QUALITY</b>				
<p><b>AIR-2</b> This proposed project may expose sensitive receptors to TACs or odors through development of new residential units near non-residential development that may be sources of TACs or odors near existing residences or other sensitive receptors.</p>	<p><b>AIR-2 Buffer TAC and Odor Emission Sources and Sensitive Land Uses.</b> Consider potential air pollution and odor impacts from future development that may emit pollution and/or odors when locating (a) air pollution sources, and (b) residential and other pollution-sensitive land uses in the vicinity of air pollution sources (which may include areas where buses idle, diesel generators, parking garage vents, restaurants, and other similar uses). Buffer sensitive receptors from TACs whenever possible, and if buffering is not feasible, apply appropriate mitigation to reduce impacts to a less than significant level, such as air filtration systems or other technologies.</p>	<p>Applicant and Architect</p> <p>City of Berkeley Planning Department, Division of Public Works</p>	<p>Prior to the issuance of Building Permit</p>	
<p><b>AIR-3</b> The proposed project would result in temporary emissions of dust and diesel exhaust that may result in both nuisance and health impacts.</p>	<p><b>AIR-3 Implement BAAMD-Recommended Measures to Control PM<sub>10</sub> Emissions during Construction.</b> Measures to reduce diesel particulate matter and PM<sub>10</sub> from construction are recommended to ensure that short-term health impacts to nearby sensitive receptors are avoided.</p> <p><b>Dust (PM<sub>10</sub>) Control Measures:</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Cover all hauling trucks or maintain at least two feet of freeboard.</li> </ul>	<p>Construction Contractor</p> <p>City of Berkeley Planning Department, Division of Public Works</p>	<p>During demolition, site preparation and project construction</p>	

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	<ul style="list-style-type: none"> <li>• Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.</li> <li>• 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.</li> <li>• Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).</li> <li>• Enclose, cover, water twice daily, or apply (non-toxic soil binders to exposed stockpiles.</li> <li>• Limit traffic speeds on any unpaved roads to 15 mph.</li> <li>• Replant vegetation in disturbed areas as quickly as possible.</li> <li>• Suspend construction activities that cause visible dust plumes to extend beyond the construction site.</li> </ul> <p><b>Measures to Reduce Diesel Particulate Matter and PM<sub>2.5</sub>:</b></p> <ul style="list-style-type: none"> <li>• 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</li> </ul>			



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	<p>could keep their engines running continuously as long as they were onsite or adjacent to the construction site.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g., compressors).</li> <li>• Properly tune and maintain equipment for low emissions.</li> </ul>			
<b>II. CULTURAL RESOURCES</b>				
<p><b>CR-3</b> The proposed project would result in the destruction or disturbance of unidentified subsurface archaeological resources, which would represent a potentially significant impact.</p>	<p><b>CR-3 Halt Work/Archaeological Evaluation/Site-Specific Mitigation.</b> If archaeological resources are uncovered during construction activities, all work within 50 feet of the discovery shall be redirected until a qualified archaeologist can be contacted to evaluate the situation, determine if the deposit qualifies as an archaeological resource, and provide recommendations. If the deposit does not qualify as an archaeological resource, then no further protection or study is necessary. If the deposit does qualify as an archaeological</p>	<p>Construction Contractor</p> <p>City of Berkeley Planning Department, Land Use Division</p>	<p>Throughout site preparation and ground disturbing activities of project construction, and in the event that archaeological resources are encountered on-site.</p>	

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	resource, then the impacts to the deposit shall be avoided by project activities. If the deposit cannot be avoided, adverse impacts to the deposit must be mitigated. Mitigation may include, but is not limited to, archaeological data recovery. Upon completion of the archaeologist's assessment, a report should be prepared documenting the methods, findings and recommendations. The report should be submitted to the City, the project proponent and the NWIC.			
<b>CR-4</b> The proposed project could result in the destruction of unidentified subsurface paleontological resources.	<b>CR-4 Halt Work/Paleontological Evaluation/Site-Specific Mitigation.</b> Should paleontological resources be encountered during construction or site preparation activities, such works shall be halted in the vicinity of the find. A qualified paleontologist shall be contacted to evaluate the nature of the find and determine if mitigation is necessary. All feasible recommendations of the paleontologist shall be implemented. Mitigation may include, but is not limited to, in-field documentation and recovery of specimen(s), laboratory analysis, the preparation of a report detailing the methods and findings of the investigation, and curation at an appropriate paleontological collection facility.	Construction Contractor  City of Berkeley Planning Department, Land Use Division	Throughout site preparation and ground disturbing activities of project construction, and in the event that paleontological resources are encountered on-site.	
<b>CR-5</b> The proposed project could result in the disturbance of unidentified subsurface human remains, which would represent a potentially significant impact.	<b>CR-5 Halt Work/Coroner's Evaluation/Native American Heritage Consultation/Compliance with Most Likely Descendent Recommendations.</b> If human remains are encountered during construction activities, all work within 50 feet of the remains should be redirected and the County Coroner notified immediately. At the same time, an archaeologist shall be contacted to assess the situation. If the	Construction Contractor  City of Berkeley Planning Department, Land Use Division	Throughout site preparation and ground disturbing activities of project construction, and in the event that unidentified subsurface human remains are	

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	<p>human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and any associated grave goods. The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion of the archaeologist's assessment, a report should be prepared documenting methods and results, as well as recommendations regarding the treatment of the human remains and any associated archaeological materials. The report should be submitted to the City, the project proponent and the NWIC.</p>		<p>encountered on-site.</p>	
<p><b>III. NOISE</b></p>				
<p><b>NOI-1</b> The proposed project under the DAP could be exposed to excessive noise levels, noise levels along many Downtown Area roadways would exceed those considered compatible with exterior residential land uses. This would represent a potentially significant impact. Where exterior noise levels exceed 70 dBA Ldn, such as along University Avenue and Shattuck Avenue, residential</p>	<p><b>NOI-1 Site-Specific Noise Studies/Site Planning/Noise Control Treatments.</b> 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:</p>	<p>City of Berkeley Planning Department, Land Use Division</p>	<p>Prior to the issuance of Building Permit</p>	

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<p>units would not be able to meet the 45-dBA Ldn interior standard simply through typical construction methods. This would be a potentially significant impact. Retail units developed under the DAP along most of the area roadways would meet the exterior commercial land use compatibility guideline of 70 dBA Ldn established in the Noise Element. Exterior noise levels would exceed 70 dBA Ldn along University Avenue and Shattuck Avenue. This would be a potentially significant impact.</p>	<ul style="list-style-type: none"> <li>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.</li> <li>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</li> </ul>			

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	<p>such as these would adequately reduce interior noise levels to 45 dBA Ldn or lower. Implementation of the above measure would reduce the impact to a level of less than significant.</p>			
<p><b>NOI-5</b> The proposed project would intermittently expose businesses and residences throughout the Downtown Area to high levels of noise throughout the planning horizon. Construction would elevate noise levels at adjacent businesses and residences by 15 to 20 dBA or more, significant impact.</p>	<p><b>NOI-5 Develop Site-Specific Noise-Reduction Programs and Implement Noise Abatement Measures During Construction.</b> Prior to the issuance of building permits, the applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include appropriate time limits for construction (7:00 AM to 7:00 PM on weekdays and between the hours of 9:00 AM and 8:00 PM on weekends or holidays) as well as technically and economically feasible controls to meet the requirements of the Berkeley Municipal Code. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:</p> <ul style="list-style-type: none"> <li>• Construction equipment should be well maintained and used judiciously to be as quiet as practical.</li> <li>• Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.</li> <li>• Utilize “quiet” models of air compressors and other stationary noise sources where technology exists.</li> </ul>	<p>City of Berkeley Planning Department, Land Use Division</p>	<p>Prior to the issuance of a Building Permit</p>	

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	<p>Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Prohibit unnecessary idling of internal combustion engines.</li> <li>• If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.</li> <li>• 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.</li> <li>• 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.</li> </ul>			

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	<ul style="list-style-type: none"> <li>• Route construction related traffic along major roadways and away from sensitive receptors where feasible</li> <li>• Businesses, residences or other noise-sensitive land uses within 500 feet of construction sites should be notified of the construction schedule in writing prior to the beginning of construction. Designate a “construction liaison” that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the liaison at the construction site.</li> </ul>			
<p><b>NOI-6</b> The proposed project would expose residences, businesses, and historic structures within or in the vicinity of the Downtown Area to construction-related vibration during the excavation and foundation work of the buildings constructed during the DAP, a significant impact.</p>	<p><b>NOI-6 Avoidance of Pile-Driving/Site-Specific Vibration Studies/Monitoring/Contingency Planning.</b> The following measures are recommended to reduce vibration from construction activities:</p> <ul style="list-style-type: none"> <li>• Avoid impact pile-driving where possible. Drilled piles causes lower vibration levels where geological conditions permit their use.</li> <li>• Avoid using vibratory rollers and tampers near sensitive areas.</li> <li>• 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</li> </ul>	<p>City of Berkeley Planning Department, Land Use Division</p>	<p>Prior to the issuance of a Building Permit</p>	

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	<p>conducted to determine the area of impact and to present appropriate mitigation measures that may include the following:</p> <ul style="list-style-type: none"> <li>○ 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.</li> <li>○ 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</li> <li>○ Construction contingencies would be identified for when vibration levels approached the limits.</li> <li>○ At a minimum, vibration monitoring should be conducted during initial demolition activities and during pile-driving activities. Monitoring results</li> </ul>			



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July 30, 2015 – Revised July 2022

Impacts	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Date and Initials)
	<p>may indicate the need for more or less intensive measurements.</p> <ul style="list-style-type: none"> <li>○ When vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures.</li> <li>○ 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.</li> </ul>			



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## FINDINGS AND CONDITIONS

AUGUST 4, 2022

# 2065 Kittredge Street

## Structural Alteration Permit #LMSAP 2021-0004

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### PROJECT DESCRIPTION

The application proposes to partially demolish the rear portion of the City Landmark Shattuck Hotel building, and to completely demolish the 1926 and 1959 Hink's department store expansions; and to construct a new multi-story, mixed-use building on the site, located in the Downtown.

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### CEQA FINDINGS

1. An Addendum to the Final Environmental Impact Report (EIR) to the 2211 Harold Way Mixed-Use Project, which was certified in December 2015, was prepared to evaluate the potentially significant environmental impacts of the proposed project, pursuant to the California Environmental Quality Act. The Landmarks Preservation Commission has considered the Addendum together with the previously certified Final EIR. The Addendum reflects the independent judgment of the Commission and has been completed in compliance with CEQA. The Addendum, together with the 2211 Harold Way Mixed-Use Project Final EIR, is adequate for the 2065 Kittredge Street Mixed-Use Project. On the basis of the whole record, including the Addendum, the previously certified Final EIR, and the public comments received, the Commission finds that the project changes described in the Addendum, i.e., 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.
2. The Addendum prepared for the project addressed the following issues: Air Quality, Cultural Resources, Greenhouse Gas Emissions, Noise, Transportation, and Utilities and Service Systems.
3. 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 Mitigation Monitoring and Reporting Program for the 2211 Harold Way Mixed-Use Project Final EIR, as modified in the addendum and reflected in the Conditions of Approval for the modified project, are hereby adopted as the reporting and monitoring program for this project; see Exhibit A. The monitoring program is designed to ensure compliance during project implementation.

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### LANDMARKS PRESERVATION ORDINANCE FINDINGS

Pursuant to Berkeley Municipal Code Sections 3.24.260.C.1.a, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The proposed project allows for the preservation of the Mission Revival style original hotel, together with all of its 1912 and most of its 1913 additions. The Hotel will still form a

significant presence on Shattuck Avenue, retaining its distinctive form, stucco walls, decorative tile work, wall surface ornamentation, squared towers, hipped roof forms, arched or arcaded wall openings, varied roof heights, red clay tile roof cladding, and broad eave overhangs with exposed rafter tails; with the new building rising behind. Mitigation measures are included to reduce any construction related impacts to the hotel, and as such the project will not adversely affect its features.

## **FINDINGS REGARDING THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION**

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Regarding the Secretary of the Interior's (SOI) Standards for Restoration/Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. SOI Standard #2: The proposed project will retain the City Landmark Shattuck Hotel building, including its early 1912 and 1913 building additions. The structure's Spanish Revival architectural design and character-defining features will not be removed or altered. The proposed demolition of a low-rise, rear portion of the 1913 addition building would not result alteration of the primary building facades, thereby avoiding loss of distinctive materials and features. The proposed wholesale demolition of the 1926 building addition is not found to be a significant loss of distinctive features, in part because the structure's significance lay primarily in its associations with historical events. As the significant architectural character of the Shattuck Hotel will not be completely removed, and will continue to be represented in the retained features of this site, the proposed project complies with Standard #2.
2. SOI Standard #9: The proposed new construction will be visually and physically separated from the street-facing façades of the Shattuck Hotel building; the Allston elevation will be separated by an existing alley that will remain, and the Kittredge elevation will feature a hyphen where the façade steps back and away from the historic structure. The new building will be located to the rear of the Shattuck Hotel, and the Hotel will retain its primacy and presence along Shattuck Avenue. The design of the new building is distinctively contemporary, thereby differentiating it from the historic structure.

## **ZONING ORDINANCE DESIGN REVIEW STANDARDS**

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Pursuant to BMC Chapter 23E.12.020, the Landmarks Preservation Commission of the City of Berkeley finds the project as proposed substantially conforms with the Southside Area Plan Design Guidelines (2011) in that the project:

1. General Guidelines - Similar to typical 20<sup>th</sup> century commercial design, like Shattuck Hotel, the new project generally maintains a band separating the building's base and creating a middle and a top. The upper most (or *top*) floor is present, though quiet as it steps back and features usable open space. The selection of proposed building materials is found to be comparable with new construction in Downtown, while the color palette is reflective of the historic Hotel building. The proposed window design comprises 25-50% of the upper façade, as recommended.

2. **Roof Forms.** - Owing to the proposed massing and color palette, much of the upper story visually serves as a successful termination to the building.
3. **Building Materials** - The materials proposed for this project are found to be durable and of high quality.
4. **Frontage, Setbacks & Heights** - The project height is comparable to the neighboring buildings, including the City Landmark Shattuck Hotel. As the results of refinements, the final proposal maintains a continuous build-to-line with the exception of the main, residential entry plaza. A step-back occurs throughout the project at approximately 65 to 75 ft. above street level.
5. **Open Spaces** – As the result of project refinements, the final design features public open space that is directly aligned with the existing open space at Berkeley Public Library.
6. **Public Serving Frontages for Kittredge, Harold and Allston Way** - The project features the recommended pattern and placement of entrances on all three street-facing facades, as well as the desired amount of glazing on Kittredge and Allston elevations. The Harold Way façade exceeds the recommended amount of glazing at the live/work entrances and comes close in the residential window pattern.

## **HISTORIC PRESERVATION & DESIGN REVIEW CONDITIONS**

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1. **Project plans.** Project shall conform to plans, facades restoration specifications, and photographs, dated July 22, 2022.
2. **Final Design Review.** Pursuant to BMC Section 23.406.070.C, prior to submittal of any building permit for this project, the project proponent shall obtain Final Design Review (FDR) approval from the Landmarks Preservation Commission. Prior to FDR consideration, the project proponent shall make the following improvements subject to Commission approval:
  - a) Enlarge and further refine the commercial tenant space at the corner of Kittredge Street and Harold Way.
  - b) Further refine the public open space areas.
  - c) Establish internal access between the bicycle parking area and the residential entry.
3. This Structural Alteration Permit approval is contingent upon Use Permit approval of this project.
4. **Mitigation monitoring & reporting program – Exhibit A.** The project proponent shall adhere to and demonstrate compliance with this plan to the satisfaction of the Zoning Officer. The project proponent shall bear the cost of monitoring to ensure compliance with the plan; a deposit of not less than \$10,000 may be required prior to building permit submittal in order to secure the services of a third-party monitor.
5. **Chemical Treatments.** Any chemical or physical graffiti removal treatments needed as construction progresses shall be undertaken using the gentlest means possible.

6. **Signage program.** For Final Design Review, the project proponent shall submit complete signage details, including colors, materials, letter heights, dimensions, placement on building, and installation details. All materials will be matte unless otherwise noted.
7. **Landscape & Irrigation.** For Final Design Review, the applicant shall submit a Landscape plan including the number, location, and species of all proposed plantings, and which existing plantings shall be removed. The applicant shall provide irrigation for all landscaped areas or provide drought tolerant plant palette. This shall be called out on Landscape building permit drawings. Further, the plans shall include irrigation for all landscaped areas.
8. **Exterior lighting detail.** For Final Design Review, the project proponent shall submit lighting details showing all proposed site and building lighting. Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.

CITY OF BERKELEY - CITY CLERK  
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October 25, 2022

**Via Email and Hand Delivery**

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Taplin, Ben Bartlett, Kate Harrison,  
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Re: **Appeal to City Council re 2065 Kittredge Street (Use Permit #ZP2021-0193)**

Dear Mayor Arreguín, Members: Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, and Mr. Numainville:

We are writing on behalf of East Bay Residents for Responsible Development (“East Bay Residents” or “Residents”) to appeal the Zoning Adjustment Board’s (“ZAB”) September 22, 2022 approval of the 2065 Kittredge Street Project (Use Permit #ZP2021-0193).<sup>1</sup> The Project, proposed by Bill Schrader and CA Student Living Berkeley (collectively “Applicant”), includes the proposed demolition of existing structures representing approximately 95,000 square feet of office, food service, and cinema uses. These uses would be replaced by approximately 4,993

<sup>1</sup> **Exhibit A:** City of Berkeley, Zoning Adjustment Board, Notice of Decision - 2065 Kittredge Street, Use Permit #ZP2021-0193 (“Date of Board Decision: September 22, 2022; Date Notice Mailed: October 11, 2022; Appeal Period Expiration: October 25, 2022; Effective Date of Permit (Barring Appeal or Certification): October 26, 2022”) (hereinafter “Notice of Decision”).

By Fax

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square feet of commercial space (retail, food service, and live/work), 183 units of new residential units (four live/work units), and approximately 4,600 square feet in two privately-owned plazas (at Allston and Kittredge) that would be open for public use. The Project would be eight stories, 87 feet in height, with 9 very low-income units, and 43 residential vehicle parking spaces in ground-level garage.

This appeal is timely filed within 14 days of the City's mailing of the Notice of Decision of the ZAB decision, pursuant to Berkeley Municipal Code ("BMC" or "Municipal Code") Section 23.410-1. This Appeal is taken from the following ZAB actions, and is accompanied by payment of the required appeal fee of \$1500:

- Approval of Use Permit under BMC Section 23.326.070(A) to demolish a non-residential building.
- Approval of Use Permit under BMC Section 23.204.020(A) to construct a new mixed-use development.
- Approval of Use Permit under BMC Section 23.204.020(A) to construct dwelling units.
- Approval of Use Permit under BMC Section 23.204.030(B)(1) to create new floor area of 10,000 square feet or more.
- Approval of Use Permit under BMC Section 23.204.130(E)(1) to exceed the maximum building height limits, up to 75 feet (plus 5-foot parapet, by right).<sup>2</sup>

## I. SUMMARY OF REASONS FOR APPEAL

Residents appeals the ZAB's actions pursuant to BMC Sections 23.410.030 and 23.406.040(E) on the grounds that the Project is detrimental to the general welfare of the City, its residents, and its workers, in violation of the City's zoning code. For the reasons explained herein and in Residents' September 8, 2022 comments to the ZAB,<sup>3</sup> the Project is inconsistent with the City's construction workforce goals, and is inconsistent with the workforce and economic policies of the General Plan and Downtown Area Plan.

Unlike its predecessor, the original Harold Way Project developer HSR Berkeley Investments, who signed a labor agreement with the Building & Construction Trades Council of Alameda County that committed the Project to

<sup>2</sup> Notice of Decision, p. 1 of 4.

<sup>3</sup> **Exhibit B:** Letter from ABJC to ZAB re *Agenda Item 4 - 2065 Kittredge Street Project (Use Permit #ZP2021-0193)* (September 8, 2022).  
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using 100% union labor,<sup>4</sup> the current Project Applicant has made no commitment to build the Project using a local skilled and trained workforce, to provide apprenticeship training opportunities for City of Berkeley or East Bay residents, or to provide healthcare for its construction workforce. These shortcomings render the Project inconsistent with Berkeley plans, policies, and goals which seek to ensure that Berkeley has an adequate supply of decent housing and living wage jobs. Unless these inconsistencies are mitigated, Project construction and operation would be detrimental to the general welfare of the City, its residents, and its workers, in violation of the City's zoning code.<sup>5</sup>

The Municipal Code prohibits the City from approving a use permit if the project is "detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use.....or to the general welfare of the City."<sup>6</sup> Municipal Code Section 22.20.020 defines detrimental impacts to include, *inter alia*, increased demand for workforce housing, training, and benefits: "The increased demand for affordable housing, child care and public services, ***adequate employment training and placement facilities and amenities***, and the other impacts generated by development projects, unless mitigated, are detrimental to the City's public health, safety and general welfare."<sup>7</sup> Under Section 22.20.020, a detriment to the general welfare occurs when the City fails to mitigate the impacts of a development project, including the increased demand for housing, workforce training, and public services that may result from the Project.<sup>8</sup>

Housing development projects in the City must also implement the goals and policies of the General Plan, including the following:

- 1) Ensure that Berkeley has an adequate supply of decent housing, living wage jobs, and businesses providing basic goods and services.
- 2) New housing will be developed to expand housing opportunities in Berkeley to meet the needs of all income groups.<sup>9</sup>

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<sup>4</sup> Emilie Raguso, High-rise Developer in Berkeley to Use 100% Union Labor (October 31, 2014). Available at: <https://www.berkeleyside.org/2014/10/31/high-rise-developer-in-berkeley-to-use-100-union-labor>

<sup>5</sup> BMC §§ 23.406.040(E)(1); 22.20.020.

<sup>6</sup> BMC § 23.406.040(E)(1)(a), (b).

<sup>7</sup> BMC § 22.20.020 (emphasis added).

<sup>8</sup> *Id.*

<sup>9</sup> General Plan Economic Development and Employment Element, p. ED-5; HARD HATS Staff Report, p. 7.  
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General Plan Policy ED-1 requires the City to “[i]ncrease the number of jobs that go to Berkeley citizens by coordinating economic development efforts with employment placement,”<sup>10</sup> and provides that the City intends to “[w]ork with job training programs and encourage training for life skills, job readiness, and specific target industries.”<sup>11</sup> The City has determined that “it is in the City of Berkeley’s economic interest to support a pipeline of skilled workers to accomplish the construction objectives and policies of the Berkeley General Plan.”<sup>12</sup>

Finally, the Downtown Area Plan provides that “[a]ll new buildings shall deliver significant community benefits, many of which should be in proportion to building height.”<sup>13</sup> Projects above 75 feet, like the instant Project, must include significant community benefits, which may specifically include “job training, and/or employment opportunities.”<sup>14</sup>

Project construction will increase the local demand for a construction workforce. The Project’s lack of workforce standards and worker healthcare may exacerbate the existing demand for local affordable housing and public services by construction workers that currently receive low pay without benefits. These impacts are detrimental to the general welfare and render the Project inconsistent with City plans, requiring mitigation. Residents raised these issues to the ZAB prior to approval. However, the ZAB approved the Project without mitigating these impacts and despite substantial evidence in the record demonstrating that the Project’s failure to comply with the City’s workforce standards and policies would cause a detriment to the general welfare of the City and its residents. Without mitigation, these impacts remain significant and the ZAB’s findings that the Project complied with the zoning code were unsupported and should be set aside.

The City Council may take action on the subject of an appeal or any aspect of an appealed project (de novo review) pursuant to BMC Section 23.410.040(E)(1).<sup>15</sup> The Municipal Code grants the City Council the authority to:

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<sup>10</sup> Berkeley General Plan Economic Development and Employment Element, p. ED-5. Available at: [https://berkeleyca.gov/sites/default/files/documents/12\\_Economic%20Development%20and%20Employment%20Element-FINAL.pdf](https://berkeleyca.gov/sites/default/files/documents/12_Economic%20Development%20and%20Employment%20Element-FINAL.pdf).

<sup>11</sup> *Id.*

<sup>12</sup> HARD HATS Staff Report, p. 7.

<sup>13</sup> City of Berkeley, Downtown Area Plan (2012) p. LU-12. Available at: <https://berkeleyca.gov/sites/default/files/2022-03/Downtown-Area-Plan.pdf> (emphasis added).

<sup>14</sup> *Id.*

<sup>15</sup> Berkeley Municipal Code (“BMC”) Section 23.410.040(E)(1). 6287-003acp

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- Modify, reverse, or affirm, wholly or partly, any decision, determination, condition or requirement of the prior review authority; or
- For appeals to the City Council, remand the matter to the prior review authority to reconsider the application, and/or any revisions to the application submitted after the review authority's action.<sup>16</sup>

Pursuant to the Code, the City Council should find that the Project is detrimental to the general welfare of the City and its residents such that the Project's use permit should not be issued without mitigation. We urge the Council to modify the ZAB's approval of the Project to apply conditions to the Project which mitigate the Project's detrimental impacts by implementing workforce standards that satisfy zoning code, General Plan and Downtown Area Plan requirements. The conditions should include public benefits such as apprenticeship opportunities, local hire provisions, and healthcare, which promote the general welfare. Such conditions would be consistent with the Municipal Code and would increase compliance with the General Plan and Downtown Are Plan. Mitigating the Project's adverse workforce impacts would also be consistent with the City's stated goals of "help[ing] address the growing need for skilled and trained construction workers," and "to make sure the people that are building the thousands of needed homes in Berkeley and across the state will have health care and a decent standard of living."<sup>17</sup>

## I. STATEMENT OF INTEREST

East Bay Residents for Responsible Development is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. The association includes the UA Plumbers and Pipefitters Local 342, International Brotherhood of Electrical Workers Local 595, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, their members and families, and City and Alameda County residents.

The individual members of Residents live, work, and raise their families in the Berkeley and Alameda County. They would be directly affected by the Project and its impacts. The organizational members of Residents also have an interest in

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<sup>16</sup> *Id.* at 23.140.040(G).

<sup>17</sup> Nico Savidge, Berkeley May Mandate Health Coverage for Workers in Big Construction Projects: Builders of apartments and other large projects could be required to provide apprenticeships and health care coverage for workers under a new proposal, Berkeley side (September 1, 2022) <https://www.berkeleyside.org/2022/09/01/berkeley-construction-labor-standards-housing-worker-shortage>.

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enforcing public interest, health and safety, labor and environmental laws that encourage sustainable development and ensure a safe working environment for its members. Residents' members are also concerned about projects that are built without providing opportunities to improve the recruitment, training, and retention of skilled workforces.

**II. THE ZAB'S APPROVAL OF THE PROJECT VIOLATED BMC SECTION 23.406.040 BECAUSE THE PROJECT IS DETRIMENTAL TO THE GENERAL WELFARE**

The Project contravenes Municipal Code Section 23.406.040(E)(1) which requires that, in order to approve a Use Permit for a Project, the ZAB must find that the Project 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.<sup>18</sup> Pursuant to Municipal Code Section 22.20.020, these impacts require mitigation.

**A. The Project is Detrimental to the General Welfare of the City, Residents, and Workers Due to A Lack of Workforce Standards and Public Benefits**

In addition to the existing workforce standards contained in the Municipal Code, General Plan, and Downtown Area Plan, on September 20, 2022, the City Council authorized the City Attorney and City Manager to draft the Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards ("HARD HATS") Ordinance, which will implement apprenticeship program requirements and healthcare security for workers on General Plan area projects. Among the many general welfare concerns cited by the City was the detrimental role that the homebuilding industry plays in perpetuating income inequality by using low wage construction workers:

Homebuilding is supposed to reduce the number of people waiting in line for housing they can afford. But when the homebuilding industry itself generates excessive very low and low wage construction employment, that just increases the number of people needing subsidies from the taxpayer. Low wage employment is in fact a problem in both the residential +and commercial construction markets.<sup>19</sup>

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<sup>18</sup> *Id.* at § 623.406.040(E)(1).

<sup>19</sup> *Id.* at pp. 4-5.  
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The HARD HATS Staff Report provided substantial evidence demonstrating that housing projects that are constructed with low-wage or uninsured construction workers are detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or visiting the City and the Project's Downtown neighborhood, as well as to the general welfare of the City. In evaluating the need for the HARD HATS Ordinance, the Council relied on numerous studies documenting the negative impacts that low wage construction employment has on workers, communities, and on the sustained development of housing in California.

For example:

- Shortages of skilled construction workers, particularly residential trade workers, threaten to delay or derail development plans.
  - In San Francisco, many entitled projects with thousands of units awaiting construction are stalled due to skilled labor shortages, diminished contractor productivity, and construction costs that spiked. These shortages are attributable to factors such as reduced utilization of state-approved apprenticeships, fewer young labor force entrants, dwindling contractor offerings of health and retirement plans, and the related trend of lagging construction productivity growth.<sup>20</sup>
  - Only 1,250 construction sector employees lived in Berkeley in 2018.<sup>21</sup>
- Low wage employment is a problem in both the residential +and commercial construction markets. Fifty-five percent of Alameda County construction workers' households are Extremely Low Income, Very Low Income, or Low Income.<sup>22</sup>
- Jobsite Health, Healthcare and Safety:
  - Construction trade workers experience exceptionally high rates of serious injury on the job, especially on sites with inadequately trained workers.
  - One of every five serious workers' compensation insurance claims which involve death, permanent total disability or major permanent partial disability - is related to a construction employee, despite the fact that construction jobs account for less than one out of every 25 California jobs.
  - For a working life in construction, the risk of fatal injury is approximately one death per 200 full-time-equivalent employees

<sup>20</sup> HARD HATS Staff Report, p. 4.

<sup>21</sup> *Id.*, citing U.S. Census Bureau LEHD Origin-Destination Employment Statistics, Version 7, Residence Area Characteristics.

<sup>22</sup> *Id.*, citing Analysis of U.S. Census, ACS 2015-2019 Microdata.  
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according to a recent study in the American Journal of Industrial Medicine.

- A recent Canadian study of workers' compensation claims from 58,837 construction companies found that unionization was associated with a 25% lower incidence of lost-time allowed injury claims, a 23% lower incidence of musculoskeletal lost-time allowed injury claims, and a 16% lower incidence of lost-time allowed critical injury claims. In California too, employers of lower paid construction workers make more serious and non-serious workers compensation claims.<sup>23</sup>
- Construction workers who live in Alameda County are uninsured at rates 3-4 times higher than the rate of non-construction workers. The under-performance of California contractors in providing health care security to employees constrains the supply of skilled construction labor. A peer-reviewed study in 2010 found that only 35 percent of blue-collar construction workers who are not covered by collective bargaining agreements had health insurance paid for at least in part by an employer. This same study found that health insurance funded through collectively bargained employer contributions to plans that are portable within the construction industry increased industry-retention rates by up to 40 percent compared to baseline retention rates of construction workers without any health insurance coverage.<sup>24</sup>
- California residential building was strongest when apprenticeship training was strongest:
  - During the 1970s, when California was producing housing at the average annual rate of 200,000 units, the state reported an average of 9,000 apprentices. California residential builders utilized apprentices every bit as much as commercial builders, according to a 1976 U.S. Bureau of Labor Statistics report.
  - De-unionization and the recession of the early 1990s, however, led to sharply reduced utilization of apprentices by residential contractors. Carpenter apprenticeship completions fell by 50 percent between 1996-2005 compared to 1973-1982.<sup>25</sup>

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<sup>23</sup> *Id.*, citing Workers Compensation Insurance Rating Bureau "Relativity Review Sheets," various years.

<sup>24</sup> (2019). Rebuilding California: The Golden State's Housing Workforce Reckoning. Smart Cities Preval. pp. 23-25. Downloaded 3/26/2021 via [https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP\\_HousingReport.0118\\_2.pdf](https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP_HousingReport.0118_2.pdf)

<sup>25</sup> *Id.*, citing U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 1911, "Industry Wage Survey: Contract Construction September 1973," Washington, D.C.: 1976. See Tables 28 & 46. Downloaded via <http://fraser.stlouisfed.org>; Littlehale, Scott. (2019). Rebuilding California: The Golden State's Housing Workforce Reckoning. Smart Cities Preval. pp. 23-25. Downloaded 6287-003acp

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This evidence demonstrates that projects like this one, which do not utilize a local skilled construction workforce and do not provide health benefits, are likely to be detrimental to the general welfare of the City, its residents, and its workers. By contrast, there is no evidence in the record demonstrating that the Project would avoid these negative impacts. If the Project proceeds without mitigation, it would be detrimental to the general welfare.

### **1. The Project is Detrimental to the General Welfare Because It Does Not Provide Apprenticeship Opportunities**

The ZAB's failure to mitigate the Project's development impacts through an apprenticeship program is detrimental to the general welfare of the City of Berkeley. The ZAB therefore approved the Project in violation of BMC Section 23.406.040.

The HARD HATS Staff Report explained that “[t]he creation and utilization of apprenticeship along with the commitments to paid healthcare act to both recruit and retain an adequate base of construction workers and to be a pipeline for future supervisors and licensed independent contractors.”<sup>26</sup> It further provides that “[r]equiring contractors on major projects in Berkeley to employ apprentices results in a higher volume of apprentice training, and thus, an increase in the construction labor force available to carry out the construction anticipated by the general plan, and especially that targeted by the Housing Element.”<sup>27</sup>

Apprenticeship programs have historically been viewed as an “escalator to the middle class” providing an opportunity to build a stable, family supporting career that is not dependent on a college degree.<sup>28</sup> Research shows that apprenticeships not only substantially raise the lifetime earnings of their participants, but provide significant net social benefits through higher tax collections, private health care coverage, and reduced reliance on unemployment insurance and other forms of assistance.<sup>29</sup> Further research shows that

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3/26/2021 via

[https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP\\_HousingReport.0118\\_2.pdf](https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP_HousingReport.0118_2.pdf)

<sup>26</sup> HARD HATS Staff Report.

<sup>27</sup> *Id.*

<sup>28</sup> Dan Calamuci, *Training the Golden State: An Analysis of California Apprenticeship Programs*, Smart Cities Prevail (December 2020). Available at: <https://www.smartcitiesprevail.org/wp-content/uploads/2021/12/Training-the-Golden-State.pdf>.

<sup>29</sup> Lantsberg Report, p. 2.

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apprenticeship programs improve workmanship and expand the pool of skilled workers.<sup>30</sup>

Particularly, apprenticeship programs and union apprenticeship programs result in a more diverse workforce,<sup>31</sup> as shown in the figure below. Apprenticeship programs are serving to improve both racial and gender wage inequalities.<sup>32</sup>

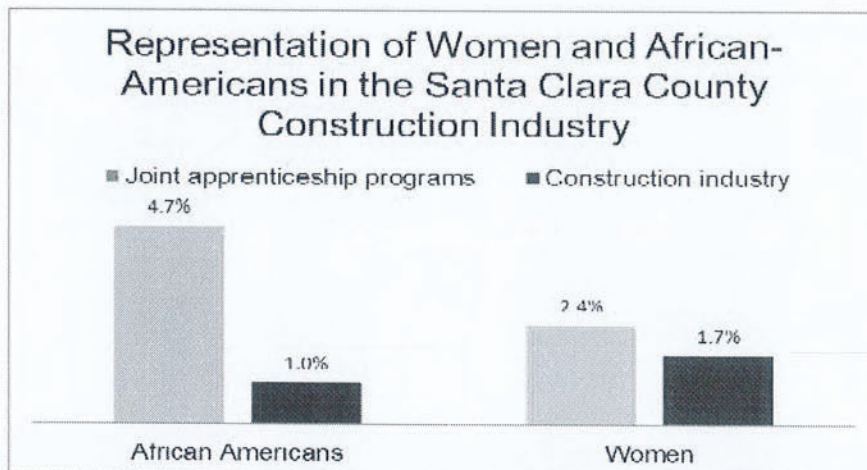


Figure 4. Data represents residents of Santa Clara County. "Construction industry" includes residents employed in non-supervisory construction occupations.

Source: DAS and ACS 2006-2008

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An analysis of joint apprenticeship program enrollments in Santa Clara County compared with construction industry employment from 2006-2008 shows that 126 African Americans residing in Santa Clara County enrolled in joint apprenticeship programs during this period, making up 4.7% of all enrollments.<sup>34</sup> Among all residents employed in non-supervisory construction occupations, African

<sup>30</sup> Philips, Peter, *Construction: The Effect of Prevailing Wage Regulations on the Construction Industry in Iowa*, Economics Department, University of Utah (2006).

<sup>31</sup> Larissa Petrucci, *Constructing a Diverse Workforce: Examining Union and Non-Union Construction Apprenticeship Programs and Their Outcomes for Women and Workers of Color*, University of Oregon Labor Education and Research Center (October 26, 2021). Available at: <https://lerc.uoregon.edu/2021/10/26/apprenticeship/>.

<sup>32</sup> Working Partnerships USA, *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* (April 25, 2011), p. 6. Available at: [https://www.wpusa.org/5-13-11%20prevailing\\_wage\\_brief.pdf](https://www.wpusa.org/5-13-11%20prevailing_wage_brief.pdf) ("Working Partnerships Report").

<sup>33</sup> Working Partnerships Report at Figure 4, p. 12.

<sup>34</sup> *Id.* at p. 12.



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Americans made up just 1.0%.<sup>35</sup> Joint apprenticeships were therefore 4.7 times more likely than the industry at large to employ an African-American.<sup>36</sup>

Examining the data by gender, the research showed that women comprised just 1.7% of construction industry workers, yet made up 2.4% of enrollments in joint apprenticeship programs.<sup>37</sup> Joint apprenticeships were therefore 1.4 times more likely than the industry at large to employ a woman.<sup>38</sup> While these numbers are still low, they indicate that the pipeline of workers currently being trained through apprenticeship programs, if they remain employed in construction, will diversify the industry relative to its current state.<sup>39</sup> Without apprenticeship opportunities, the opportunity to access construction careers for women, African Americans and other underrepresented groups in Berkeley could be considerably reduced.<sup>40</sup>

The City Council should mitigate the Project's detrimental impacts on the general welfare with apprenticeship training standards.

## **2. The Project is Detrimental the General Welfare Because It Does Not Include Local Hire**

Because the Project is not publicly funded, the Applicant is not required to provide local hire opportunities, and has not voluntarily agreed to do so. The lack of local hiring commitments for Project construction workers may result in longer commutes, and further exacerbate housing inaffordability.

Recent studies have confirmed that the absence of locally hired construction workers can exacerbate the impacts of construction project. For example, a Working Partnership case study in San Jose found that, in 2008, non-local construction workers employed in Santa Clara County cumulatively drove over 1 million miles per day to and from work.<sup>41</sup> If the work done by non-locals was instead performed by locals with shorter commutes, then the estimated savings would be 123,619,000 miles per year.<sup>42</sup> The study also found that, if the City of San Jose's major municipal buildings from 2007-2012 were not built under prevailing wage, then

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Working Partnerships Report, p. 12.

<sup>41</sup> Working Partnerships USA, *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* (April 25, 2011). Available at: [https://www.wpusa.org/5-13-11%20prevailing wage brief.pdf](https://www.wpusa.org/5-13-11%20prevailing%20wage%20brief.pdf).

<sup>42</sup> *Id.*

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major economic impacts would include reduction in total economic activity of \$164 million, net loss of 1,510 local jobs, and loss in local property and sales tax revenues of \$1.9 million.”<sup>43</sup> This includes a direct impact of 1,155 fewer construction jobs and indirect impacts of 355 fewer jobs in other sectors, a total loss in local property and sales tax revenues of \$1.9 million, and a decrease in sales taxes collected by the City of San Jose of \$181,000.<sup>44</sup>

Local hire policies provide local jobs and also incentivize the creation of career ladders by moving community members into apprenticeship programs and into middle-class careers.<sup>45</sup> By definition, local hire policies require that a certain number of journeyworkers and apprentices who are residents of the local area to be employed on development projects.<sup>46</sup> Condition of approval that mandate local hire in public projects have been found to be concrete mechanisms to ensure that the investment of public funds into the community helps low-income residents.<sup>47</sup>

Local hire commitments are a critical way not only to hire local residents, but to use project hiring needs to target opportunities to low-income residents and people of color who might otherwise not benefit from new development.<sup>48</sup> Local hire programs help address the fragmentation inherent in the development process, establishing better communication among developers, employers, community organizations, local job training resources, and the workforce development system that can provide job readiness and job retention support services.<sup>49</sup>

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<sup>43</sup> Working Partnerships USA, *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* (April 25, 2011), p. 6. Available at: [https://www.wpusa.org/5-13-11%20prevailing wage brief.pdf](https://www.wpusa.org/5-13-11%20prevailing%20wage%20brief.pdf).

<sup>44</sup> *Id.*

<sup>45</sup> Corinne Wilson, *Construction Apprenticeship Programs: Career Training for California's Recovery*, Center on Policy Initiatives (September 2009). Available at: <https://cpisandiego.org/research/construction-apprenticeship-programs-2009/>.

<sup>46</sup> Corinne Wilson, *Construction Apprenticeship Programs: Career Training for California's Recovery*, Center on Policy Initiatives (September 2009). Available at: <https://cpisandiego.org/research/construction-apprenticeship-programs-2009/>.

<sup>47</sup> Kathleen Mulligan-Hansel, PhD. 2008. *Making Development Work for Local Residents: Local Hire Programs and Implementation Strategies that Serve Low-Income Communities*. Partnership for Working Families.

<http://www.communitybenefits.org/downloads/Making%20Development%20Work%20for%20Local%20Residents.pdf>.

<sup>48</sup> Kathleen Mulligan-Hansel, *Making Development Work for Local Residents: Local Hire Programs and Implementation Strategies that Serve Low-Income Communities*, (July 2008). Available at: [https://s3.amazonaws.com/proggov21-uploads/uploads/asset/asset\\_file/Making\\_Development\\_Work\\_Local\\_Residents\\_Mulligan-HanselPWF2008.pdf](https://s3.amazonaws.com/proggov21-uploads/uploads/asset/asset_file/Making_Development_Work_Local_Residents_Mulligan-HanselPWF2008.pdf).

<sup>49</sup> *Id.*

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In voting to support the drafting of the HARD HATS Ordinance, the City Council found that it is in the general welfare of persons in the Berkeley area to utilize local labor for local projects.<sup>50</sup> Specifically, the Council concluded that “it is in the City of Berkeley’s economic interest to support a pipeline of skilled workers to accomplish the construction objectives and policies of the Berkeley General Plan.”<sup>51</sup> The HARD HATS Staff Report provided numerous examples of how a local skilled and trained workforce supports the general welfare of the community and the individual workers and their families.

Here, the Project Applicant has not made a commitment to ensure the Project is built with local skilled and trained workforce. The Project is therefore likely to be detrimental to City goals and the Berkeley community – particularly to its highly qualified construction workforce, who may not have the opportunity to build much-needed housing in their own community.

### **3. The Project Externalizes the Costs of Construction Because It Does Not Provide Healthcare Benefits**

The Project has not committed to healthcare standards or benefits for the construction workers building the Project. This results in a detriment to the general welfare of the City and its residents, including in particular its construction worker residents. By failing to provide healthcare for its construction workers, the Project leaves the responsibility of providing for the health, safety, and welfare of the workers and the community on the workers themselves, or on taxpayer-funded public assistance, thus externalizing the cost of construction.

The City’s HARD HATS Ordinance Staff Report explained that construction trade workers experience exceptionally high rates of serious injury on the job, especially on sites with inadequately trained workers.<sup>52</sup> For example, one of every five serious workers’ compensation insurance claims which involve death, permanent total disability or major permanent partial disability - is related to a construction employee, despite the fact that construction jobs account for less than one out of every 25 California jobs.<sup>53</sup> In authorizing drafting of the HARD HATS Ordinance, the Council reiterated the importance of providing paid healthcare for

<sup>50</sup> City of Berkeley, Agenda, Berkeley City Council, Tuesday September 20, 2022 6:00 PM, Council Consent Item 14 Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (HARD HATS) Referral, p. 77. Available at: <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-09-20%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf> (“HARD HATS Staff Report”).

<sup>51</sup> HARD HATS Staff Report, p. 77.

<sup>52</sup> *Id.* at 81.

<sup>53</sup> *Id.*

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construction workers to support a sustainable construction workforce: “The creation and utilization of apprenticeship along with the commitments to paid healthcare act to both recruit and retain an adequate base of construction workers and to be a pipeline for future supervisors and licensed independent contractors.”<sup>54</sup>

Lack of paid healthcare and a deficit in wages are major factors in externalizing the costs of construction onto individual workers and public services. A study by Smart Cities Preval calculated that, if California’s multifamily residential construction resembled the rest of the industry on wage standards, worker income would increase by more than \$1 billion, state and local government coffers would grow \$55 million a year, and public assistance payments for direct expenditures like MediCal would decrease by at least \$30 million per year.<sup>55</sup> A typical non-union construction employee on a non-prevailing wage project without health benefits would be eligible for \$916 to \$8,032 in public assistance for his or her family.<sup>56</sup> At prevailing wage with health benefits, the same worker would earn enough to support his or her family with no public assistance.<sup>57</sup>

By failing to provide healthcare standards, the Project would perpetuate existing income and healthcare inequities for construction workers, causing a detriment to the general welfare by failing to provide for the health and safety of its workers. The City should ask the Applicant to provide healthcare benefits as a public benefit of the Project.

#### 4. Providing Workforce Benefits Furthers Berkeley’s Goals as Laid out in the Municipal Code

The Municipal Code provides that the “Zoning Ordinance establishes *minimum* requirements to promote the public health, safety, and general welfare.”<sup>58</sup> The Municipal Code also provides that, “[t]o the extent possible, it is the government’s responsibility to balance the responsibility to ensure the health, safety, and general welfare of the public at large in a fiscally and environmentally sustainable manner.”<sup>59</sup> It is therefore the responsibility of the City Council to promote the general welfare beyond the minimum required by law.

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<sup>54</sup> *Id.* at 77.

<sup>55</sup> Lantsberg Report, p. 2.

<sup>56</sup> Working Partnerships USA, *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* (April 25, 2011). Available at: [https://www.wpusa.org/5-13-11%20prevailing\\_wage\\_brief.pdf](https://www.wpusa.org/5-13-11%20prevailing_wage_brief.pdf) (“Working Partnerships Report”).

<sup>57</sup> *Id.*

<sup>58</sup> BMC § 22.104.030.

<sup>59</sup> BMC § 2.09.020.

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Here, the City Council must ensure the health, safety, and general welfare is promoted in a fiscally and environmentally sustainable manner. The Council should endeavor to do so through the implementation of apprenticeship standards, healthcare benefits, and local hire commitments for the Project.

### **5. Utilizing a Skilled Construction Workforce Promotes the Goals Set Forth in the Regional Housing Needs Assessment**

One of the main rationales for the HARD HATS Ordinance was to increase the City's housing supply through the use of a local skilled and trained labor force. Berkeley has been assigned a Regional Housing Needs Assessment ("RHNA") by the State of roughly 9,000 units of housing to produce over an eight year period, or over 1,100 units per year.<sup>60</sup> But, the City has determined that Berkeley does not have an adequate supply of construction workers to build over 1,100 housing units per year while also building, altering, and maintaining public and private commercial nonresidential buildings and infrastructure.<sup>61</sup> Only 1,250 construction sector employees lived in Berkeley in 2018.<sup>62</sup> The City has also concluded that Berkeley cannot rely on contractors to reliably import surplus skilled construction workers from other cities.<sup>63</sup> Construction jobs – particularly residential construction jobs - have lost their competitive edge relative to other jobs in the Bay Area regional economy.<sup>64</sup> To meet its General Plan goals, Berkeley must create working conditions, on the Project site in particular, that will help to overcome the construction labor market's failures to make construction jobs attractive enough to recruit and retain productive trade workers.

At the September 20, 2022 HARD HATS hearing, City Councilmembers explained that there is a "shortage of qualified local construction workers" and that is one reason why it is hard to get housing built.<sup>65</sup> Councilmember Hahn explained that Berkeley should "develop more labor, have working conditions, and pay, and benefits that you need to live in the Bay Area."<sup>66</sup> Further Councilmember Hahn asserted that Berkeley needs to expand the available workforce of people who are able to build housing and other projects, and "to ensure they have protections."<sup>67</sup> Mayor Arreguin noted that the "key to addressing the significant shortage of

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<sup>60</sup> HARD HATS Staff Report, p. 80.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Statement by Councilmember Hahn, Oakland City Council Hearing (September 20, 2022 6 PM).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

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housing is addressing the shortage of a skilled and trained workforce.”<sup>68</sup> The Project does not meet this goal of addressing the housing shortage by utilizing local skilled and trained workers.

In order to ensure that the City remains on track to meet its State RHNA housing allocation, the Council must ensure that this Project, and every housing project constructed in Berkeley, includes workforce standards which promote the development and retention of a local skilled and trained workforce.

### **B. The Project is Inconsistent with the General Plan**

The Project is inconsistent with the General Plan Economic Development & Employment Element, and thus cannot be approved until consistency is demonstrated.<sup>69</sup>

The General Plan Economic Development and Employment Element Policy (ED-1) provides that the City must “[i]ncrease the number of jobs that go to Berkeley citizens by coordinating economic development efforts with employment placement.”<sup>70</sup> Further, the General Plan provides that the City intends to “[w]ork with job training programs and encourage training for life skills, job readiness, and specific target industries.”<sup>71</sup> The Project does not include any commitment to provide construction jobs to Berkeley or East Bay residents, and does not contribute to any apprenticeship or other construction job training programs. The Project therefore fails to comply with Policy ED-1.

The HARD HATS Staff Report explains that requiring contractors on major projects in Berkeley to employ apprentices results in a higher volume of apprentice training, and thus, an increase in the construction labor force available to carry out the construction anticipated by the general plan.<sup>72</sup> Further, the Staff report provides that, in order to meet its General Plan goals, Berkeley must create local working conditions that will help to overcome the construction labor market’s failures to make construction jobs attractive enough to recruit and retain productive trade workers.<sup>73</sup>

<sup>68</sup> Statement by Mayor Arreguin, Oakland City Council Hearing (September 20, 2022 6 PM).

<sup>69</sup> SB 330 requires conformance with applicable, objective general plan and zoning standards. Gov. Code § 65905.5. (a).

<sup>70</sup> Berkeley General Plan Economic Development and Employment Element, p. ED-5. Available at: [https://berkeleyca.gov/sites/default/files/documents/12\\_Economic%20Development%20and%20Employment%20Element-FINAL.pdf](https://berkeleyca.gov/sites/default/files/documents/12_Economic%20Development%20and%20Employment%20Element-FINAL.pdf).

<sup>71</sup> *Id.*

<sup>72</sup> HARD HATS Ordinance Staff Report, p. 80.

<sup>73</sup> *Id.*

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Providing a local skilled and trained workforce would further the goals laid out in the General Plan Economic Development and Employment Element, that the City enacted to promote the general welfare. The Project does not include any of these elements and therefore fails to demonstrate consistency with the General Plan Economic Development and Employment Element.

### C. The Project is Inconsistent with the Downtown Area Plan

The Project does not conform with the Downtown Area Plan because it fails to provide “significant community benefits” as required by the Plan.

The Downtown Area Plan provides that “All new buildings *shall* deliver significant community benefits, many of which should be in proportion to building height.”<sup>74</sup> The Downtown Area Plan requires projects above 75 feet to include significant community benefits in the form of affordable housing, supportive social services, green features, open space, transportation demand features, job training, and/or employment opportunities.<sup>75</sup> The applicable public benefit requirements are to be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest.<sup>76</sup> The Project violates the Downtown Area Plan for failure to include community benefits as binding conditions of approval.

### III. CONCLUSION

For the reasons stated above, the Project was approved by ZAB in violation of the Municipal Code due to detrimental impacts to the general welfare associated with construction of the Project. The City Council should modify the ZAB’s approval to add mitigation measures or conditions of approval to the Project which require the Applicant to provide workforce standards and public benefits that are consistent with Municipal Code and local plan standards to provide local employment training and placement facilities and amenities for construction workers, healthcare benefits, and apprenticeship opportunities.

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<sup>74</sup> City of Berkeley, Downtown Area Plan (2012) p. LU-12. Available at: <https://berkeleyca.gov/sites/default/files/2022-03/Downtown-Area-Plan.pdf> (emphasis added).

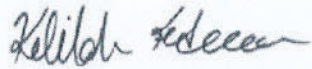
<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

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Thank you for your attention to these comments. Please include them in the City's record of proceedings for the Project.

Sincerely,



Kelilah D. Federman

Attachments  
KDF:acp

6287-003acp





Z O N I N G  
A D J U S T M E N T S  
B O A R D  
S T A F F R E P O R T

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FOR BOARD ACTION  
SEPTEMBER 22, 2022

## 2065 Kittredge Street

Use Permit #ZP2021-0193 to demolish portions of existing City Landmark commercial buildings and construct an 8-story, mixed-use building with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces. Project utilizes State Density Bonus.

### 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 Required:

- Use Permit under BMC Section 23.326.070(A) to demolish a non-residential building
- Use Permit under BMC Section 23.204.020(A) to construct a new mixed-use development
- Use Permit under BMC Section 23.204.020(A) to construct dwelling units
- Use Permit under BMC Section 23.204.030(B)(1) to create new floor area of 10,000 square feet or more
- Use Permit under BMC Section 23.204.130(E)(1) to exceed the maximum building height limits, up to 75 feet (plus 5-foot parapet, by right)

#### C. Concessions and Waivers and Pursuant to State Density Bonus Law (CA Gov't. Code Section 65915):

- Concession to reduce the usable open space requirement – to provide 11,916 square feet where 14,960 square feet is required
- Waiver of BMC Section 23.204.130(E)(1) to exceed building height limits – to be 87 feet (plus 5-foot parapet, by right), where 75 feet is the limit (plus 5-foot parapet, by right, with a use permit)
- Waiver of BMC Section 23.204.130(E)(3) to reduce setback to 0 feet, where 15 feet is required, where above 75 feet in height

- Waiver of BMC Section 23.204.130(E)(3) to increase front setback maximum to 0-20 feet, where 5 feet is required, at 0-20-foot building height
- Waiver of BMC Section 23.304.090(B)(7) to reduce the landscaped usable open space to 25 percent, where from 40 percent minimum is required
- Waiver of BMC Section 23.304.050(A) to exceed building height limits with rooftop architectural elements which exceed the maximum height limit for the district
- Waiver of BMC Section 23.322.030(B)(1) to reduce the minimum commercial parking requirement to zero, where eight is required

**D. CEQA Recommendation:** Adopt the Environmental Impact Report (EIR) Addendum to the certified 2211 Harold Way Mixed-Use Project Final EIR (SCH #2014052063) and Revised Mitigation Monitoring and Reporting Program (MMRP) pursuant to the California Environmental Quality Act. The Addendum and MMRP are attached to this staff report. See Section V for discussion of the project's CEQA review.

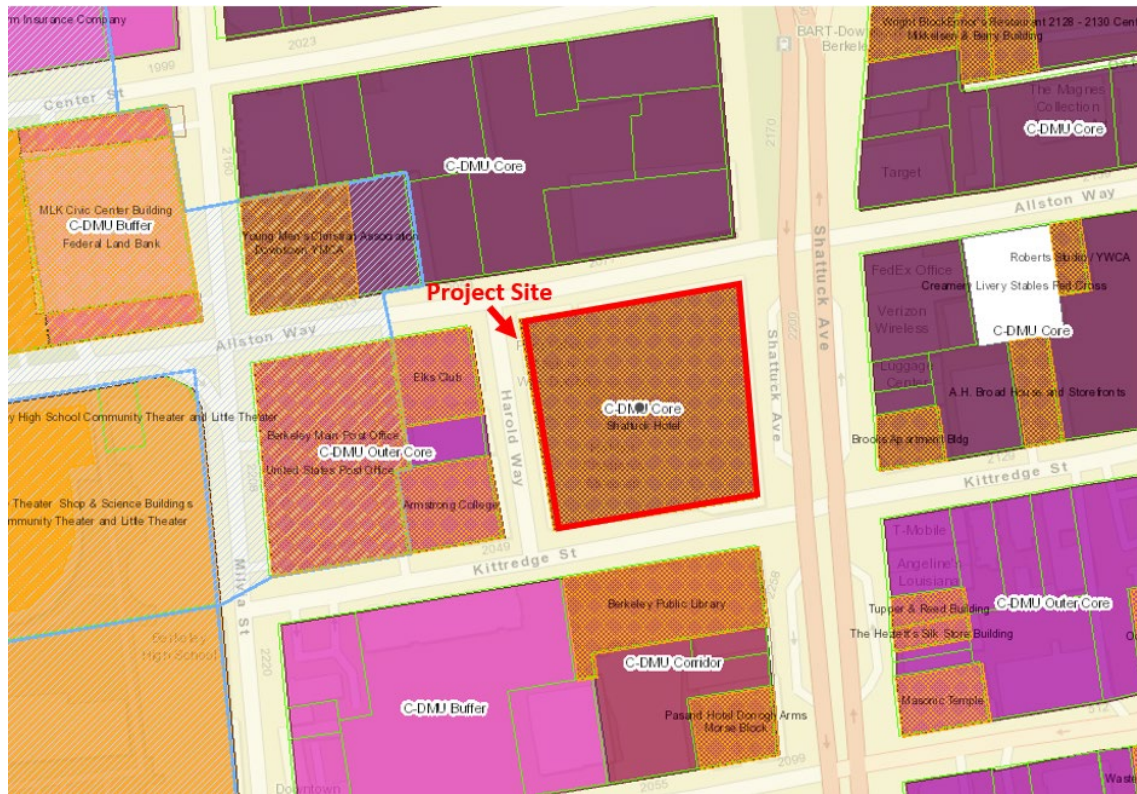
**E. Parties Involved:**

- Applicant Bill Schrader, 164 Oak Road, Alamo, CA 94507
- Property Owner CA Student Living Berkeley, LLC, 130 Randolph Street, Suite 2100, Chicago IL, 60601

**F. Application Materials, Staff Reports and Correspondence are available on the Internet:**

<https://aca.cityofberkeley.info/citizenaccess/Default.aspx>  
<https://cityofberkeley.info/your-government/boards-commissions/zoning-adjustments-board>

Figure 1: Zoning Map



Legend

- C-DMU: Downtown Mixed-Use District
- Core: C-DMU Core Sub-Area
- Buffer: C-DMU Buffer Sub-Area
- Corridor: C-DMU Corridor Sub-Area
- Outer Core: C-DMU Outer Core Sub-Area

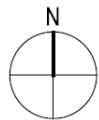


Figure 2: Project Location

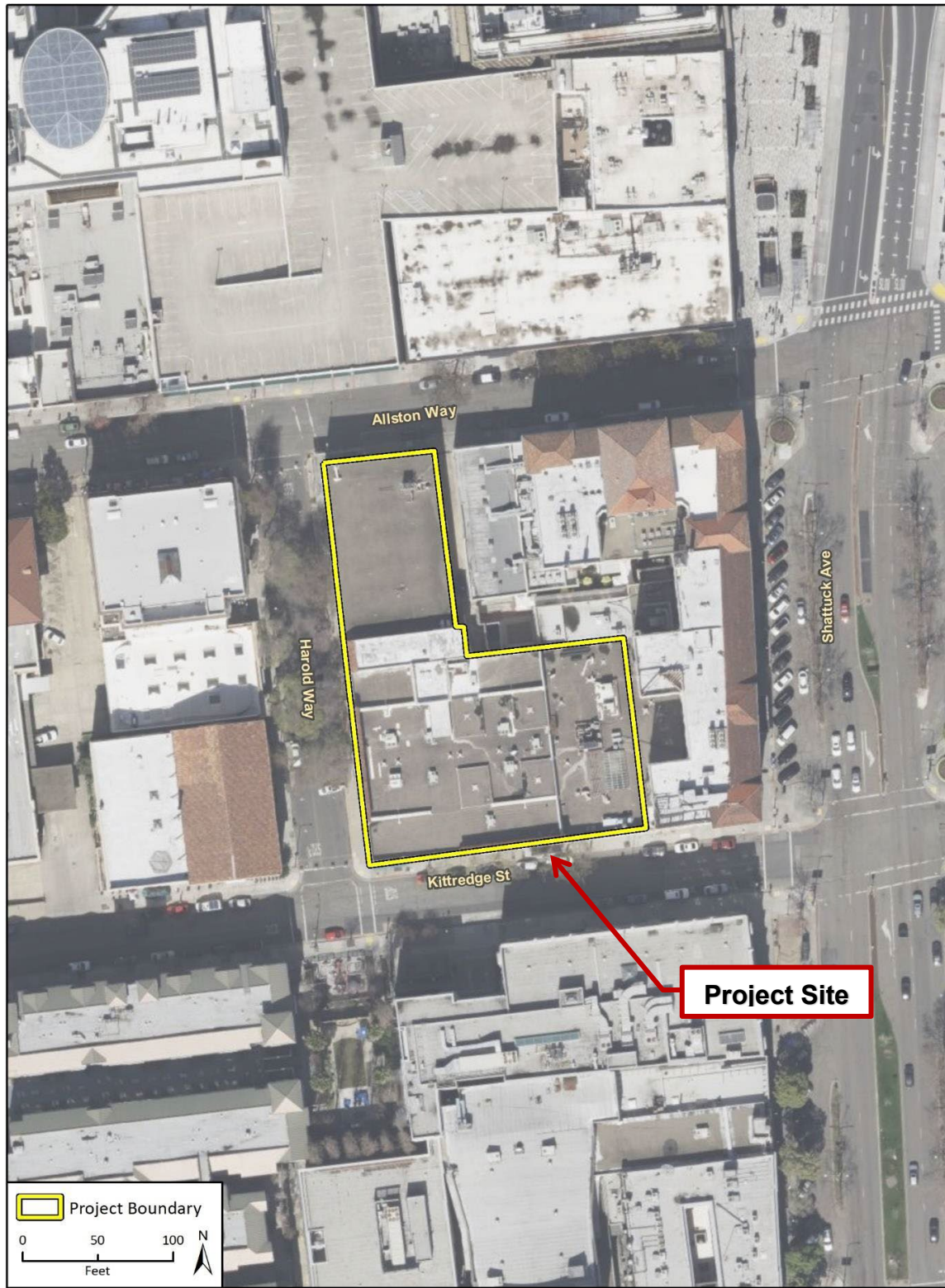


Figure 3: City Landmarks and Demolition Boundaries



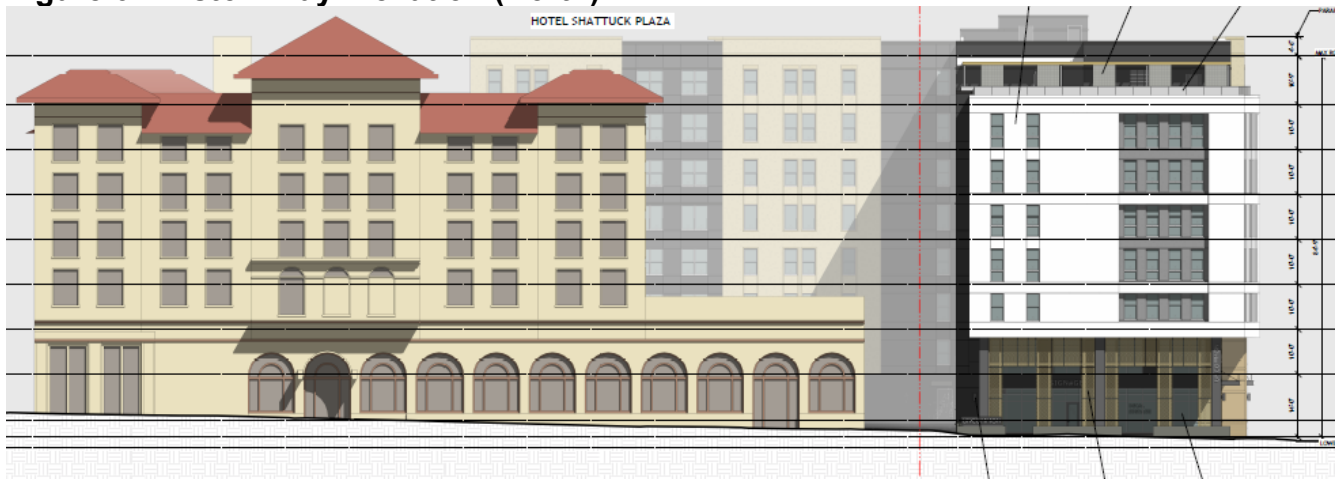
Figure 4: Kittredge Street Elevation (South)



Figure 5: Harold Way Elevation (West)



Figure 6: Allston Way Elevation (North)



**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Office (combination of professional, institutional and medical) Children’s Museum (closed)	C-DMU Core Sub- Area	DT
Surrounding Adjacent Properties	North	Retail (2190 Shattuck Ave); Public parking structure with ground floor office and commercial		
	East	Hotel Shattuck Plaza (2086 Allston Way) and ground floor retail on Shattuck Ave. Mixed use retail and apartments (2219 Shattuck Ave.) Mixed use retail and apartments (2225 Shattuck Ave.) Mixed use retail and apartments (2231 Shattuck Ave.) Shattuck Cinemas (closed)		
	South	Central Public Library (2090 Kittredge St.)		
	West	Dharma College and the Mangalam Center (2018 Allston Way)		

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee & Affordable Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. & 66,617-N.S.)	No	These fees apply to projects with more than 7,500 square feet of net new non-residential gross floor area. The project includes no net new non-residential gross floor area. Therefore, the project would not be subject to these fees.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	Yes	The project would include five or more market rate dwelling units and is therefore subject to the affordable housing provisions of BMC 22.20.065.
Alcohol Sales/Service	No	The project is not proposing alcohol sales or service with this permit.
Coast Live Oaks	No	There are no oak trees on the project site.
Creeks	No	The project site is not within a creek buffer.

Characteristic	Applies to Project?	Explanation
Density Bonus	Yes	The project would provide nine Very Low-Income units, or 5% of the Base Project units, and qualifies for a 20% density bonus, or 33 bonus units (24 taken). See Section III.B for discussion.
Green Building Score	Yes	The Project is designed to achieve a LEED Gold (or equivalent) rating.
Historic Resources	Yes	The project would involve removal of the 1926 addition and portions of the 1913 addition to the landmarked Shattuck Hotel. The project would involve demolition of the 1959 Hink's Building, which is not a historic resource.
Housing Accountability Act (Govt. Code 65589.5(j))	Yes	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.
Public Art on Private Projects (BMC Chapter 23C.23)	Yes	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.
Rent Controlled Units	No	The project involves the partial demolition of non-residential structures and no rent-controlled units would be demolished.
Residential Preferred Parking	Yes	The site is located in RPP zone "I". However, newly constructed dwellings would not be eligible to participate in the RPP program.
Seismic Hazards (SHMA)	No	The project site is located in an area susceptible to liquefaction, as defined by the State Seismic Hazards Mapping Act (SHMA). The applicant has submitted a geotechnical report that has been peer reviewed by the City's consultant. Conditions of approval will be included in the permit to ensure oversight by the applicant's geotechnical consultant.
Soil/Groundwater Contamination	No	The project site is located within the City's Environmental Management Area. The project site is not listed on the Cortese List. The Phase I submitted by applicant indicated a potential for vapor intrusion associated with previous dry-cleaning activities at the site. A condition of approval will be included in the permit requiring a vapor intrusion report for Toxics Division review, as recommended in the Phase I report. Also, standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The project site is served by multiple bus lines (local, rapid, and Transbay) that operate along Shattuck Avenue, and is approximately one block from the Downtown Berkeley BART Station.





**Table 3: Project Chronology**

Date	Action
July 26, 2021	SB 330 Preliminary Application deemed complete
October 25, 2021	SB 330 Use Permit Application submitted
June 1, 2022	Application deemed complete; level of CEQA review determined by staff – EIR Addendum
April 21 2022	DRC Design Review Referral for LMSAP2021-0004
June 2, 2022	LPC Structural Alterations Permit LMSAP2021-0004 Hearing
August 4, 2022	LPC Structural Alterations Permit LMSAP2021-0004 Hearing
September 8, 2022	Public hearing notices mailed/posted
September 22, 2022	ZAB Hearing

**Table 4: Development Standards**

C-DMU Standards, Core Sub-Area		Existing	Proposed	Permitted/Required
Lot Area (sq. ft.)		33,582 <sup>1</sup>	33,582	n/a
Gross Floor Area (sq. ft.)		92,531	186,354	n/a
Commercial Floor Area		95,000	4,993 <sup>2</sup>	n/a
FAR		2.8	5.5	n/a
Dwelling Units		0	183	n/a
Live/Work Units		0	4	n/a
Building Height	Maximum	36'-0"	87'-0"	50' min./60' max. (75' max. w/use permit <sup>3</sup> ; 5' max. parapet by right)
	Stories	3	8	n/a
Building Setbacks	Front (Kittredge)	0'-0"	0'-0"	0'-5' (bldg. ht.≤20') 0' (bldg. ht.>20' and ≤75') 15' (bldg. ht.>75')
	Front (Harold)	0'-0"	0'-0" (2'-6" overhang into ROW)	0'-5' (bldg. ht.≤20') 0' (bldg. ht.>20' and ≤75') 15' (bldg. ht.>75')
	Front (Allston)	0'-0"	0'-0"	0'-5' (bldg. ht.≤20') 0' (bldg. ht.>20' and ≤75') 15' (bldg. ht.>75')
Lot Coverage (%)		100	82	n/a
Usable Open Space (sq. ft.)		n/a	11,916	14,960 min. (80 s.f./d.u.)
Privately Owned Public Open Space (sq. ft.)		n/a	4,593 <sup>4</sup>	100 (1 s.f./50 s.f. of commercial)

C-DMU Standards, Core Sub-Area		Existing	Proposed	Permitted/Required
Parking	Commercial (4,993 sq. ft.)	0	0	8 min. (1.5 space/1,000 s.f.)
	Residential	0	41	0 min./92 max. (0.5 spaces/du max.)
	Carshare	0	2	2 min.
	Total	0	43	6 min./92 max.
Bicycle Parking	Commercial - Short Term (4,993 sq. ft.)	0	3	3 (1 spc/2,000 s.f. commercial)
	Residential - Long Term	0	122	112 (1 space/3 bedrooms)
	Residential - Short Term	0	8	8 (1 space/40 bedrooms, or 2)
	Total		122/11 (long term/short term)	112/11 (long term/short term)
<p><sup>1</sup> Area of Unit B of Parcel Map 6889</p> <p><sup>2</sup> Includes commercial area in live/work units, 4 x 433.5 sq.ft.=1,734 sq.ft..</p> <p><sup>3</sup> The use permit to allow height up to 75 feet is included in the Base Project for the calculation of the density bonus, and is not a requested waiver. Additional height beyond 75' is being requested as a waiver.</p> <p><sup>4</sup> Each square foot of usable open space provided as privately-owned public open space is counted as two square feet of required on-site usable open space.</p> <p> = Waiver requested to modify the district standard.</p> <p> = Concession, pursuant to State Density Bonus Law, requested to modify the district standard.</p>				

## II. Project Setting

**A. Neighborhood/Area Description:** The project site is located within the Downtown Mixed-Use District (C-DMU), Core Sub-Area, as identified in the City’s Downtown Area Plan (DAP). Directly adjacent to the project site and on the same block is the Shattuck Hotel, a City of Berkeley Landmark, whose main lobby and entrance are on Allston Way but which also occupies the airspace above the ground floor retail along the entire block’s frontage on Shattuck Avenue. Below the hotel rooms along Shattuck Avenue is a row of commercial storefronts, as well as the entrance to the former commercial occupant, Shattuck Cinemas, which is now closed. The hotel consists of guest rooms, a restaurant, a bar, and meeting rooms.

Commercial uses are located along Shattuck Avenue north of and across from the project site. South of the project site on Shattuck Avenue and across Kittredge Street is the Berkeley Central Library, a City of Berkeley and National historic landmark. West of the project site across Harold Way are the Dharma College and the Mangalam Center, both City of Berkeley Landmarks. Commercial land uses and a public parking structure are located north of the project site across Allston Way. (See Figure 1: Zoning Map and Figure 2: Project Location.)

Building heights in the vicinity range from two to three-stories (portions of the Dharma College complex on Harold Way and U.S. Post Office along Kittredge Street) to the 12-story 2140–2144 Shattuck Avenue Chamber of Commerce Building (173 feet) and 14-story 2150 Shattuck Avenue First Savings/Great Western Building (180 feet). The adjacent Shattuck Hotel is five stories in height, not including the basement. Most buildings around the project site are in the two- to five-story range. One block north, around the intersection of Center Street and Shattuck Avenue, are several AC Transit and UC Berkeley Shuttle bus stops serving a number of bus lines, as well as the Downtown Berkeley BART Station on Shattuck Avenue between Allston Way and Addison Street.

**B. Site Conditions/Background:** The project site is a portion of the fully urbanized city block discussed above, which is generally level, sloping slightly downward towards the west and south. The project site is a single parcel that encompasses an entire City block with street frontage on Allston Way (north), Shattuck Avenue (east), Kittredge Street (south) and Harold Way (west) that is subdivided into condominium parcels A, B, and C of Parcel Map 6889. (See Figure 3: City Landmarks and Demolition Boundaries) The site is occupied by a City Landmark, The Shattuck Hotel, which has four primary components: the original hotel building constructed in 1910; 1913 hotel expansion and Hink’s Department store addition facing Shattuck Avenue and Kittredge Street; 1926 Hink’s expansion facing Kittredge and Harold Way; and the 1959 Hink’s addition facing Harold Way and Allston Way. The 1913 expansion previously housed the Shattuck Cinema’s movie theaters, part of the Habitot Children’s Museum, and office space. Both the Shattuck Cinemas and Habitot spaces are currently vacant. All portions of the expansions proposed to be demolished are two stories in height with a partial third story and a basement level.

The project site is Unit B of the condominium subdivision, Parcel Map 6889, which was created December, 2020. Entitlements were previously obtained for the project site in 2015 (UP13-10000010 and LM13-40000002, under the address 2211 Harold Way) to demolish historic structures and construct an 18-story, 302-unit, mixed-use building, with approximately 10,877 square feet of commercial space, a ten-theater cinema complex, and 177 underground parking spaces. Building permits were never obtained for the project, and the City deemed the permits expired on January 17, 2020.

### III. Project Description

- A.** The proposed project would demolish a portion of the City Landmark Shattuck Hotel (the 1913 expansion) and fully demolish the City Landmarks 1926 and 1959 Hink’s department store expansions; and construct a mixed-use building with the following main components:
- Eight stories, 87 feet in height
  - 183 dwelling units – 41 studios, 30 one-bedroom 101 two-bedroom, and 11 three-bedroom
  - Four live/work units

- 583 bedrooms total
- Nine Very Low Income (VLI) units
- 4,993 square feet of ground-floor commercial space
- 11,916 square feet of usable open space – two ground-floor public plazas (off of Kittredge and Allston frontages) and a seventh-floor roof deck
- 43 residential vehicle parking spaces in ground-level garage (two carshare spaces)
- 122-space bike room

(See Figure 4, 5 and 6: Elevations.)

**B. Base Project and Density Bonus:** By committing to provide nine 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 163 units, as the maximum allowable density for the site.<sup>1</sup> The Base Project has an average unit size of 995 square feet in a 7-story building. Nine VLI units, or 5 percent of the Base Project, qualifies the project for a 20 percent density bonus or 33 bonus units, of which the project would utilize 24. The resulting Proposed Project would be an eight-story building with 187 units, with an average unit size of 997 square feet. (See Table 5: Density Bonus.)

**Table 5: Density Bonus – CA Gov’t Code 65915**

Base Project Units*	Qualifying Units	Percent Density Bonus	Number of Density Bonus Units*	Proposed Project Units
163	9 VLI (5% of BP)	20%	24 (33 max.) (20%x163)	187
*Per Gov’t 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.

<sup>1</sup> 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).

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 below are subject to the requirements of Government Code Section 65589.5.

#### IV. Community Discussion

- A. Neighbor/Community Concerns:** Prior to submitting the application to the City on October 25, 2021, the applicant installed yellow Proposed Development Project signs at the project site.

October 6, 2021 a neighborhood outreach meeting was held by the applicant. Four members of the public attended and discussed questions about: construction timeline and noise mitigation, shared service access on the alley at Allston Way; the extent of the demolition and impact to internal circulation in the existing buildings to remain; the proposed retail and shared utilities with existing buildings to remain; and exterior materials and finishes.

On March 2, 2022, staff received a letter from a neighbor raising concerns over the demolition of a portion of the Shattuck Cinemas. On April 20 and 21, 2022, prior to the Design Review Committee referral meeting, staff received two letters letter from neighbors raising similar concerns about the demolition of the movie theater, and the loss of a “cultural resource”.

On September 8, 2022, 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.

- B. Design Review Committee Referral and Landmarks Preservation Commission:** In accordance with BMC Section 3.24.200 of the Landmarks Preservation Ordinance and BMC Section 23.406.070 of the Zoning Ordinance, the Landmarks Preservation Commission (LPC) must grant approval of the proposed demolition and complete Design Review for the new development under a Structural Alteration Permit, because the new construction shares the site with the landmarked structures. The project proposes to demolish the rear portion of the Shattuck Hotel (1913 expansion) and the 1926 and 1959 Hink’s department store expansions. All are components of the designated Shattuck Hotel City Landmark, and two structures – the 1913 and 1926 expansions – are eligible for listing on the National Register of Historic Places as well

as the California Register of Historic Resources.<sup>2</sup> Staff referred the project to the Design Review Committee (DRC) to obtain advisory comments on the design of the new building and its adherence to the Downtown Design Guidelines for consideration by both the ZAB and LPC.

The DRC met to review the project on April 21, 2022, and forwarded comments and recommendations for improvements to the project design. The applicant made revisions per DRC recommendations and the revised project was reviewed by the LPC under the Structural Alteration Permit (LMSAP2021-0004) on June 2, 2022 and August 4, 2022.

At the August 4, 2022 meeting, the LPC approved the Structural Alteration Permit (SAP) for demolition and new construction at the Shattuck Hotel site, adopted an Addendum to a previous EIR, and conditioned further refinements for Final Design Review (Vote: 5-2-1-1). The SAP Findings and Conditions can be found at this [link](#). Further revisions to the project were made based on comments received from the LPC at this meeting, including the elimination of one unit (two bedrooms), the addition of 812 square feet of commercial area, and other minor revisions. (See Attachment 2.) The revisions did not affect the conclusion of the EIR Addendum (discussed in section V.B).

## 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 EIR Addendum, potential impacts associated with the modified project (the proposed changes compared to the project evaluated in the Final EIR) are consistent with potential impacts characterized and mitigated for in the Final EIR. 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.

**B. EIR Addendum and Revised MMRP:** An Addendum to the 2211 Harold Way Mixed-Use Project (UP 13-10000010) Final EIR, which was certified in December 2015, was prepared to evaluate the potentially significant environmental impacts of the proposed

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<sup>2</sup> The 1959 Hink's expansion does not have cultural resource status pursuant to CEQA.

project, pursuant to the California Environmental Quality Act. The Addendum considered the Final EIR and Statement of Overriding Considerations, and evaluated the modified project (see Figure 7). The modified project was found to be smaller and less impactful than the Final EIR project. The impacts related to demolition and alteration of historic buildings, would remain significant and unavoidable, and the same overriding considerations would apply to the modified project, except that the project is no longer required to provide community benefits, and cultural resource impacts were addressed in the modified design.

**Figure 7: Changes to Previously Approved Project (from EIR Addendum)**

<b>Project Characteristic</b>	<b>Previously Approved Project</b>	<b>Updated Project</b>
Total Building Size	389,470 sf	220,982 sf
Residential	278,185 sf	149,678 sf <sup>1</sup>
Retail	10,535 sf	4,181 sf <sup>2</sup>
Cinema	21,641 sf	N/A
Parking	79,109 sf	20,881 sf
Building Height	180 feet; 18 stories	87 feet; 8 stories
<b>Total Residential Units</b>	<b>302 units<sup>3</sup></b>	<b>188 units<sup>4</sup></b>
Studio	76 units	41 units
1-Bedroom	145 units	31 units
2-Bedroom	75 units	101 units
3-Bedroom	6 units	11 units
Live/Work	N/A	4 units
Affordable Units	28 units	9 units
<b>Open Space</b>		
Private Roof Terrace	16,406 sf	2,930 sf
Private Balconies	9,762 sf	N/A
Public Open Space	713 sf	9,186 sf <sup>5</sup>
Outdoor deck	18th floor, 4,354 sf	N/A
Cinema	641 seats 10 screening rooms	Demolished
Main Pedestrian Entrance	Corner of Kittredge Street and Harold Way	Kittredge Street between Harold Way and Shattuck Avenue
<b>Parking</b>	<b>3 subterranean levels</b>	<b>1 subterranean level</b>
Automobile	171 spaces	43 spaces
Bicycle	100 spaces	129

<sup>1</sup>Includes 9,019 sf of indoor residential amenity and 2,946 sf of elevated roof terrace amenity

<sup>2</sup>Includes 2,666 sf retail suite (coffee shop) and 1,515 sf work space in live/work units

<sup>3</sup>Units were approved to range in size from 474 sf to 1,103 sf.

<sup>4</sup>Units would range in size from 295 sf to 1,374 sf.

<sup>5</sup>Includes a 6,186 sf public plaza on Kittredge Street and a 3,000 sf public plaza on Allston Way

sf = square feet

The Addendum described the changes in the modified project, and addressed the following issues in detail: Air Quality, Cultural Resources, Greenhouse Gas Emissions, Noise, Transportation, and Utilities and Service Systems. All other environmental issues were evaluated for impact from the modified project as well, with the conclusion that impacts to these areas would be less than significant with mitigation, similar to the original project. For each of the above-listed areas of evaluation, the EIR 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 these evaluated areas. 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 a reduction in building height, design strategies to break up massing with varied rooflines and materials, and the projection of the second-floor level above the double-height street level, aligning with the cornice of the 1912 portion of the Shattuck Hotel. These design modifications have responded to the design measures adopted in Mitigation Measures CR-2(a), (b) and (c) of the Final EIR; therefore the measures do not apply to the modified project. In particular, the modified project avoids impact to the Allston Way elevation, in response to Mitigation Measure CR-2(a); the redesign of the Kittredge Street “hyphen” responds to Mitigation Measure CR-2(b); and the removal of large-scale use of aluminum glazing systems responds to Mitigation Measure CR-2(c).

In conclusion, similar to the original project, cultural resource impacts from the modified project would be less than significant with mitigation, with the exception of impacts related to demolition and alteration of historic buildings, which would remain significant and unavoidable. Mitigation Measures CR-2(a) through (c) would be removed from the Mitigation Monitoring and Reporting Program (MMRP). All other measures adopted in the Final EIR for the purposes of mitigating cultural resources impacts remain applicable.

As mentioned in section IV.B, revisions to the project were made after the LPC meeting on August 4, 2022, including the elimination of one unit (two bedrooms), the addition of 812 square feet of commercial area, and other minor revisions. The City reviewed the revised plans and concluded that the revisions did not change the conclusion of the EIR Addendum (see Attachment 4).

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 2211 Harold Way 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. SB 330 – Housing Crisis Act of 2019:** The Housing Crisis Act, also known as Senate Bill 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 September 22, 2022 ZAB Hearing represents the fourth public hearing for the proposed project since the project was deemed complete. The City can hold one additional public hearing on this project, if needed. That 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, the structures proposed to be demolished – the rear portion of the Shattuck Hotel (1913 expansion) and the 1926 and 1959 Hink’s department store expansions – components of the designated Shattuck Hotel City Landmark, and two structures – 1913 and 1926 expansions – are eligible for listing on the National Register of Historic Places as well as the California Register of Historic Resources. Since the project would involve demolition of these historic resources, and an EIR was previously prepared in 2015 for a project proposal with a similar demolition scope, the City determined that an EIR Addendum was required to evaluate the modified project’s impacts on the historic resources. (See Section V for more information regarding the CEQA review). Further, standard

conditions of approval have been included to halt work if any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code 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. The project was deemed complete on June 1, 2022. An EIR was certified in December 2015 for a similar project on the project site, and Staff determined on this date that the appropriate level of CEQA review was preparation of an EIR Addendum to evaluate the modified project's impacts on the environment. (See Section V for details on the CEQA Approach and EIR Addendum.) Therefore, this section 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, this section does not apply to the project.

**B. Density Bonus Waivers and Concessions:** The project is entitled to one concession (or incentive), 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 one concession to reduce the Usable Open Space requirement to eliminate the cost of providing an additional roof deck or balconies.

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<sup>3</sup> 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, commercial parking, and the amount of landscaped open space are requested because they are necessary to physically accommodate the full density bonus project on the site.

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<sup>3</sup> A "specific, adverse impact" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."

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 following analyses of conformance with district purposes, use permit findings for non-detriment, and the 2002 General Plan goals and policies are provided for informational purposes only, to provide context; they are not required because the proposed project is HAA-compliant.

- A. Use Permit for Demolition of Commercial Structures:** Pursuant to BMC Section 23.326.070(A), in order to approve a Use Permit to demolish a commercial structure, the Board must make the findings in BMC Section 23.326.070(D)(2), including the finding that the demolition would not be materially detrimental to the commercial needs and public interest of any affected neighborhood of the City, and if demolishing a building more than forty years old, the LPC, upon review, does not recommend against granting the permit.

The proposed demolition of the rear portion of the Shattuck Hotel (1913 expansion) and the 1926 and 1959 Hink's department store expansions would not be materially detrimental to the commercial needs and public interest of the neighborhood because the proposed project would provide replacement commercial floor area, public open space, and new dwelling units within a mixed-use building that would bring more diversity of services to residents and workers in the vicinity and new housing to the neighborhood and the City at large. The existing structures to be demolished contain approximately 95,000 square feet of office, food service, and cinema uses. These uses would be replaced by approximately 4,993 square feet of commercial space (retail, food service, and live/work), 183 units of new residential units (four live/work units), and approximately 4,600 square feet in two privately-owned plazas (at Allston and Kittredge) that would be open for public use. The demolition is required in order to allow the proposed new mixed-use project to be built. The structures that are proposed for demolition are two stories in height with a basement level, and can be considered to be underutilized, as the DAP identifies two-story buildings near BART as Potential Development Opportunity Sites.

Further, as described above in Section IV.B., the proposed demolition referral and SAP were approved by the LPC on August 4, 2022.

- 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 project would include 183 housing units, four live/work units, 4,993 square feet of ground floor commercial uses in Downtown Berkeley and within walking distance of the University of California. It is located in an area that is well served by transit; the Downtown Berkeley BART station is within one block of the site, and multiple AC Transit lines run on Shattuck Avenue and University Avenue. The Project is within the C-DMU Downtown Mixed-Use District, and as per Provisions of the BMC, the purpose of this district is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include: 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 ES-3, UL-1 AC-1, AC-4. The project provides higher-density development in proximity to regional transit, shops and amenities, and it would improve options to increase access to Downtown on foot, by bicycle and via transit would promote transit as an efficient and attractive choice through its location and through its Transportation Demand Management Plan and other associated Conditions of Approval.
- Land Use: DAP Goal LU-1 (Policies LU-1.1 and LU-1.3). The Project will include residential, and commercial uses that allow people who live, work and learn in the Downtown to meet daily needs on foot.
- Historic Preservation and Urban Design: The LPC referred the project to DRC for design review recommendations, and considered the project in relation to its urban context, focusing on the application of the Downtown Design Guidelines, which implement the objectives and policies of the Historic Preservation and Urban Design chapter of the DAP. The LPC approved the SAP with findings for consistency with Landmarks Preservation, the Secretary of Interior standards for rehabilitation, and DAP design review standards. (See section IV.B for details.)
- Streets and Open Space: DAP Goal OS-1. The project would enhance public open spaces and streets to benefit pedestrians, improve Downtown's livability, and foster a sense of place.
- Housing and Community Health and Services: DAP Goals HC-1, HC-2, HC-3. The project would encourage Downtown as a thriving, livable, diverse residential neighborhood with a mix of supportive uses, and play a significant role in meeting Berkeley's continuing need for additional housing.
- Economic Development: DAP Goal ED-1. The project would serve the needs of the neighborhood and the City, make Downtown a more attractive regional destination, by promoting successful retail businesses and other attractions, with daytime and night-time populations to support them.

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

The project site currently includes office and retail uses. (Previous cinema and museum uses no longer occupy the site.) The proposed project would change uses

on the site to ground-floor commercial (retail and food service) and residential uses above. Uses on the surrounding properties include retail, public parking, office, library, hotel, and residential. The project would not introduce new land uses that do not already exist in the Downtown, and as described above, would further the vision and goals of the DAP.

As noted above, the DRC forwarded a positive recommendation for the project design, and the LPC voted to approve the SAP, with findings for consistency with Landmarks Preservation, the Secretary of Interior standards for rehabilitation, and DAP design review standards.

**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 A3-301 through A3-303). New shadow impacts would occur in the summer months, affecting commercial buildings on adjacent blocks to the west (Dharma College) and south (Downtown city public library) of the project site and the commercial buildings (offices and Shattuck hotel) that share the city block with the project site. New shadow impacts would also occur in the winter months, affecting commercial buildings on adjacent blocks to the northeast and north of the project site (YMCA, parking, and Walgreens) and the commercial buildings that share the city block with the project site (offices and Shattuck hotel). No residential buildings would be affected by new shadows from the project.

Non-Detriment: The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

## 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 EIR Addendum and Revised Mitigation Monitoring and Reporting Program (MMRP)

- B. **APPROVE** Use Permit ZP2021-0193, pursuant to BMC Section 23.406.040 and subject to the attached Findings and Conditions and MMRP (see Attachment 1, Exhibit A and B).

**Attachments:**

1. Findings and Conditions
  - a. Exhibit A, Findings and Conditions
  - b. Exhibit B, Mitigation Monitoring and Reporting Program, Revised July 2022
  - c. The SAP Findings and Conditions document is available at this link:  
[https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-08-04\\_LPC\\_Agenda\\_linked\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-08-04_LPC_Agenda_linked_0.pdf)
2. Project Plans, received September 1, 2022
3. EIR Addendum for 2065 Kittredge Mixed-Use Project  
The 2211 Harold Mixed-Use Project Final EIR and Statement of Overriding Considerations are available at this link: <https://aca.cityofberkeley.info/CitizenAccess/Default.aspx>. Click on Zoning tab; enter permit number ZP2021-0193; select permit ZP2021-0193; click on the "Record Info" drop down menu; click on Attachments for a list of all application materials.
4. Supplemental Analysis Memorandum to EIR Addendum, dated September 8, 2022
5. Notice of Public Hearing

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



Z O N I N G  
A D J U S T M E N T S  
B O A R D  
S T A F F R E P O R T

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FOR BOARD ACTION  
SEPTEMBER 22, 2022

## 2065 Kittredge Street

Use Permit #ZP2021-0193 to demolish portions of existing City Landmark commercial buildings and construct an 8-story, mixed-use building with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces. Project utilizes State Density Bonus.

### 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 Required:

- Use Permit under BMC Section 23.326.070(A) to demolish a non-residential building
- Use Permit under BMC Section 23.204.020(A) to construct a new mixed-use development
- Use Permit under BMC Section 23.204.020(A) to construct dwelling units
- Use Permit under BMC Section 23.204.030(B)(1) to create new floor area of 10,000 square feet or more
- Use Permit under BMC Section 23.204.130(E)(1) to exceed the maximum building height limits, up to 75 feet (plus 5-foot parapet, by right)

#### C. Concessions and Waivers and Pursuant to State Density Bonus Law (CA Gov't. Code Section 65915):

- Concession to reduce the usable open space requirement – to provide 11,916 square feet where 14,960 square feet is required
- Waiver of BMC Section 23.204.130(E)(1) to exceed building height limits – to be 87 feet (plus 5-foot parapet, by right), where 75 feet is the limit (plus 5-foot parapet, by right, with a use permit)
- Waiver of BMC Section 23.204.130(E)(3) to reduce setback to 0 feet, where 15 feet is required, where above 75 feet in height

- Waiver of BMC Section 23.204.130(E)(3) to increase front setback maximum to 0-20 feet, where 5 feet is required, at 0-20-foot building height
- Waiver of BMC Section 23.304.090(B)(7) to reduce the landscaped usable open space to 25 percent, where from 40 percent minimum is required
- Waiver of BMC Section 23.304.050(A) to exceed building height limits with rooftop architectural elements which exceed the maximum height limit for the district
- Waiver of BMC Section 23.322.030(B)(1) to reduce the minimum commercial parking requirement to zero, where eight is required

**D. CEQA Recommendation:** Adopt the Environmental Impact Report (EIR) Addendum to the certified 2211 Harold Way Mixed-Use Project Final EIR (SCH #2014052063) and Revised Mitigation Monitoring and Reporting Program (MMRP) pursuant to the California Environmental Quality Act. The Addendum and MMRP are attached to this staff report. See Section V for discussion of the project's CEQA review.

**E. Parties Involved:**

- Applicant Bill Schrader, 164 Oak Road, Alamo, CA 94507
- Property Owner CA Student Living Berkeley, LLC, 130 Randolph Street, Suite 2100, Chicago IL, 60601

**F. Application Materials, Staff Reports and Correspondence are available on the Internet:**

<https://aca.cityofberkeley.info/citizenaccess/Default.aspx>  
<https://cityofberkeley.info/your-government/boards-commissions/zoning-adjustments-board>



Figure 1: Zoning Map



Legend

- C-DMU: Downtown Mixed-Use District
- Core: C-DMU Core Sub-Area
- Buffer: C-DMU Buffer Sub-Area
- Corridor: C-DMU Corridor Sub-Area
- Outer Core: C-DMU Outer Core Sub-Area

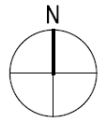


Figure 2: Project Location

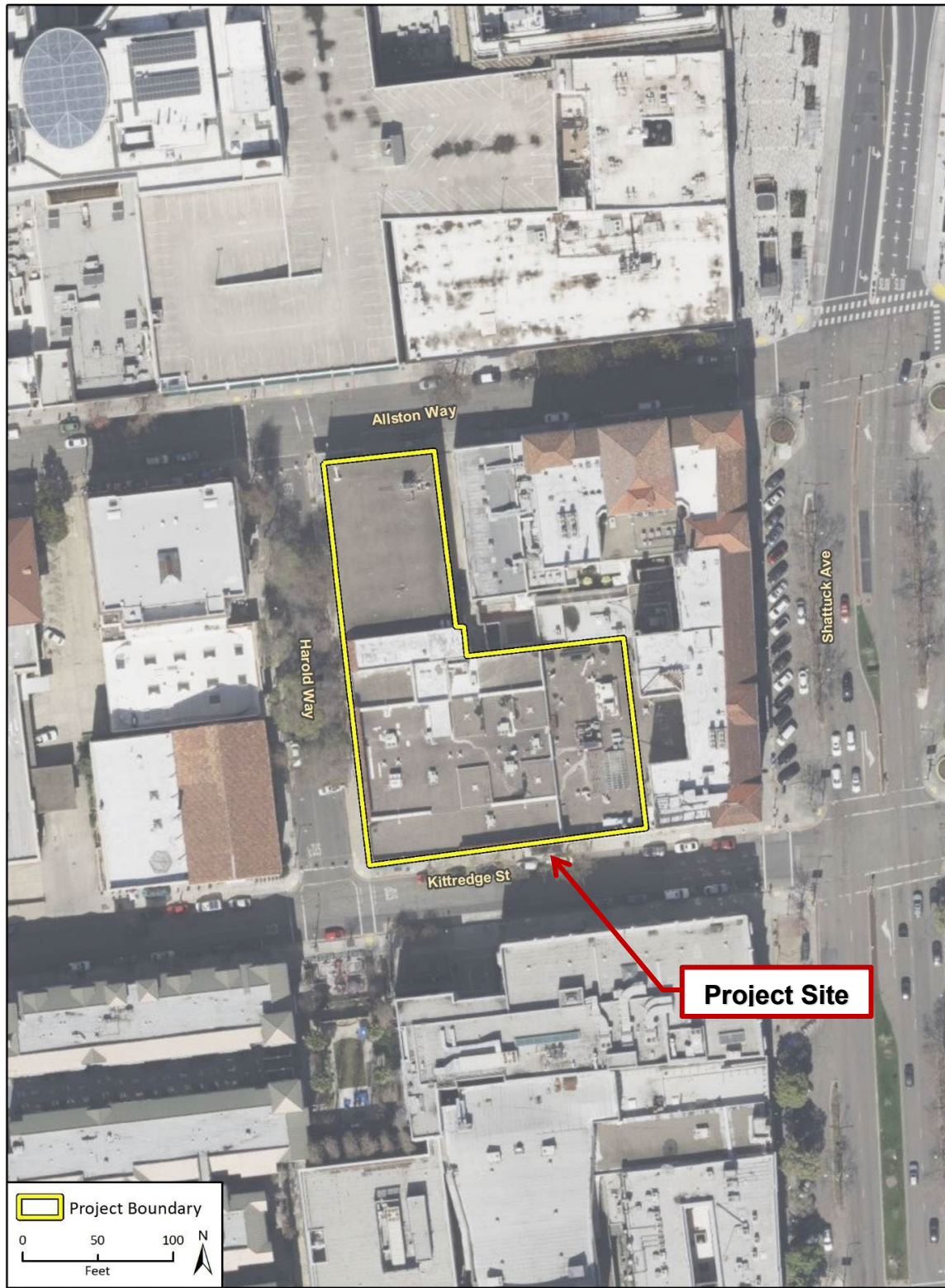


Figure 3: City Landmarks and Demolition Boundaries



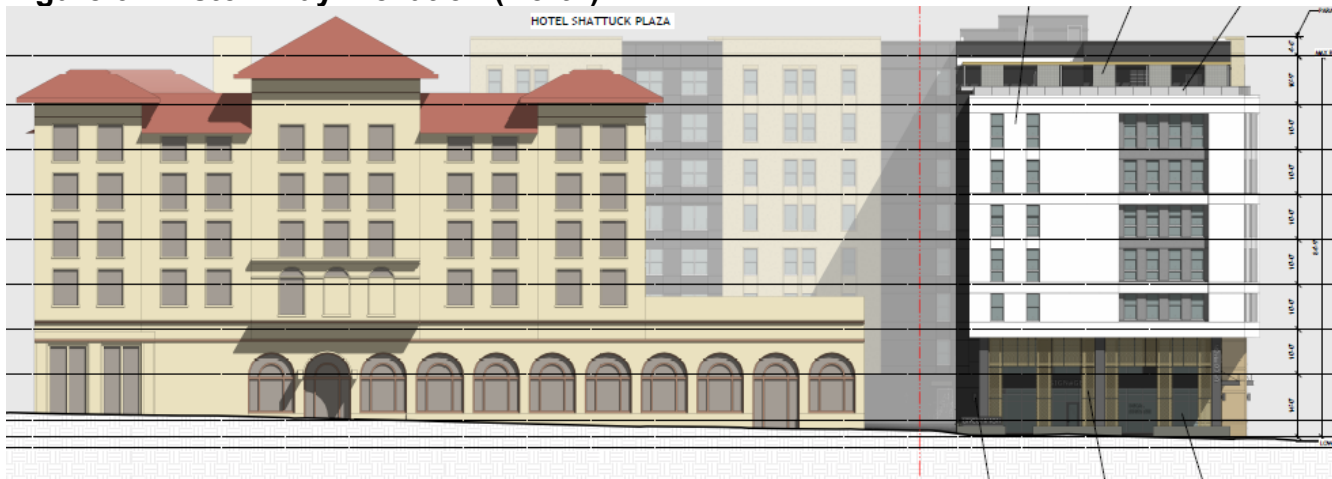
Figure 4: Kittredge Street Elevation (South)



Figure 5: Harold Way Elevation (West)



Figure 6: Allston Way Elevation (North)



**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation	
Subject Property		Office (combination of professional, institutional and medical) Children’s Museum (closed)	C-DMU Core Sub- Area	DT	
Surrounding Adjacent Properties	North	Retail (2190 Shattuck Ave); Public parking structure with ground floor office and commercial			
	East	Hotel Shattuck Plaza (2086 Allston Way) and ground floor retail on Shattuck Ave. Mixed use retail and apartments (2219 Shattuck Ave.) Mixed use retail and apartments (2225 Shattuck Ave.) Mixed use retail and apartments (2231 Shattuck Ave.) Shattuck Cinemas (closed)			
	South	Central Public Library (2090 Kittredge St.)			C-DMU Corridor Sub-Area
	West	Dharma College and the Mangalam Center (2018 Allston Way)			C-DMU Outer Core Sub- Area

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee & Affordable Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. & 66,617-N.S.)	No	These fees apply to projects with more than 7,500 square feet of net new non-residential gross floor area. The project includes no net new non-residential gross floor area. Therefore, the project would not be subject to these fees.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	Yes	The project would include five or more market rate dwelling units and is therefore subject to the affordable housing provisions of BMC 22.20.065.
Alcohol Sales/Service	No	The project is not proposing alcohol sales or service with this permit.
Coast Live Oaks	No	There are no oak trees on the project site.
Creeks	No	The project site is not within a creek buffer.



Characteristic	Applies to Project?	Explanation
Density Bonus	Yes	The project would provide nine Very Low-Income units, or 5% of the Base Project units, and qualifies for a 20% density bonus, or 33 bonus units (24 taken). See Section III.B for discussion.
Green Building Score	Yes	The Project is designed to achieve a LEED Gold (or equivalent) rating.
Historic Resources	Yes	The project would involve removal of the 1926 addition and portions of the 1913 addition to the landmarked Shattuck Hotel. The project would involve demolition of the 1959 Hink's Building, which is not a historic resource.
Housing Accountability Act (Govt. Code 65589.5(j))	Yes	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.
Public Art on Private Projects (BMC Chapter 23C.23)	Yes	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.
Rent Controlled Units	No	The project involves the partial demolition of non-residential structures and no rent-controlled units would be demolished.
Residential Preferred Parking	Yes	The site is located in RPP zone "I". However, newly constructed dwellings would not be eligible to participate in the RPP program.
Seismic Hazards (SHMA)	No	The project site is located in an area susceptible to liquefaction, as defined by the State Seismic Hazards Mapping Act (SHMA). The applicant has submitted a geotechnical report that has been peer reviewed by the City's consultant. Conditions of approval will be included in the permit to ensure oversight by the applicant's geotechnical consultant.
Soil/Groundwater Contamination	No	The project site is located within the City's Environmental Management Area. The project site is not listed on the Cortese List. The Phase I submitted by applicant indicated a potential for vapor intrusion associated with previous dry-cleaning activities at the site. A condition of approval will be included in the permit requiring a vapor intrusion report for Toxics Division review, as recommended in the Phase I report. Also, standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The project site is served by multiple bus lines (local, rapid, and Transbay) that operate along Shattuck Avenue, and is approximately one block from the Downtown Berkeley BART Station.

**Table 3: Project Chronology**

Date	Action
July 26, 2021	SB 330 Preliminary Application deemed complete
October 25, 2021	SB 330 Use Permit Application submitted
June 1, 2022	Application deemed complete; level of CEQA review determined by staff – EIR Addendum
April 21 2022	DRC Design Review Referral for LMSAP2021-0004
June 2, 2022	LPC Structural Alterations Permit LMSAP2021-0004 Hearing
August 4, 2022	LPC Structural Alterations Permit LMSAP2021-0004 Hearing
September 8, 2022	Public hearing notices mailed/posted
September 22, 2022	ZAB Hearing

**Table 4: Development Standards**

C-DMU Standards, Core Sub-Area		Existing	Proposed	Permitted/Required
Lot Area (sq. ft.)		33,582 <sup>1</sup>	33,582	n/a
Gross Floor Area (sq. ft.)		92,531	186,354	n/a
Commercial Floor Area		95,000	4,993 <sup>2</sup>	n/a
FAR		2.8	5.5	n/a
Dwelling Units		0	183	n/a
Live/Work Units		0	4	n/a
Building Height	Maximum	36'-0"	87'-0"	50' min./60' max. (75' max. w/use permit <sup>3</sup> ; 5' max. parapet by right)
	Stories	3	8	n/a
Building Setbacks	Front (Kittredge)	0'-0"	0'-0"	0'-5' (bldg. ht.≤20') 0' (bldg. ht.>20' and ≤75') 15' (bldg. ht.>75')
	Front (Harold)	0'-0"	0'-0" (2'-6" overhang into ROW)	0'-5' (bldg. ht.≤20') 0' (bldg. ht.>20' and ≤75') 15' (bldg. ht.>75')
	Front (Allston)	0'-0"	0'-0"	0'-5' (bldg. ht.≤20') 0' (bldg. ht.>20' and ≤75') 15' (bldg. ht.>75')
Lot Coverage (%)		100	82	n/a
Usable Open Space (sq. ft.)		n/a	11,916	14,960 min. (80 s.f./d.u.)
Privately Owned Public Open Space (sq. ft.)		n/a	4,593 <sup>4</sup>	100 (1 s.f./50 s.f. of commercial)

C-DMU Standards, Core Sub-Area		Existing	Proposed	Permitted/Required
Parking	Commercial (4,993 sq. ft.)	0	0	8 min. (1.5 space/1,000 s.f.)
	Residential	0	41	0 min./92 max. (0.5 spaces/du max.)
	Carshare	0	2	2 min.
	Total	0	43	6 min./92 max.
Bicycle Parking	Commercial - Short Term (4,993 sq. ft.)	0	3	3 (1 spc/2,000 s.f. commercial)
	Residential - Long Term	0	122	112 (1 space/3 bedrooms)
	Residential - Short Term	0	8	8 (1 space/40 bedrooms, or 2)
	Total		122/11 (long term/short term)	112/11 (long term/short term)
<sup>1</sup> Area of Unit B of Parcel Map 6889 <sup>2</sup> Includes commercial area in live/work units, 4 x 433.5 sq.ft.=1,734 sq.ft.. <sup>3</sup> The use permit to allow height up to 75 feet is included in the Base Project for the calculation of the density bonus, and is not a requested waiver. Additional height beyond 75' is being requested as a waiver. <sup>4</sup> Each square foot of usable open space provided as privately-owned public open space is counted as two square feet of required on-site usable open space.   = Waiver requested to modify the district standard.   = Concession, pursuant to State Density Bonus Law, requested to modify the district standard.				

## II. Project Setting

**A. Neighborhood/Area Description:** The project site is located within the Downtown Mixed-Use District (C-DMU), Core Sub-Area, as identified in the City’s Downtown Area Plan (DAP). Directly adjacent to the project site and on the same block is the Shattuck Hotel, a City of Berkeley Landmark, whose main lobby and entrance are on Allston Way but which also occupies the airspace above the ground floor retail along the entire block’s frontage on Shattuck Avenue. Below the hotel rooms along Shattuck Avenue is a row of commercial storefronts, as well as the entrance to the former commercial occupant, Shattuck Cinemas, which is now closed. The hotel consists of guest rooms, a restaurant, a bar, and meeting rooms.

Commercial uses are located along Shattuck Avenue north of and across from the project site. South of the project site on Shattuck Avenue and across Kittredge Street is the Berkeley Central Library, a City of Berkeley and National historic landmark. West of the project site across Harold Way are the Dharma College and the Mangalam Center, both City of Berkeley Landmarks. Commercial land uses and a public parking structure are located north of the project site across Allston Way. (See Figure 1: Zoning Map and Figure 2: Project Location.)



Building heights in the vicinity range from two to three-stories (portions of the Dharma College complex on Harold Way and U.S. Post Office along Kittredge Street) to the 12-story 2140–2144 Shattuck Avenue Chamber of Commerce Building (173 feet) and 14-story 2150 Shattuck Avenue First Savings/Great Western Building (180 feet). The adjacent Shattuck Hotel is five stories in height, not including the basement. Most buildings around the project site are in the two- to five-story range. One block north, around the intersection of Center Street and Shattuck Avenue, are several AC Transit and UC Berkeley Shuttle bus stops serving a number of bus lines, as well as the Downtown Berkeley BART Station on Shattuck Avenue between Allston Way and Addison Street.

**B. Site Conditions/Background:** The project site is a portion of the fully urbanized city block discussed above, which is generally level, sloping slightly downward towards the west and south. The project site is a single parcel that encompasses an entire City block with street frontage on Allston Way (north), Shattuck Avenue (east), Kittredge Street (south) and Harold Way (west) that is subdivided into condominium parcels A, B, and C of Parcel Map 6889. (See Figure 3: City Landmarks and Demolition Boundaries) The site is occupied by a City Landmark, The Shattuck Hotel, which has four primary components: the original hotel building constructed in 1910; 1913 hotel expansion and Hink’s Department store addition facing Shattuck Avenue and Kittredge Street; 1926 Hink’s expansion facing Kittredge and Harold Way; and the 1959 Hink’s addition facing Harold Way and Allston Way. The 1913 expansion previously housed the Shattuck Cinema’s movie theaters, part of the Habitot Children’s Museum, and office space. Both the Shattuck Cinemas and Habitot spaces are currently vacant. All portions of the expansions proposed to be demolished are two stories in height with a partial third story and a basement level.

The project site is Unit B of the condominium subdivision, Parcel Map 6889, which was created December, 2020. Entitlements were previously obtained for the project site in 2015 (UP13-10000010 and LM13-40000002, under the address 2211 Harold Way) to demolish historic structures and construct an 18-story, 302-unit, mixed-use building, with approximately 10,877 square feet of commercial space, a ten-theater cinema complex, and 177 underground parking spaces. Building permits were never obtained for the project, and the City deemed the permits expired on January 17, 2020.

### III. Project Description

- A.** The proposed project would demolish a portion of the City Landmark Shattuck Hotel (the 1913 expansion) and fully demolish the City Landmarks 1926 and 1959 Hink’s department store expansions; and construct a mixed-use building with the following main components:
- Eight stories, 87 feet in height
  - 183 dwelling units – 41 studios, 30 one-bedroom 101 two-bedroom, and 11 three-bedroom
  - Four live/work units

- 583 bedrooms total
- Nine Very Low Income (VLI) units
- 4,993 square feet of ground-floor commercial space
- 11,916 square feet of usable open space – two ground-floor public plazas (off of Kittredge and Allston frontages) and a seventh-floor roof deck
- 43 residential vehicle parking spaces in ground-level garage (two carshare spaces)
- 122-space bike room

(See Figure 4, 5 and 6: Elevations.)

**B. Base Project and Density Bonus:** By committing to provide nine 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 163 units, as the maximum allowable density for the site.<sup>1</sup> The Base Project has an average unit size of 995 square feet in a 7-story building. Nine VLI units, or 5 percent of the Base Project, qualifies the project for a 20 percent density bonus or 33 bonus units, of which the project would utilize 24. The resulting Proposed Project would be an eight-story building with 187 units, with an average unit size of 997 square feet. (See Table 5: Density Bonus.)

**Table 5: Density Bonus – CA Gov’t Code 65915**

Base Project Units*	Qualifying Units	Percent Density Bonus	Number of Density Bonus Units*	Proposed Project Units
163	9 VLI (5% of BP)	20%	24 (33 max.) (20%x163)	187
*Per Gov’t 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.

<sup>1</sup> 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).

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 below are subject to the requirements of Government Code Section 65589.5.

#### IV. Community Discussion

- A. Neighbor/Community Concerns:** Prior to submitting the application to the City on October 25, 2021, the applicant installed yellow Proposed Development Project signs at the project site.

October 6, 2021 a neighborhood outreach meeting was held by the applicant. Four members of the public attended and discussed questions about: construction timeline and noise mitigation, shared service access on the alley at Allston Way; the extent of the demolition and impact to internal circulation in the existing buildings to remain; the proposed retail and shared utilities with existing buildings to remain; and exterior materials and finishes.

On March 2, 2022, staff received a letter from a neighbor raising concerns over the demolition of a portion of the Shattuck Cinemas. On April 20 and 21, 2022, prior to the Design Review Committee referral meeting, staff received two letters letter from neighbors raising similar concerns about the demolition of the movie theater, and the loss of a “cultural resource”.

On September 8, 2022, 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.

- B. Design Review Committee Referral and Landmarks Preservation Commission:** In accordance with BMC Section 3.24.200 of the Landmarks Preservation Ordinance and BMC Section 23.406.070 of the Zoning Ordinance, the Landmarks Preservation Commission (LPC) must grant approval of the proposed demolition and complete Design Review for the new development under a Structural Alteration Permit, because the new construction shares the site with the landmarked structures. The project proposes to demolish the rear portion of the Shattuck Hotel (1913 expansion) and the 1926 and 1959 Hink’s department store expansions. All are components of the designated Shattuck Hotel City Landmark, and two structures – the 1913 and 1926 expansions – are eligible for listing on the National Register of Historic Places as well

as the California Register of Historic Resources.<sup>2</sup> Staff referred the project to the Design Review Committee (DRC) to obtain advisory comments on the design of the new building and its adherence to the Downtown Design Guidelines for consideration by both the ZAB and LPC.

The DRC met to review the project on April 21, 2022, and forwarded comments and recommendations for improvements to the project design. The applicant made revisions per DRC recommendations and the revised project was reviewed by the LPC under the Structural Alteration Permit (LMSAP2021-0004) on June 2, 2022 and August 4, 2022.

At the August 4, 2022 meeting, the LPC approved the Structural Alteration Permit (SAP) for demolition and new construction at the Shattuck Hotel site, adopted an Addendum to a previous EIR, and conditioned further refinements for Final Design Review (Vote: 5-2-1-1). The SAP Findings and Conditions can be found at this [link](#). Further revisions to the project were made based on comments received from the LPC at this meeting, including the elimination of one unit (two bedrooms), the addition of 812 square feet of commercial area, and other minor revisions. (See Attachment 2.) The revisions did not affect the conclusion of the EIR Addendum (discussed in section V.B).

## 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 EIR Addendum, potential impacts associated with the modified project (the proposed changes compared to the project evaluated in the Final EIR) are consistent with potential impacts characterized and mitigated for in the Final EIR. 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.

**B. EIR Addendum and Revised MMRP:** An Addendum to the 2211 Harold Way Mixed-Use Project (UP 13-10000010) Final EIR, which was certified in December 2015, was prepared to evaluate the potentially significant environmental impacts of the proposed

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<sup>2</sup> The 1959 Hink's expansion does not have cultural resource status pursuant to CEQA.

project, pursuant to the California Environmental Quality Act. The Addendum considered the Final EIR and Statement of Overriding Considerations, and evaluated the modified project (see Figure 7). The modified project was found to be smaller and less impactful than the Final EIR project. The impacts related to demolition and alteration of historic buildings, would remain significant and unavoidable, and the same overriding considerations would apply to the modified project, except that the project is no longer required to provide community benefits, and cultural resource impacts were addressed in the modified design.

**Figure 7: Changes to Previously Approved Project (from EIR Addendum)**

<b>Project Characteristic</b>	<b>Previously Approved Project</b>	<b>Updated Project</b>
Total Building Size	389,470 sf	220,982 sf
Residential	278,185 sf	149,678 sf <sup>1</sup>
Retail	10,535 sf	4,181 sf <sup>2</sup>
Cinema	21,641 sf	N/A
Parking	79,109 sf	20,881 sf
Building Height	180 feet; 18 stories	87 feet; 8 stories
<b>Total Residential Units</b>	<b>302 units<sup>3</sup></b>	<b>188 units<sup>4</sup></b>
Studio	76 units	41 units
1-Bedroom	145 units	31 units
2-Bedroom	75 units	101 units
3-Bedroom	6 units	11 units
Live/Work	N/A	4 units
Affordable Units	28 units	9 units
<b>Open Space</b>		
Private Roof Terrace	16,406 sf	2,930 sf
Private Balconies	9,762 sf	N/A
Public Open Space	713 sf	9,186 sf <sup>5</sup>
Outdoor deck	18th floor, 4,354 sf	N/A
Cinema	641 seats 10 screening rooms	Demolished
Main Pedestrian Entrance	Corner of Kittredge Street and Harold Way	Kittredge Street between Harold Way and Shattuck Avenue
<b>Parking</b>	<b>3 subterranean levels</b>	<b>1 subterranean level</b>
Automobile	171 spaces	43 spaces
Bicycle	100 spaces	129

<sup>1</sup>Includes 9,019 sf of indoor residential amenity and 2,946 sf of elevated roof terrace amenity

<sup>2</sup>Includes 2,666 sf retail suite (coffee shop) and 1,515 sf work space in live/work units

<sup>3</sup>Units were approved to range in size from 474 sf to 1,103 sf.

<sup>4</sup>Units would range in size from 295 sf to 1,374 sf.

<sup>5</sup>Includes a 6,186 sf public plaza on Kittredge Street and a 3,000 sf public plaza on Allston Way

sf = square feet

The Addendum described the changes in the modified project, and addressed the following issues in detail: Air Quality, Cultural Resources, Greenhouse Gas Emissions, Noise, Transportation, and Utilities and Service Systems. All other environmental issues were evaluated for impact from the modified project as well, with the conclusion that impacts to these areas would be less than significant with mitigation, similar to the original project. For each of the above-listed areas of evaluation, the EIR 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 these evaluated areas. 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 a reduction in building height, design strategies to break up massing with varied rooflines and materials, and the projection of the second-floor level above the double-height street level, aligning with the cornice of the 1912 portion of the Shattuck Hotel. These design modifications have responded to the design measures adopted in Mitigation Measures CR-2(a), (b) and (c) of the Final EIR; therefore the measures do not apply to the modified project. In particular, the modified project avoids impact to the Allston Way elevation, in response to Mitigation Measure CR-2(a); the redesign of the Kittredge Street “hyphen” responds to Mitigation Measure CR-2(b); and the removal of large-scale use of aluminum glazing systems responds to Mitigation Measure CR-2(c).

In conclusion, similar to the original project, cultural resource impacts from the modified project would be less than significant with mitigation, with the exception of impacts related to demolition and alteration of historic buildings, which would remain significant and unavoidable. Mitigation Measures CR-2(a) through (c) would be removed from the Mitigation Monitoring and Reporting Program (MMRP). All other measures adopted in the Final EIR for the purposes of mitigating cultural resources impacts remain applicable.

As mentioned in section IV.B, revisions to the project were made after the LPC meeting on August 4, 2022, including the elimination of one unit (two bedrooms), the addition of 812 square feet of commercial area, and other minor revisions. The City reviewed the revised plans and concluded that the revisions did not change the conclusion of the EIR Addendum (see Attachment 4).

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 2211 Harold Way 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. SB 330 – Housing Crisis Act of 2019:** The Housing Crisis Act, also known as Senate Bill 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 September 22, 2022 ZAB Hearing represents the fourth public hearing for the proposed project since the project was deemed complete. The City can hold one additional public hearing on this project, if needed. That 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, the structures proposed to be demolished – the rear portion of the Shattuck Hotel (1913 expansion) and the 1926 and 1959 Hink’s department store expansions – components of the designated Shattuck Hotel City Landmark, and two structures – 1913 and 1926 expansions – are eligible for listing on the National Register of Historic Places as well as the California Register of Historic Resources. Since the project would involve demolition of these historic resources, and an EIR was previously prepared in 2015 for a project proposal with a similar demolition scope, the City determined that an EIR Addendum was required to evaluate the modified project’s impacts on the historic resources. (See Section V for more information regarding the CEQA review). Further, standard

conditions of approval have been included to halt work if any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code 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. The project was deemed complete on June 1, 2022. An EIR was certified in December 2015 for a similar project on the project site, and Staff determined on this date that the appropriate level of CEQA review was preparation of an EIR Addendum to evaluate the modified project's impacts on the environment. (See Section V for details on the CEQA Approach and EIR Addendum.) Therefore, this section 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, this section does not apply to the project.

**B. Density Bonus Waivers and Concessions:** The project is entitled to one concession (or incentive), 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 one concession to reduce the Usable Open Space requirement to eliminate the cost of providing an additional roof deck or balconies.

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<sup>3</sup> 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, commercial parking, and the amount of landscaped open space are requested because they are necessary to physically accommodate the full density bonus project on the site.

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<sup>3</sup> A "specific, adverse impact" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."



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 following analyses of conformance with district purposes, use permit findings for non-detriment, and the 2002 General Plan goals and policies are provided for informational purposes only, to provide context; they are not required because the proposed project is HAA-compliant.

- A. Use Permit for Demolition of Commercial Structures:** Pursuant to BMC Section 23.326.070(A), in order to approve a Use Permit to demolish a commercial structure, the Board must make the findings in BMC Section 23.326.070(D)(2), including the finding that the demolition would not be materially detrimental to the commercial needs and public interest of any affected neighborhood of the City, and if demolishing a building more than forty years old, the LPC, upon review, does not recommend against granting the permit.

The proposed demolition of the rear portion of the Shattuck Hotel (1913 expansion) and the 1926 and 1959 Hink's department store expansions would not be materially detrimental to the commercial needs and public interest of the neighborhood because the proposed project would provide replacement commercial floor area, public open space, and new dwelling units within a mixed-use building that would bring more diversity of services to residents and workers in the vicinity and new housing to the neighborhood and the City at large. The existing structures to be demolished contain approximately 95,000 square feet of office, food service, and cinema uses. These uses would be replaced by approximately 4,993 square feet of commercial space (retail, food service, and live/work), 183 units of new residential units (four live/work units), and approximately 4,600 square feet in two privately-owned plazas (at Allston and Kittredge) that would be open for public use. The demolition is required in order to allow the proposed new mixed-use project to be built. The structures that are proposed for demolition are two stories in height with a basement level, and can be considered to be underutilized, as the DAP identifies two-story buildings near BART as Potential Development Opportunity Sites.

Further, as described above in Section IV.B., the proposed demolition referral and SAP were approved by the LPC on August 4, 2022.

- 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 project would include 183 housing units, four live/work units, 4,993 square feet of ground floor commercial uses in Downtown Berkeley and within walking distance of the University of California. It is located in an area that is well served by transit; the Downtown Berkeley BART station is within one block of the site, and multiple AC Transit lines run on Shattuck Avenue and University Avenue. The Project is within the C-DMU Downtown Mixed-Use District, and as per Provisions of the BMC, the purpose of this district is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include: 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 ES-3, UL-1 AC-1, AC-4. The project provides higher-density development in proximity to regional transit, shops and amenities, and it would improve options to increase access to Downtown on foot, by bicycle and via transit would promote transit as an efficient and attractive choice through its location and through its Transportation Demand Management Plan and other associated Conditions of Approval.
- Land Use: DAP Goal LU-1 (Policies LU-1.1 and LU-1.3). The Project will include residential, and commercial uses that allow people who live, work and learn in the Downtown to meet daily needs on foot.
- Historic Preservation and Urban Design: The LPC referred the project to DRC for design review recommendations, and considered the project in relation to its urban context, focusing on the application of the Downtown Design Guidelines, which implement the objectives and policies of the Historic Preservation and Urban Design chapter of the DAP. The LPC approved the SAP with findings for consistency with Landmarks Preservation, the Secretary of Interior standards for rehabilitation, and DAP design review standards. (See section IV.B for details.)
- Streets and Open Space: DAP Goal OS-1. The project would enhance public open spaces and streets to benefit pedestrians, improve Downtown's livability, and foster a sense of place.
- Housing and Community Health and Services: DAP Goals HC-1, HC-2, HC-3. The project would encourage Downtown as a thriving, livable, diverse residential neighborhood with a mix of supportive uses, and play a significant role in meeting Berkeley's continuing need for additional housing.
- Economic Development: DAP Goal ED-1. The project would serve the needs of the neighborhood and the City, make Downtown a more attractive regional destination, by promoting successful retail businesses and other attractions, with daytime and night-time populations to support them.

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

The project site currently includes office and retail uses. (Previous cinema and museum uses no longer occupy the site.) The proposed project would change uses

on the site to ground-floor commercial (retail and food service) and residential uses above. Uses on the surrounding properties include retail, public parking, office, library, hotel, and residential. The project would not introduce new land uses that do not already exist in the Downtown, and as described above, would further the vision and goals of the DAP.

As noted above, the DRC forwarded a positive recommendation for the project design, and the LPC voted to approve the SAP, with findings for consistency with Landmarks Preservation, the Secretary of Interior standards for rehabilitation, and DAP design review standards.

**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 A3-301 through A3-303). New shadow impacts would occur in the summer months, affecting commercial buildings on adjacent blocks to the west (Dharma College) and south (Downtown city public library) of the project site and the commercial buildings (offices and Shattuck hotel) that share the city block with the project site. New shadow impacts would also occur in the winter months, affecting commercial buildings on adjacent blocks to the northeast and north of the project site (YMCA, parking, and Walgreens) and the commercial buildings that share the city block with the project site (offices and Shattuck hotel). No residential buildings would be affected by new shadows from the project.

Non-Detriment: The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

## 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 EIR Addendum and Revised Mitigation Monitoring and Reporting Program (MMRP)

- B. **APPROVE** Use Permit ZP2021-0193, pursuant to BMC Section 23.406.040 and subject to the attached Findings and Conditions and MMRP (see Attachment 1, Exhibit A and B).

**Attachments:**

1. Findings and Conditions
  - a. Exhibit A, Findings and Conditions
  - b. Exhibit B, Mitigation Monitoring and Reporting Program, Revised July 2022
  - c. The SAP Findings and Conditions document is available at this link:  
[https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-08-04\\_LPC\\_Agenda\\_linked\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-08-04_LPC_Agenda_linked_0.pdf)
2. Project Plans, received September 1, 2022
3. EIR Addendum for 2065 Kittredge Mixed-Use Project  
The 2211 Harold Mixed-Use Project Final EIR and Statement of Overriding Considerations are available at this link: <https://aca.cityofberkeley.info/CitizenAccess/Default.aspx>. Click on Zoning tab; enter permit number ZP2021-0193; select permit ZP2021-0193; click on the "Record Info" drop down menu; click on Attachments for a list of all application materials.
4. Supplemental Analysis Memorandum to EIR Addendum, dated September 8, 2022
5. Notice of Public Hearing

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



Administrative Record

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

**City Clerk Department**

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

or from:

**The City of Berkeley, City Council's Web site**

<http://www.cityofberkeley.info/citycouncil/>

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL****ZAB APPEAL: 2065 KITTREDGE STREET, USE PERMIT #ZP2021-0193**

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

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, JANUARY 31, 2023 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of the decision by the Zoning Adjustments Board to APPROVE Zoning Permit #ZP2021-0095 to **demolish portions of existing City Landmark commercial buildings and construct an eight-story, mixed-use building with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces.**

The hearing will be held at the Berkeley Unified School District Board Room located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of January 19, 2023. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Sharon Gong, Project Planner, (510) 981-7429 or [SGong@cityofberkeley.info](mailto:SGong@cityofberkeley.info). Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

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Mark Numainville, City Clerk

Mailed: **JANUARY 17, 2023**

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed.*

*Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

*If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available by request from the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.*

