



Office of the City Manager

PUBLIC HEARING
February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning & Development Department

Subject: Appeals of Landmarks Preservation Commission and Zoning
Adjustments Board Actions -- Conversion of the Hillside School to
Residential Use at 1581 Le Roy Avenue

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt a Resolution to affirm the Landmarks Preservation Commission (LPC) decision to approve Structural Alteration Permit #LMSAP2019-0004 and the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP20190061, to rehabilitate and convert the Hillside School to residential use, and dismiss the appeals.

FISCAL IMPACTS OF RECOMMENDATION

The recommendation to uphold the approval of these entitlements would have no impact on the City's adopted budget.

CURRENT SITUATION AND ITS EFFECTS

On December 3, 2019, Michael Scott, a representative of the Hillside Path and Playground Preservation Association (HPPPA), submitted an appeal of the LPC and the ZAB approvals for the rehabilitation and conversion of the Hillside School to residential use. The Hillside School is a City of Berkeley Landmark; the LPC approved the SAP for exterior building and site alterations for the project on August 1, 2019 [Vote: 5-3-0-0 (Yes: Abranches Da Silva, Allen, Chagnon, Crandall, Olson; No: Finacom, O'Malley, Schwartz; Abstain: none; Absent: none; one vacancy)]. The ZAB approved the conversion of the site to residential use and the introduction of certain building features on October 24, 2019 [Vote: 8-0-1-0 (Yes: Clarke, Ching, Matthews, O'Keefe, Selawsky, Sharenko, Simon-Weisberg, Tregub; No: none; Abstain: Kim; Absent: none)]. The City issued the requisite LPC Notice of Decision (NOD) for the SAP approval on November 18, 2019, and the ZAB NOD for the Use Permit approval on November 19, 2019. Rebecca Davis, attorney at Lozeau Drury LLC, submitted comment letters during the ZAB proceedings on behalf of the HPPPA, which form the basis for the appeals. The City Council must conduct a hearing to resolve these appeals.

BACKGROUND

On April 1, 2019, the applicant, historical architect Jerri Holan, on behalf of property owner Samuli Seppala, submitted Use Permit application #ZP2019-0061 and Structural Alteration Permit application #LMSAP2019-0004, to rehabilitate the Hillside School and to convert the building and site to residential use.

The project site is approximately 2.5 acres in total area and contains an approximately 50,000-sq. ft. main building constructed between 1934 and 1938 as an elementary school. The building was designed by renowned Berkeley architect Walter H. Ratcliff Jr. This property appears on the National Register of Historic Places and was designated as a City Landmark in 1982. The main building occupies the eastern portion of the site, and the remainder of the site features the former school playground. There is an existing parking and service vehicle area on the southern end of the site. The public school closed in 1982 and the property has since been in private ownership and in use as a variety of educational and community activities.

The scope of the SAP application included installation of a vehicle door, new windows, a rooftop swimming pool and a hot tub on the main building as well as establishing a new surface parking lot, constructing five storage sheds, and completing landscape improvements in a portion of the former playground and parking areas.

The scope of the Use Permit application included establishing the approximately 50,000-sq. ft. main building as a single-family residence and accessory dwelling unit, incorporating several former classrooms as private (non-commercial) art studio space; installing an unenclosed swimming pool and hot tub within a new roof deck; constructing an approximately 36-sq. ft. elevator penthouse above the second story, but below the third story roof ridge; converting a former multi-purpose room to a garage; creating a new, surface parking lot and locating as many as five new storage sheds, which will not be habitable or conditioned, so as to be suitable only for storage, within portions of the former playground to be partially re-purposed as an outdoor (non-commercial) art practice space; and completing landscape improvements along the public interface.

LPC Hearing and SAP Approval

After holding a public hearing on August 1, 2019, the LPC approved the Structural Alteration Permit (SAP) by a vote of 5-3-0-0 with one vacancy. The approval included findings of compliance with the Landmarks Preservation Ordinance (Berkeley Municipal Code Chapter 3.24) and the Secretary of the Interior (SOI) Standards for the Treatment of Historic Properties. The findings are itemized in the Notice of Decision, included with this report as Attachment 1, Exhibit A. The approved plans are in Exhibit B. Because the project complies with the SOI Standards, it is categorically exempt from environmental review pursuant to CEQA, as provided for in CEQA Guidelines section 15331 for *Historical Resource Restoration/Rehabilitation*.

The majority of the public comments regarding the project were inquiries about the nature and scale of the property owner's private art practice and the activities intended for the site, which would support the practice and invite others to participate by invitation to the site. Some speakers were opposed to the project citing the property owner's ability to preclude public access to the playground and a pathway within the site that extends from Buena Vista Way on the north side of the property to Le Roy Avenue on the south. The path represents a pedestrian shortcut that many neighbors have used while the school was not in session. These neighbors requested that the property owner grant a public easement for their continued use of that pathway and, when the owner did not agree, they requested that the LPC make an easement a condition of SAP approval. In response to the neighbors, the applicant confirmed that the property owner is willing to maintain the pathway in its current condition with no barriers to public access but reserves the right to re-consider this arrangement in the future should the circumstances prove untenable.

The LPC did not impose a condition of approval requiring an access easement; the majority of the Commission recognized that such an easement would be a private matter and not within the Commission's purview or authority.

ZAB Hearing and Use Permit Approval

After holding a public hearing on October 24, 2019, the ZAB approved the Use Permit to convert the school to residential use by a vote of 8-0-1-0. The approval included findings of compliance with the Zoning Ordinance (BMC Title 23) as well as the provisions for environmental review and exemption pursuant to CEQA Guidelines section 15301 for *Existing Facilities*, section 15303 for *New Construction or Conversion of Small Structures*, and section 15331 for *Historical Resource Restoration / Rehabilitation*.

Similar to the prior SAP hearing, the public's comments were inquiries about the nature and scale of the property owner's private art practice and the activities intended for the site, which would support the practice and invite others to participate by invitation to the site. Unlike the SAP hearing, the majority of the speakers were in favor of the proposal and in support of the site's conversion to an active use. A few members of the public, including the appellant representative Michael Scott, raised the matter of their preference for a pedestrian access easement, this time stating that the easement was necessary to ensure public safety and that the project would not adhere to the requirements of the BMC and CEQA. They submitted letters prepared by attorney Rebecca Davis of Lozeau Drury LLP and asked that ZAB include a pedestrian access easement along the path as a condition of Use Permit approval.

ZAB did not require the easement as a condition of approval, explaining that the easement was a private matter and finding that the project was, in fact, categorically exempt from CEQA and consistent with the BMC. By reference, the ZAB also adopted the LPC's findings of compliance with the SOI Standards for the Treatment of Historic

Properties. The itemized findings and conditions are included as Attachment 1, Exhibit C. The approved plans are in Exhibit D.

Appeal

On December 3, 2019, Michael Scott, a representative of the Hillside Path and Playground Preservation Association, filed appeals of both the LPC SAP approval and the ZAB Use Permit approval, submitting a copy of the letter of objection previously submitted for the ZAB hearing. As a result, the points of both appeals are identical to each other and reassert the matters that ZAB considered at the hearing on October 24, 2019. The appeal includes signatures of no less than 50 persons identifying themselves as Berkeley residents; these signatures are required for LPC appeals in accordance with BMC Section 3.24.300.A.1 (*Appeals*).

ENVIRONMENTAL SUSTAINABILITY

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers. The creation of dwelling units within a former school site that is currently underutilized due to vacancy, represents an urban in-fill housing project that aligns with regional practices for sustainable development.

RATIONALE FOR RECOMMENDATION

The issues raised in the ZAB and LPC appeals, as well as additional information provided by staff for both sets of appeal points are combined below. For the sake of brevity, the appeal points are not re-stated in their entirety; please refer to the appeal documents for full text (Attachments 2).

Appeal Point 1 – Not a Historic Resource Rehabilitation Project

“The Historical Resource Restoration/Rehabilitation exemption does not apply on its face” because the approved project does not represent a restoration or rehabilitation project. Appeal document Pages 12 and 44

The appellant asserts that the CEQA categorical exemption for historical resource restoration and rehabilitation projects, CEQA Guidelines Section 153331, does not apply to the approved Use Permit or Structural Alteration Permit applications for rehabilitation of the Hillside School because the project does not represent a restoration or rehabilitation project.

Response 1: On August 1, 2019, the Landmarks Preservation Commission found that the applicant’s proposed improvements to the Hillside School building and site represented a rehabilitation project as defined by the Secretary of the Interior and

the Standards for the Treatment of Historic Properties, and pursuant to CEQA Guidelines for historic resources and environmental practices. In accordance with the SOI Standards, CEQA and the Landmarks Preservation Ordinance (LPO), the LPC approved the proposed project and made all requisite findings accordingly; see Attachment 1, Exhibit A.

The terms *rehabilitation* and *restoration* are used in the CEQA Guidelines, and are specifically referenced in the CEQA Guidelines which promulgate categorical exemptions for historical resource: section 15331. In its publication "*The SOI Standards for the Treatment of Historic Properties: Guidelines for Preserving, Rehabilitation, Restoring and Reconstructing Historic Buildings*," published in 1995 and again 2017, the SOI defines the term *rehabilitation* as:

...the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

In this case, the LPC found that the proposed scope of work represented the rehabilitation and adaptive re-use of the historic site. This finding is consistent with SOI's definition and use of the term rehabilitation. The approved rehabilitation activities extend beyond simple repairs, which generally are non-discretionary actions, to include additions to the property, such as the introduction of a swimming pool and overflow parking within a portion the asphalt-covered area of the former playground. The expanded scope represents alterations and additions, per the SOI, and were subject to discretionary SAP approval. Such activities are consistent with adaptive re-use of this site for residential purposes.

On October 24, 2019, the ZAB adopted the LPC's findings by reference when it approved the Use Permit.

LPC's and ZAB's findings support the determination that the project is a historic restoration and rehabilitation project.

Appeal Point 2 – Public Safety Impairment

"The City cannot rely on a CEQA exemption because the Project will have a significant impact on public safety." Appeal document Pages 14 and 46

The appellant believes the approved project will expose people and structures to a significant risk of loss, injury or death involving wildfires by reducing access and egress and by eliminating a potential safety zone and safety personnel deployment zone.

Response 2: The approved project will not reduce or eliminate access or egress to a potential safety zone (emergency staging and retreat area) because the site is not used for such purposes now, because it is no longer a public property, and the approved project will not change this condition. The appellant's claim is based on a statement provided by Noah Brownlow, from the Richmond Fire Department. As discussed below, Mr. Brownlow's opinion was reviewed and rejected by City of Berkeley Fire Chief David Brannigan; see Attachment 6.

The Hillside School is not a publicly-owned property, and its walkway, which extends from Buena Vista Way on the north to Le Roy Avenue on the south, is not a City pathway. In spite of the neighbors' regular use of the pathway and playground, it has never served as a public right-of-way. The subject property is currently owned by a private individual who purchased it from another private entity in 2018. Prior owners have included a series of K-12 schools and organizations, none of which were public entities or agents of the City of Berkeley.

Moreover, the City does not rely on the property for life safety purposes. As Chief Brannigan explained to ZAB in his October 24, 2019 memorandum, the City's evacuation plans and exercises focus on existing transportation networks only, and do not rely on private properties. Chief Brannigan specifically noted that: *"1581 Le Roy is not public property nor does it contain a public right of way and therefore [life safety personnel] do not consider it an official option for evacuation routes or temporary area of refuge..."*

The approved project will not change this status nor impair public safety as a result. For this reason, staff recommends that City Council uphold the LPC and ZAB approval of this project as it pertains to this appeal point.

Appeal Point 3 – Unusual Circumstances

"The Project involves an unusual circumstance, precluding reliance on a CEQA exemption." Appeal Document Pages 16 and 48

The appellant contends that two unusual circumstances apply to the approved project that do not apply to other projects or sites in the area, rendering the project non-exempt under CEQA: 1) location in a fire zone within the Alquist-Priolo Earthquake Fault Zoning; and 2) preclusion of use of a public path and open space that would be vital to public safety in the event of a fire or earthquake.

Response 3: The second part of this appeal point is addressed in response to appeal point #2, above.

The appellant's other primary assertion that earthquake and landslide hazards would constitute unusual circumstances precluding the project from a categorical exemption is inaccurate. In *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, the California Supreme Court observed that an unusual circumstance exists when a project "has some feature that distinguishes it from others in the exempt class, such as its size or location." (*Id.* at p. 1105.)

The project's location in a fire and earthquake fault zone is not an unusual circumstance under this standard. The Alquist-Priolo (A-P) Earthquake Fault Zone affects a large portion of the Berkeley Hills and applies to several hundred properties in the area, as do the fire hazard zones. The map in Figure 1, below, highlights landslide areas in light blue and fault zones in yellow and dark blue. Figure 2 illustrates the extent of the Very High Fire Hazard Severity Zone established by the State and adopted by the City for local fire code amendments, in which special construction techniques and other measures are required. The project site is not unique or unusual in this context.

For these reasons, staff recommends that Council uphold the determinations of the ZAB and LPC regarding the CEQA exemptions.

Figure 1. California Geological Survey - Earthquake Zones of Required Investigation

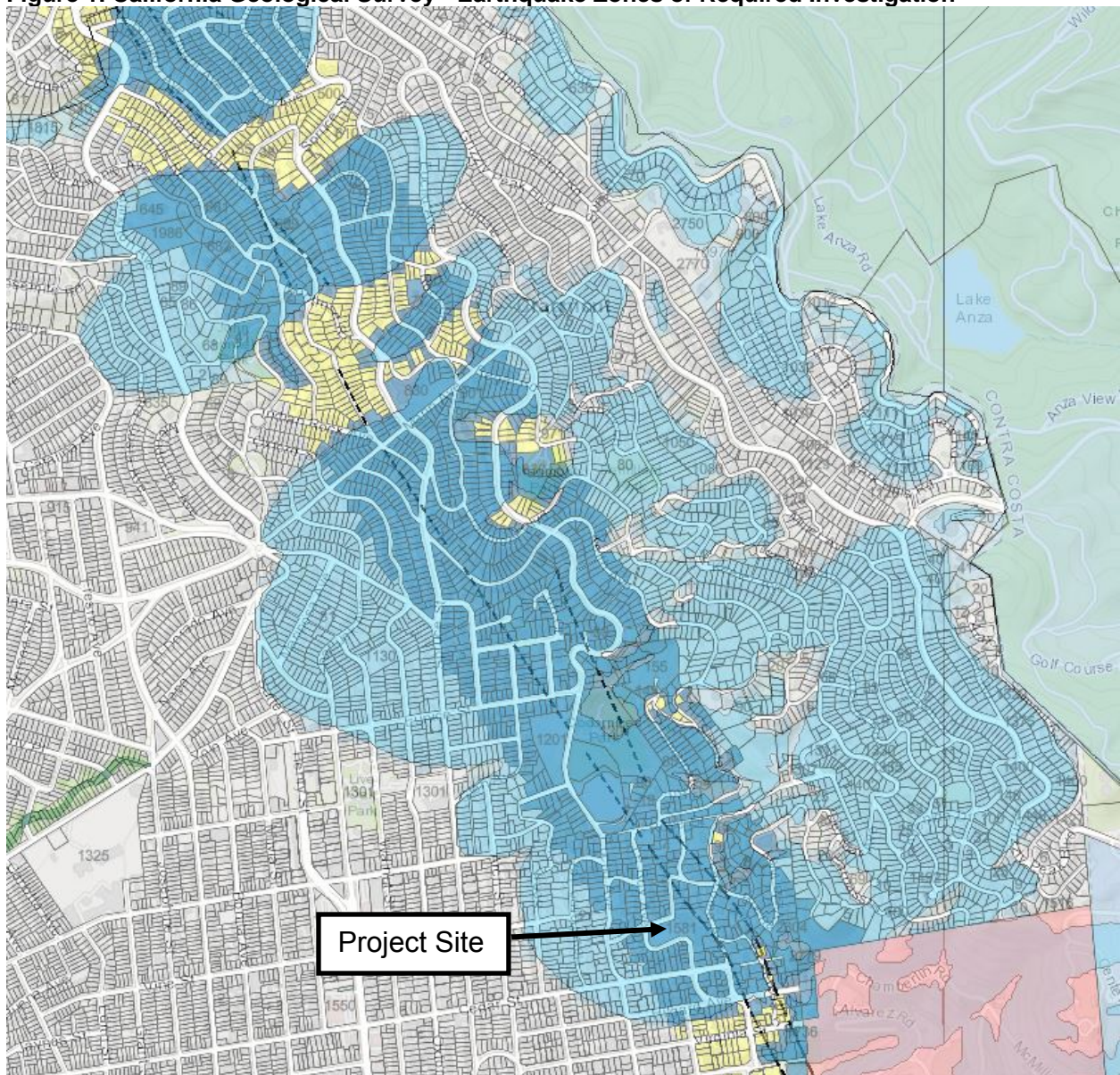
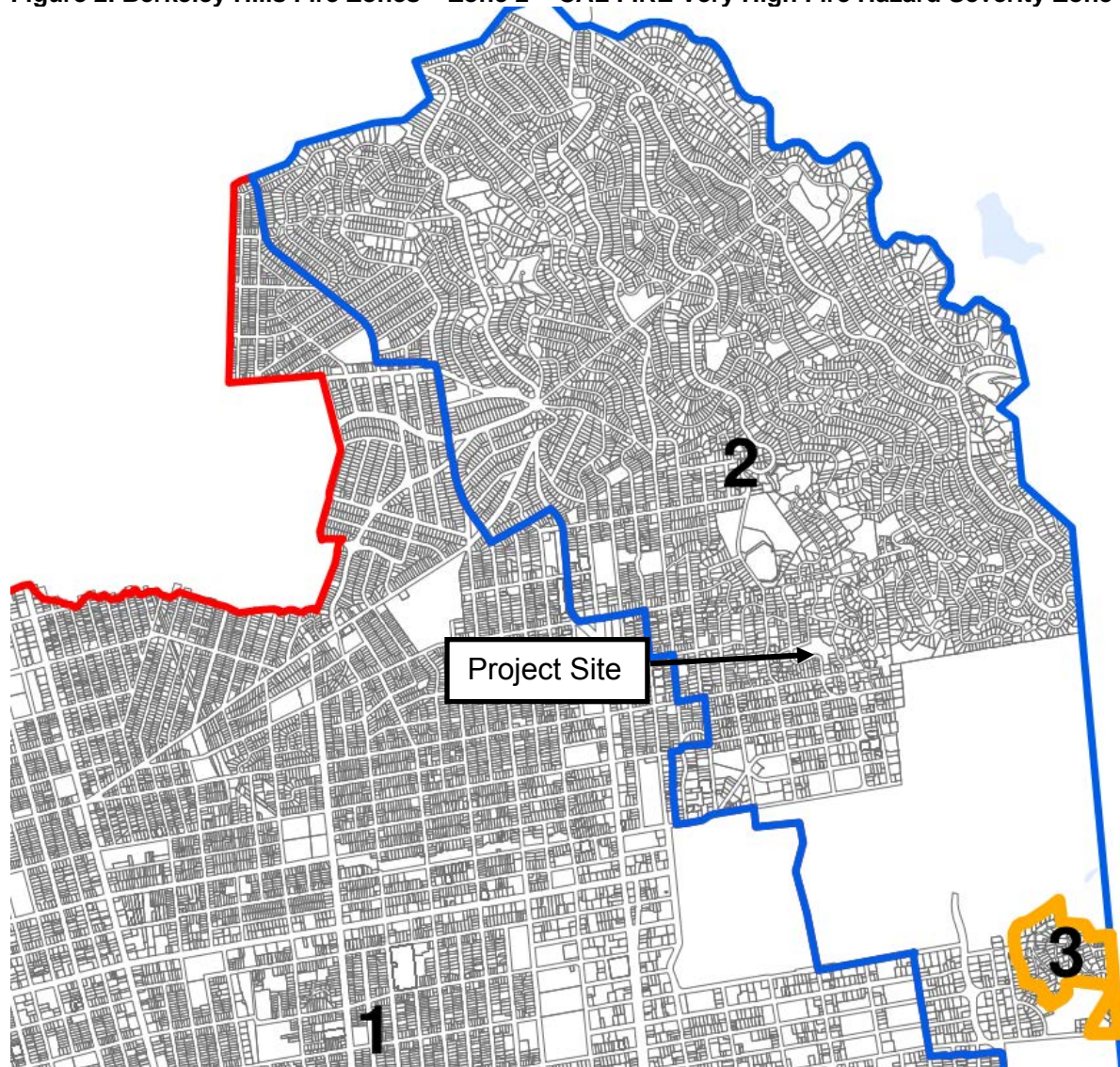


Figure 2. Berkeley Hills Fire Zones – Zone 2 = CAL FIRE Very High Fire Hazard Severity Zone



Appeal Point 4 – Adverse Impact on Historical Resources

“CEQA exemption is not allowed because the Project may have an adverse impact on a historic resource.” Appeal document Pages 17 and 49

The appellant asserts that the proposed project is not exempt under CEQA because the approved scope of work extends beyond rehabilitation to include alteration of portions of the playground and, therefore, will adversely affect and materially impair the Hillside School, the pathway and the playground, which collectively represent a historic resource.

Response 4: Under *Berkley Hillside, supra*, the appellant can prevail on this argument only if he establishes that the project *will* have a significant impact on a historical resource. (60 Cal.4th at p. 1105.) As summarized previously in the response to appeal point #1, the LPC found that the approved project is a rehabilitation project that is consistent with the SOI Standards for the Treatment of Historic Properties and, therefore, is exempt from environmental review pursuant to the provisions of CEQA.

LPC's finding support the conclusion that the approved project would not materially impair the historical significance of Hillside School owing to its compliance with the SOI Standards, according to CEQA Guidelines section 15064.5(b)(3). Thus, the appellant has not shown that the project will have a significant impact on a historical resources.

Appeal Point 5 – Conditions of Approval are Not Allowed as CEQA Mitigations
“*CEQA does not allow mitigated categorical exemptions.*” Appeal document Pages 17 and 49

The appellant asserts that LPC and ZAB adopted Conditions of Approval for the approved project that represent CEQA mitigations and, therefore a categorical exemption for this project is prohibited.

Response 5: The adoption of Conditions of Approval for discretionary projects is the City's long-standing, standard practice and must not be confused with mitigations for significant environmental impacts pursuant to CEQA. SAP Conditions of Approval often mirror the City's standard conditions for Design Review approval.

For the rehabilitation project at 1581 Le Roy Avenue, LPC adopted Conditions of Approval that deferred certain regulatory actions until building permit review for practical purposes. These actions include, for example, obtaining Use Permit approval and making the final selection of building finishes and colors. The Conditions of Approval for this project are not intended to mitigate environmental impacts, but to more efficiently process the requisite entitlement applications. None of the conditions of approval constitutes a mitigation measure under CEQA.

Appeal Point 6 – Project Does Not Comply with Berkeley Municipal Code Provisions for Residentially-zoned Properties with Respect to the Creation of Art

“*The project violates the Berkeley Municipal Code (BMC).*” Appeal document Pages 20 and 52

The appellant asserts that BMC Sections 23F.04 (Definitions) permits private residents to use *only* a detached accessory building for private art space.

Response 6: Through a combination of section codes, the zoning ordinance (BMC Title 23) regulates the creation of works of art or crafts when the activities are:

- Located in a manufacturing and commercial district; *or*
- Conducted in a detached accessory building occupied by private individuals on a residentially-zoned property.

When these activities occur elsewhere on a permitted residential property, they are not regulated.

Neither of the regulated circumstances summarized above applied to the Use Permit proposal to convert the Hillside School to residential use, because the site is residentially zoned and proposes the legal creation of a dwelling unit. The art activities would be associated with the main building and open yard area, and would not occur within any accessory buildings. Although the approved project site plan does include accessory storage structures, those structures would not be suitable for any use or activity other than storage, so they are not subject to any art use regulation.

Therefore, the proposed art activities do not require a separate discretionary permit in order to occur within a legal residential use, because the dwelling use and/or construction of a main building itself is subject to Use Permit approval in an R-district.

The BMC explicitly requires Administrative Use Permit (AUP) approval to establish art activities within detached accessory buildings on a residentially zoned property in BMC Section 23D.04.08.005.A.1 and Section 23F.04, and the BMC is silent on these activities when they occur within main buildings containing dwelling units. The appellant has interpreted this silence to be a prohibition on artistic activities on a residential-zoned property. However, the exclusion of a discretionary permit requirement simply means that the use is not regulated, but this does not mean that use is prohibited.

BMC 23D.04.08.005.A.1 requires prior AUP approval of the art creation activities within detached accessory buildings because these structures might otherwise be created ministerially with no opportunity for neighbors to weigh their concerns about possible effects. This is not the case for properties containing dwelling units because the establishment of these uses requires discretionary approval, which ensures a public review process. The approved Use Permit project at the Hillside School was subject to a Use Permit for the creation of a dwelling unit and was not subject to further permit review for the private art activities to occur as part of the residential use.

The appellant further argues that the approved project is an “art/crafts studio” as defined in BMC Section 23F.04, which is permitted only in commercial and certain manufacturing zones and is prohibited in residential zones. In the October 24, 2019 report to ZAB, staff attempted to demonstrate the difference between a private individual’s art practice within their residence and an enterprise where art is practiced, because the latter is subject to zoning and business license (BMC Section 9.04) regulation and the former is not. In response, the appellant argues that the approved project is akin to a regulated enterprise activity because the property owner proposes to invite other artists to practice along with the residential occupants of the converted Hillside School property on a regular basis. Staff disagrees with this generalization because, in this particular case, no fees will be charged or collected in order for invited guests to visit the residence and share in their art activities and, therefore, the project is not an “art/craft studio” use defined in BMC Section 23F.04.

Staff concludes that the proposed conversion of Hillside School to residential use where occupants will practice art and invite others to join them free-of-charge is permissible under the BMC, and staff recommends that the City Council dismiss this appeal point.

Appeal Point 7 – The Project Does Not Meet the BMC Finding for General Non-detriment.

“ZAB cannot make the findings required for approval of a use permit... [because]... the ability of the Project owner to cut off the public’s access to the Path and Playground would [sic] be detrimental to the safety of neighbors and their properties...also...the Project owner’s plans to throw monthly parties...combined with a roof deck and hot tub...additional traffic and noise...”
Appeal document pages 22-23 and 54-58

Response 7: The appellant’s contentions about potential public safety impairment and access to the pathway have been addressed in the previous responses to appeal points 2 and 3, above.

Residential property owners and occupants are entitled, generally, to host events on their private property. After considering the applicant’s estimate of monthly events and the relatively large size of the property and its built features, ZAB found that the site conditions would sufficiently accommodate the proposed frequency and scale of events.

Although residential zoning districts do not impose additional parking standards for these events, the approved project at Hillside School includes the provision of up to 30 off-street parking spaces where only one space is otherwise required. The conversion of the school site to low-density residential use is expected to

result in a reduction, and not an increase, in the frequency and number of vehicle trips to the site compared to when it was a school.

All properties are subject to the City-wide Community Noise Ordinance, BMC Section 13.40, which controls for audible noise levels and disturbances, and is enforced by the Division of Public Health, the Berkeley Police and the Office of the City Manager.

The proposed new roof deck and swimming pool are permitted by-right, while the proposed enclosed hot tub is permissible subject to performance standards that have been imposed through the ZAB-adopted Conditions of Approval, in accordance with BMC Section 23D.08.060.C (Fences and Other Accessory Structures); see Attachment 1, Exhibit C, Conditions of Approval 42-44.

Under these circumstances, ZAB found all of these aspects of the proposal to be permissible and generally non-detrimental.

Appeal Point 8 – The Project Does Not Meet Several General Plan Land Use Policies
“The Project is inconsistent with Berkeley General Plan and Municipal Code.”
Appeal document pages 23 and 55

The appellant states that the approved project is contrary to General Plan Policies LU-7 through 9, and 11.

Response 8: ZAB found that the project would be consistent with the General Plan (GP), specifically Policies LU-7, H-33 and UD-6. The appellant asserts that the project would be inconsistent with other GP Policies and, in support of this argument, cites GP policies that are not directly applicable for this project.

GP LU-7, Action A: Neighborhood Quality of Life. Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area

Response: The LPC and ZAB found compliance with prevailing historic preservation practices and the avoidance of significant alteration through the use of limited alterations to the built environment.

GP LU-8: Home Occupation. Monitor and evaluate the present and future effects of home occupations, home offices, and other similar developments on residential areas.

Response: This policy is not applicable because the approved project is not a commercial enterprise as explained in response 6, above, and is not a home occupation use as defined under BMC Section 23F.04

GP LU-9: Non-Residential Traffic. Minimize or eliminate traffic impacts on residential areas from institutional and commercial uses through careful land use decisions.

Response: This policy is not applicable because the project, as proposed, would not be entitled as a commercial or institutional use; see response 6, above. The site has been an institutional use (e.g. a school) and the approved conversion to a low-density residential use is not expected to increase vehicle trips to the site, as explained previously in response 7.

GP LU-11: Pedestrian and Bicycle Friendly Neighborhoods. Ensure that neighborhoods are pedestrian- and bicycle-friendly with well-maintained streets, street trees, sidewalks, and pathways.

GP LU-11, Action A: Ensure that any City-owned pathways or dedicated easements adjacent to, abutting, or through private property are preserved when reviewing new development proposals.

Response: As explained in previous response 2, the Hillside School property is not a City-owned pathway or dedicated easement. Therefore, this policy is not applicable.

Appeal Point 9 – The project is not Categorical Exempt from CEQA because the project will expand the use of the property.

“The key consideration is whether the project involves the negligible or no expansion of use...[in order to exempt].” Appeal document Pages 24-25 and 56-57

The appellant states that the approved project does not qualify as a Class 1 CEQA exemption for “Existing Facilities” because it will result in an expansion of the use of the project site.

Response 9: Contrary to this assertion, the approved project is not an expansion of the K-12 school use of this site but, instead, is a change of use and a reduction in the land use intensity.

The Hillside School site was entitled as a K-12 school where up to 85 students along with facility and staff members occupied the site Monday through Friday, and hosted evening and weekend events on occasions where extended family

and community were invited to attend (Use Permit #A1565 and A1702, issued 1994). By comparison, the proposed project includes two dwelling units (a main dwelling unit and an accessory dwelling unit) along with an active art practice and periodic events where as many as 100 people might be invited but fewer would likely attend. In the approved condition, the site would host fewer people and feature less activity on a regular, daily basis. The proposed use represents a reduction, not an expansion, of the use of the site.

When ZAB approved the conversion of the site to residential use, it noted that the proposed low-density residential land use and the associated art activities represented a less intense use of the property with far few occupants and less frequent gatherings than the previous school use. For this reason, the Use Permit was approved with a Categorical Exemption under Class 1 because the project was not an expansion of the former school use, as permitted under CEQA Guidelines Section 15301 for Existing Facilities.

ALTERNATIVE ACTIONS CONSIDERED

In accordance with BMC Sections 3.24.300.E and 23B.32.060.D, the City Council may take action to continue the hearing on these matters, reverse or affirm or modify the LPC and/or ZAB decisions in whole or in part, or remand the matter to LPC or ZAB to re-consider the application(s). If Council remands either decision, then Council must also specify which issues shall be re-considered.

ACTION DEADLINE

Pursuant to BMC Section 3.24.300.F and Section 23B.32.060.G, if the disposition of the Appeals have not been determined within 30 days from the date the public hearing was closed by City Council (not including Council recess), then the decisions of LPC and ZAB are deemed affirmed and the appeals shall be deemed denied.

CONTACT PERSONS

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Fatema Crane, Senior Planner, Planning & Development Department, 510-981-7413

Attachments:

1: Draft Council Resolution

- Exhibit A: LPC Findings for SAP Approval
- Exhibit B: Approved SAP Project Plans
- Exhibit C: ZAB Findings for Use Permit Approval
- Exhibit D: Approved ZAB Project Plans

2: Appeals of ZAB and LPC Actions, received December 3, 2019

- 3: LPC staff report, dated August 1, 2019
- 4: ZAB staff report, dated October 24, 2019
- 5: Memorandum from Chief Brannigan to ZAB, dated October 23, 2019
- 6: Index of Administrative Record
- 7: Administrative Record
- 8: Public Hearing Notice

ATTACHMENT 1

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

UPHOLDING LANDMARKS PRESERVATION COMMISSION APPROVAL OF STRUCTURAL ALTERATION PERMIT #LMSAP2019-0004 AND ZONING ADJUSTMENTS BOARD APPROVAL OF USE PERMIT #ZP2019-0061 TO REHABILITATE THE HILLSIDE SCHOOL AT 1581 LE ROY AVENUE AND TO CONVERT IT TO RESIDENTIAL USE

WHEREAS, on April 1, 2019, Jerri Holan AIA, submitted a Structural Alteration Permit application #LMSAP2019-0004 and a Use Permit application #ZP2019-00061 to rehabilitate the Hillside School and to convert it to residential use; and

WHEREAS on July 19, 2019, the City deemed the application for #LMSAP2019-0004 complete; and

WHEREAS on July 22, 2019, the City duly noticed the Landmarks Preservation Commission (LPC) hearing on this matter in accordance with Berkeley Municipal Code (BMC) Section 3.24.230; and

WHEREAS on August 1, 2019, LPC held a public hearing and, upon close of the hearing, approved #LMSAP2019-0004 with a vote of 5-3-0-0; and

WHEREAS on September 19, 2019, staff deemed the application for #ZP2019-0061 complete; and

WHEREAS on October 9, 2019, the City duly noticed the Zoning Adjustments Board (ZAB) hearing on this matter in accordance with BMC Section 23B.32.020; and

WHEREAS on October 24, 2019, ZAB held a public hearing and, upon close of the hearing, approved #ZP2019-0061 with a vote of 8-0-1-0; and

WHEREAS on November 18, 2019, the City issued a Notice of Decision for #LMSAP2019-0004, and on November 19, 2019, issued the Notice of Decision for #ZP2019-0061; and

WHEREAS on December 3, 2019, Michael Scott, representing the Hillside Path and Playground Preservation Association, submitted an appeal of the LPC decision to approve #LMSAP2019-0004 and an appeal of the ZAB decision to approve #ZP2019-0061; and

WHEREAS on February 11, 2020, City staff posted notices of the public hearing for this appeal at the site; and

February 25, 2020

WHEREAS on February 25, 2020, the City Council held a public hearing to consider the LPC decision and the ZAB decision, and in the opinion of this Council, the points and evidence of the appeals for both decisions and the facts stated in or ascertainable from the public record, including comments made at the public hearing, warrant approving the project; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Berkeley that the Council hereby denies and dismisses the appeal of #LMSAP2019-0004 and the appeal of #ZP2019-0061, and affirms the LPC and ZAB decisions to approve both entitlements, respectively, and hereby adopts the findings for approval made by LPC and by ZAB contained in Exhibits A and C.

Exhibits

- A: LPC Findings for SAP Approval
- B: Approved SAP Project Plans
- C: ZAB Findings for Use Permit Approval
- D: Approved Use Permit Project Plans

FINDINGS AND CONDITIONS

1581 Le Roy Avenue – The Hillside School

Structural Alteration Permit #LMSAP2019-0004

To make exterior alterations to a City Landmark school building and site in order to convert them to residential use; changes include installation of a vehicle door, new windows, a rooftop swimming pool and hot tub, a surface parking lot, five storage sheds, perimeter fences and landscape improvements.

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 153331 of the CEQA Guidelines (“Historic Resource Restoration/Rehabilitation”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

SECRETARY OF THE INTERIOR’S STANDARDS FINDINGS

Regarding the Secretary of the Interior’s Standards for Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The property and subject portion of the building be given a new residential use and proposed exterior changes will result in limited alterations to the historic building and overall site.
2. Because the proposed exterior changes to this site are limited and expected to have a limited overall effect on the character of the site, as described above, this property will retain its historic character as perceived through its building and site design.
3. The Hillside School will continue to be recognized as a physical record of Berkeley’s primary school and neighborhood development, where this site is the focal point of the immediate area. The building will retain its appearance, Tudor Revival style, location and relation to its surroundings.
4. No changes to a property that have acquired historic significance in their own right are the subject of this request.

5. The distinctive materials and features of this Tudor Revival building – such as its half-timber details and decorative architectural details – will not be affected by this request for exterior alterations and, therefore, will be preserved.
6. As conditioned herein, all repair and replacement work related to character-defining features of this building and site shall be designed to match the historic style, color, texture and, where possible, materials.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials are prohibited by the Conditions herein.
8. Because limited excavation will be required for the proposed alterations of this building and site, any existing archeological resources at this site will be unaffected by this proposal. Subsequent Use Permit approval of this project would include the City's standards conditions upon the discovery of any subsurface resources.
9. The proposed project is not expected to result in the destruction of historic fabric, materials, features or spatial relationships at this Landmark site. Certain new work – such as installation of a roof deck, swimming pool and hot tub – would occur on a portion of the building that is not historically significant, in and of itself. All other new work is limited in size and scale and, the thereby, will be compatible with the current conditions of this Landmark site.
10. The work proposed with this project will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment will be unimpaired.

LANDMARK PRESERVATION ORDINANCE FINDINGS

1. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that proposed work is appropriate for and consistent with the purposes of the Ordinance, and will preserve and enhance the characteristics and features specified in the designation for this property. Specifically:
 - The proposed building alterations are designed to either restore character-defining features, such as windows and doors, or replicate and compliment these details with new windows and doors, including a new garage door on the rear of the building. The Art Park and parking lot will be effectively screened by the existing chain link fence as well as with new, organic vegetative plantings to ensure continuity with the residential surroundings and the maintenance of the open character of the former school playground.
 - The proposal to legalize installation of the existing chain link fence is reasonable because the approximate height of 10 feet is effective for securing the site, and the design and materials maintain a visually open interface with the public-of-way. As conditioned herein, new plantings will screen the fence as well as the proposed parking lot and Art Park activities.
 - The new elevator penthouse will be located at the rear of the building, not readily visible from the right-of-way, and could be removed without significant impact to the historic

building and its character-defining features.

- The new, sloped driveway will be located on the rear of the building, the historic service area, and will not be readily visible from the public right-of-way.
- The new swimming pool and hot tub will be installed on the roof of the 1963 building addition, thereby avoiding impacts to the historically significant portions of the building.
- The proposed storage sheds will be limited by Condition #14 herein to a total of five and, therefore, will not result in the proliferations of accessory structures of inferior quality and design in the front yard area.

STANDARD CONDITIONS

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

1. Conditions 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 Permit, under the title 'Structural Alteration 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. Plans and Representations Become Conditions

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

3. Subject to All Applicable Laws and Regulations

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

4. Exercise and Lapse of Permits (Section 23B.56.100)

- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- A. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has:
 - (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

5. Indemnification Agreement

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

ADDITIONAL CONDITIONS

The following additional conditions are attached to this Permit:

6. **Use Permit approval.** This Structural Alteration Permit is contingent upon Use Permit approval for this project.
7. **Repair and replacement of character-defining features.** Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
8. **Chemical Treatments.** Any chemical treatments needed as construction progresses will be undertaken using the gentlest means possible.
9. **Roof equipment.** Any above ground or roof equipment, such as transformer(s), utilities, fire apparatus, air conditioning units, compressors, etc. shall be shown to scale on the architectural drawings of the building permit set of drawings in both plan and elevation, in order to determine if additional screening and design review may be required.
10. **Clear glass.** All glass is assumed to be clear glass. Any proposed glass that is not clear glass shall be indicated on all drawings, and shall be reviewed for approval by historic preservation staff, prior to approval of any building permit for this project.
11. **Exterior Lighting.** Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
12. **Landscape Plan.** Prior to approval of any building permit for this project, the proposed landscape improvements shall be revised to include new plantings to screen – or to supplement existing plantings – on both the north *and* south sides of the former playground area. Further, the landscape plan may be modified as needed to ensure compliance with zoning criterion for open space pavement.
13. **Irrigated, water efficient landscape.** New areas of landscape shall provide irrigation. This shall be called out on Landscape building permit drawings. The property owner shall maintain automatic irrigation and drainage facilities adequate to assure healthy growing conditions for all required planting and landscape. The landscape shall be drought-tolerant and achieve maximum water efficiency.
14. **Storage sheds within the front yard area.** The storage sheds shall be limited to not more than five total and to their proposed height, floor area and locations. Prior to issuance of any building permit for this project, the Commission shall appoint a Subcommittee to approval the final design of the storage sheds.
15. **Curb cuts.** All curbs and curb cuts shall be constructed per the standards and specifications of the Public Works Department. Curb cuts no longer utilized shall be restored per the Public Works Department specifications.

16. **Woodland maintenance.** The property owner shall establish and maintain a plan for maintenance and enhancement of the rustic woodland, which shall include a dripline protection zone wherein no structures has been place or items shall be stored.
17. **New surface parking lot.** Prior to issuance of any building permit for this project, the applicant shall re-design new parking area to further reduce visual impact to the playground area.
18. **Woodland maintenance.** The property owner shall establish and maintain a plan for maintenance and enhancement of the rustic woodland, which shall include a dripline protection zone wherein no structures has been place or items shall be stored.
19. At all times, the property owner shall preserve the existing pathways.



EXISTING WEST ELEVATIONS, 2019

PARCEL CONDITIONS:

- 1) Building is on the National Register of Historic Places and is a City Landmark;
- 2) Building is in the Fault Zone;
- 3) Building is in the Landslide Zone;
- 4) Building is not in a Creek Zone.

SCOPE OF ALTERATION WORK (NO SQUARE FOOTAGE BEING ADDED):

- 1) CHANGE OF OCCUPANCY FROM EDUCATIONAL TO SINGLE-FAMILY RESIDENTIAL WITH ADU;
- 2) REPLACE & RESTORE MISCELLANEOUS DOORS, WINDOWS & SIDELIGHTS;
- 3) RESTORE DAMAGED 3-STORY SOUTH WALL & REPLACE FOUNDATION;
- 4) RESTORE SOUTH TERRACE, ADD WING WALLS AND BRICK STAIRS SIMILAR TO ORIGINAL TERRACE.
- 5) CONVERT KITCHEN TO GARAGE AND ADD NEW CONCRETE DRIVEWAY AND RETAINING WALLS;
- 6) ADD ELEVATOR;
- 7) ADD BATHROOMS TO SECOND FLOOR;
- 8) REMODEL THIRD FLOOR AND ADD REAR DECK WITH STUCCO GUARD RAILS, POOL AND HOT TUB;
- 9) REPLACE ELECTRICAL AND MECHANICAL SYSTEMS;
- 10) ADD SOLAR PANELS;
- 11) ADD NEW FENCING;
- 12) ADD NEW PARKING AREA 2.

SECRETARY OF THE INTERIOR STANDARDS FOR REHABILITATING HISTORIC BUILDINGS:

As a property on the National Register of Historic Properties, the following Standards shall be followed:

- Standard 1** - A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
- Standard 2** - The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
- Standard 3** - Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties will not be undertaken.
- Standard 4** - Changes to a property that have acquired historic significance in their own right will be retained and preserved.
- Standard 5** - Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
- Standard 6** - Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
- Standard 7** - Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
- Standard 8** - Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
- Standard 9** - New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion and massing to protect the integrity of the property and its environment.
- Standard 10** - New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

2016 CALIFORNIA HISTORICAL BUILDING CODE (CHBC) NOTES:

As a qualified historic building, the application of the following provisions of the CHBC apply:

SECTION 8-102.1.6 - Qualified buildings shall not be subject to additional work required by the regular code beyond that required to complete the work undertaken.

SECTION 8-901.5 - Qualified buildings are exempted from compliance with energy conservation standards.

PLANNING, ZONING, & BUILDING INFORMATION:

APN: 058-2245-009-03 Fire Zone 2

Zoning: R-1H Existing Educational Building Occupancy (E) is converting to Single-family Residential Occupancy (R-3)

Three-story, Type VB Construction, Fully Sprinklered

Lot Size: 117,546 sf Footprint Size: 25,695 sf

First Floor Size: 25,695 sf
Second Floor Size: 21,562 sf
Third Floor Size: 3,045 sf

TOTAL SIZE 50,302 SF



1
T-1 VICINITY MAP

APPROX. SCALE: 1" = 100'

DRAWING INDEX

- T-1 TITLE SHEET
- A-1 SITE & ROOF PLAN
- SY-1 SURVEY
- A-2 FIRST & SECOND FLOOR PLANS
- A-3 THIRD FLOOR PLANS & BUILDING SECTION
- A-4 PARTIAL ELEVATIONS & DETAILS
- A-5 ENERGY FORMS & FLASHING DETAILS

PLANNING & DEVELOPMENT				
TABULATION FORM				
Project Address: 1581 Le Roy Avenue		Date: Feb. 20, 2019		
Applicant's Name: Jerri Holan & Associates				
Zoning District: R-1H				
Please print in ink the following numerical information for your Administrative Use Permit, Use Permit, or Variance application:				
		Existing	Proposed	Permitted/Required
Units, Parking Spaces & Bedrooms				
Number of Dwelling Units (4)		0	2	2
Number of Parking Spaces (4)		9	27	1
Number of Bedrooms (4) (R-1, R-1A, R-2, R-2A, and R-3 only)		0	5	0
Yards and Height				
Front Yard Setback (Feet)		10-20	10-20	20
Side Yard Setbacks (Facing property)				
Left: (Feet)		25	25	4
Right: (Feet)		25	25	4
Rear Yard Setback (Feet)		15-40	15-40	20
Building Height*				
(# Stories)		3	3	3
Average* (Feet)		35	35	35
Maximum* (Feet)		50	50	35
Areas				
Lot Area (Square-Feet)		117,546	117,546	5,000
Gross Floor Area* (Square-Feet)		50,302	50,302	N/A
Total Area Covered by All Floors (Square-Feet)		25,695	25,695	N/A
Building Footprint* (Square-Feet)		25,695	25,695	N/A
Total of All Structures (Square-Feet)		25,695	25,695	N/A
Lot Coverage* (Footprint/Lot Area) (%)		22	22	40
Useable Open Space* (Square-Feet)		91,851	91,851	800
Floor Area Ratio* Non-Residential only (Except ES-R)				

*See Definitions - Zoning Ordinance Title 23F. Revised: 05/15

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Rehabilitation & Remodel of
Hillside School
for
SAMULI SEPPALA
1581 Le Roy Avenue
Berkeley, CA

Revision:
May 20, 2019 - Supplemental Submissions for Use Permit
July 25, 2019 - Supplemental Submissions for Use Permit

Issue Date:
April 1, 2019 - Submitted for the Permit
April 1, 2019 - Submitted for Structural Alteration
Form & Detail Review

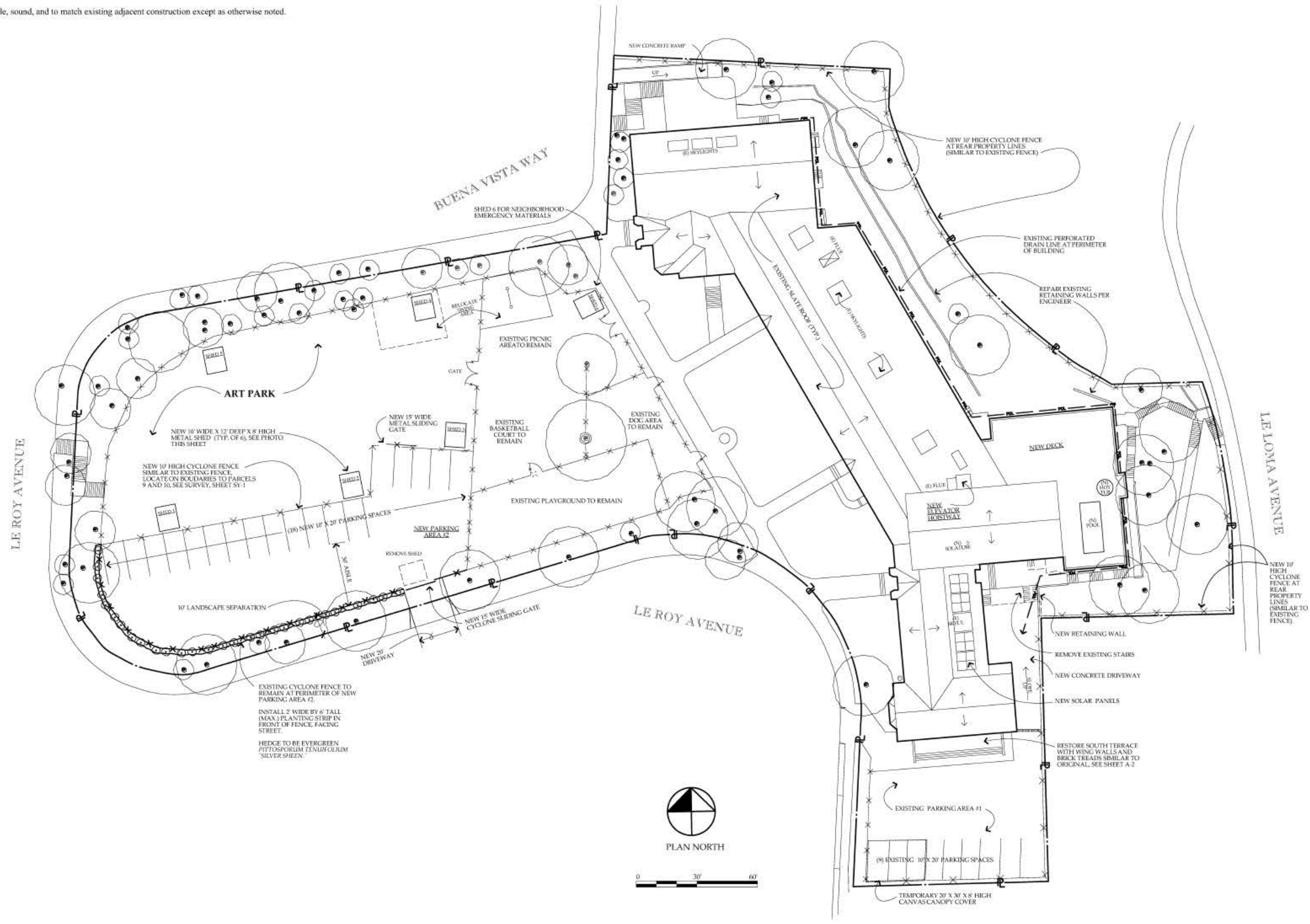
TITLE SHEET

SHEET

T-1

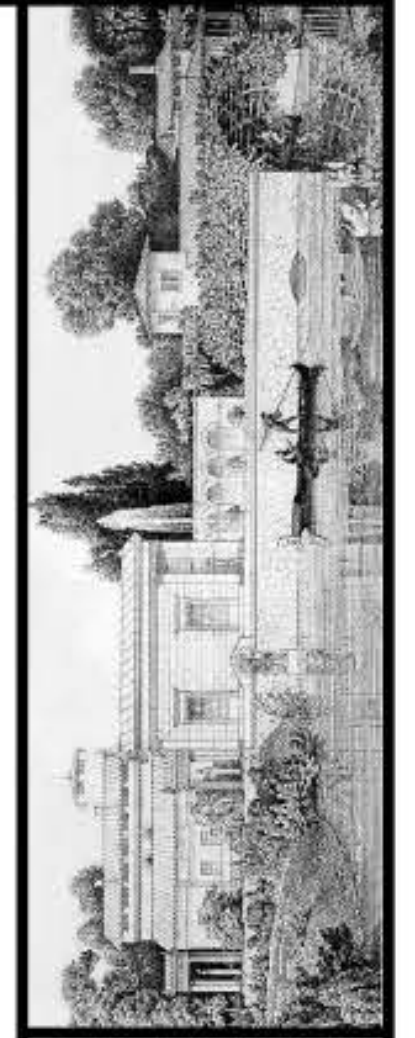
GENERAL AND SITE PLAN NOTES:

1. These Drawings and Specifications may not be used for construction unless corresponding Drawings signed by the Architect and approved by the building department, with appropriate permits, are in the possession of the General Contractor or Owner.
2. Use of these drawings constitutes acceptance.
3. Drawings and Specifications, as instruments of service, are and shall remain the property of the architect whether the project is executed or not. The owner may be permitted to retain copies for information and reference in connection with the use and occupancy of the project. The Drawings and Specifications shall not be used by the owner or anyone else without permission from the architect.
4. The architect will not be responsible for any changes in, or divergence from, the plans, specifications, or details unless such are specifically allowed in writing by the architect.
5. The architect does not accept responsibility for any changes made necessary by building codes, laws, or ordinances. All contractors, subcontractors, fabricators, and other persons utilizing these plans are advised to verify any and all aspects of these plans and any inconsistencies between them and actual conditions or requirements of equipment, materials, local codes or ordinances. Any such inconsistencies shall be brought to the attention of the architect in a timely fashion so that they may be resolved or clarified.
6. All work shall conform to the 2016 California Building Code (CBC), the 2016 California Residential Code (CRC), the 2016 California Historical Building Code (CHBC), The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995 and any other applicable local codes, regulations, and ordinances.
7. By executing the Work, the contractor represents that he has visited the site, familiarized himself with the local conditions under which the work is to be performed, and correlated his observations with the requirements of the Drawings and Specifications. The Site Plan does not constitute a survey and its accuracy should be verified in the field.
8. The Contractor shall be responsible for coordinating the work of all trades. All subcontractors shall coordinate work with each other.
9. The contractor shall be responsible for protection of all trees and other conditions to remain with the construction area.
10. The site shall be kept clean at all times. Materials indicated to be reinstalled shall be stored and protected onsite unless otherwise noted. THE BASEMENT AREA WILL BE AVAILABLE FOR STORAGE OF NEW WINDOW UNITS DURING CONSTRUCTION. Upon completion of the work and prior to acceptance by Owner, contractor shall conduct a final, thorough cleanup of site and building.
11. Any work not shown or specified which can reasonably be inferred or defined as belonging to the work and necessary to complete any system shall be the responsibility of the contractor.
12. All items not noted as new (N) are existing.
13. All existing walls, floors, and ceilings at removed, new or modified construction shall be patched as required to make surfaces whole, sound, and to match existing adjacent construction except as otherwise noted.



PROPOSED NEW SHED

1 A-1 SITE & ROOF PLAN



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Rehabilitation & Remodel of
Hillside School
for
SAMULI SEPPÄLÄ
1581 Le Roy Avenue
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Revision:
May 20, 2019 - Supplemental Submissions for Civil Permit
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Issue Date:
April 1, 2019 - Submitted for Civil Permit
April 1, 2019 - Submitted for Structural Allowance
Form & Design Review

SITE & ROOF PLAN

SHEET A-1



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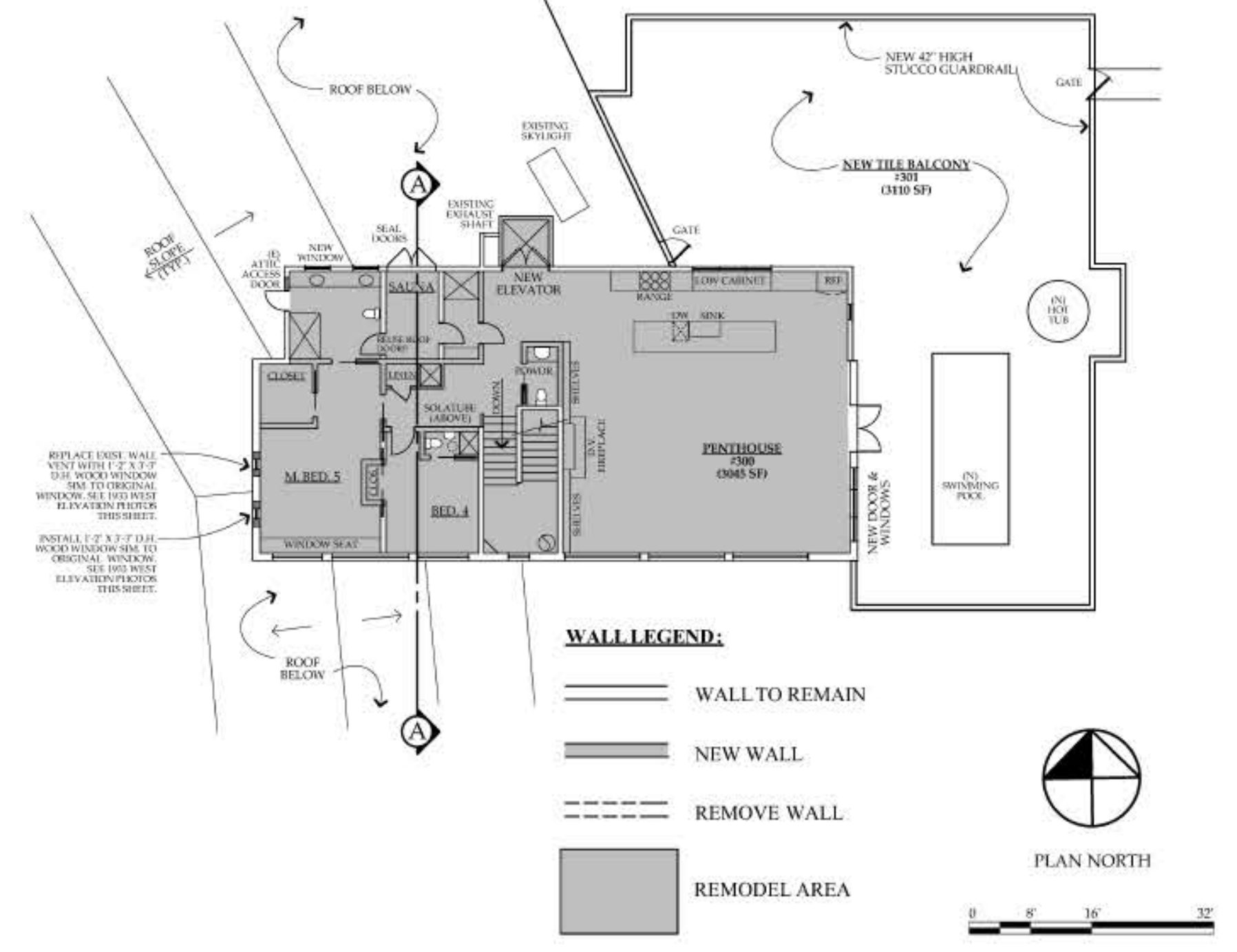


2019 WEST ELEVATION



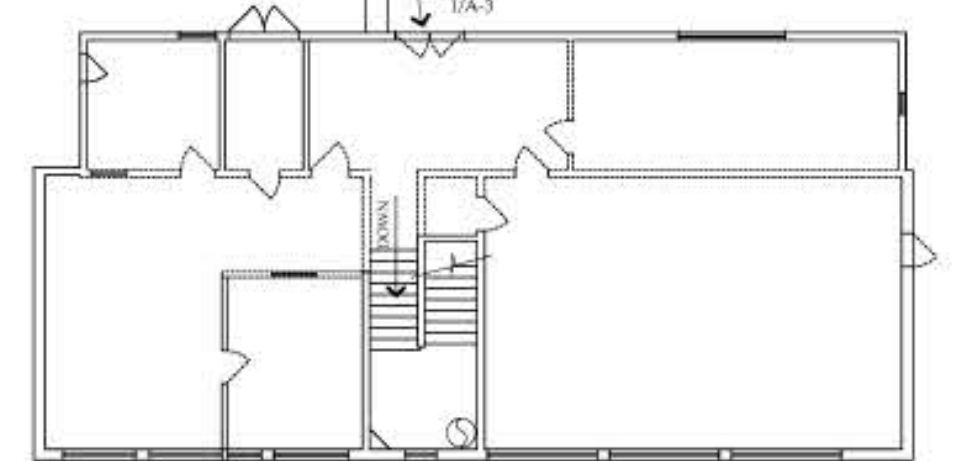
West Elev. - Hillside School
Berkeley
4-21-33
T.M.S. (12)

1933 WEST ELEVATIONS



1 THIRD FLOOR PLAN
A-3

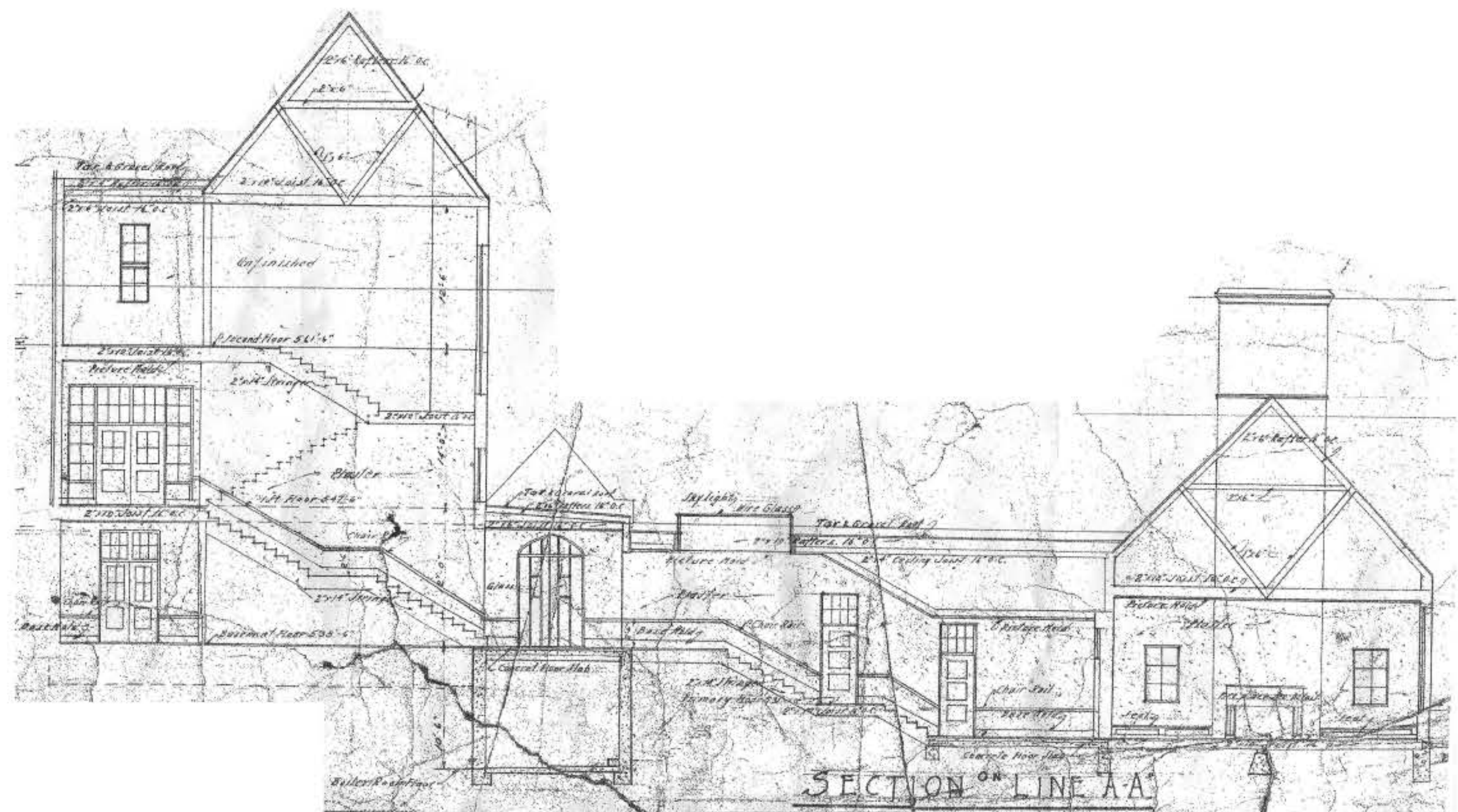
SCALE: 1/16" = 1'-0"



2 THIRD FLOOR DEMOLITION PLAN
A-3

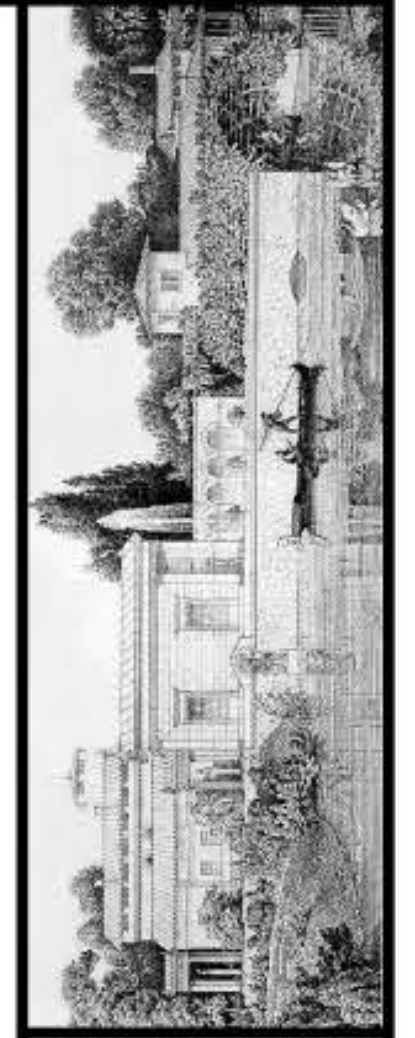
SCALE: 1/16" = 1'-0"

- FACADE RESTORATION & WOOD TREATMENT NOTES:**
- 1) ALL WORK SHALL CONFORM TO THE 1995 SECRETARY OF THE INTERIOR STANDARDS FOR REHABILITATION OF HISTORIC BUILDINGS.
 - 2) PRIOR TO DEMOLITION, THE CONTRACTOR WILL MEET WITH THE PRESERVATION ARCHITECT ON SITE TO REVIEW HISTORIC MATERIALS AND TREATMENTS.
 - 3) RETAIN ALL ORIGINAL WOOD MEMBERS ON THE FRONT AND SIDES. MEMBERS SHALL BE PROTECTED AND PRESERVED DURING CONSTRUCTION.
 - 4) SURFACE PREPARATION: REMOVE DAMAGED AND DETERIORATED PAINT FROM ALL WOOD SURFACES TO THE NEXT SOUND LAYER USING THE GENTLEST MEANS POSSIBLE (HANDSCRAPING AND HANDSANDING). USE CHEMICAL STRIPPERS PRIMARILY TO SUPPLEMENT HAND METHODS. IF APPROPRIATE, DETACHABLE WOOD ELEMENTS MAY BE CHEMICALLY DIP-STRIPPED. USE ELECTRIC HOT-AIR GUNS WITH CARE ON DECORATIVE WOOD FEATURES.
 - 5) INSPECT WOOD MEMBERS FOR DAMAGE. ORIGINAL WOOD MEMBERS THAT ARE DAMAGED OR DETERIORATED, SHALL BE REPAIRED OR STABILIZED. IF REPLACEMENT IS NECESSARY, APPROVAL FROM PRESERVATION ARCHITECT IS REQUIRED. REPLACEMENT MATERIALS SHALL MATCH ORIGINALS IN MATERIAL, DESIGN, AND TEXTURE.
 - 6) REPAIR, STABILIZE, AND CONSERVE FRAGILE WOOD USING WELL-TESTED CONSOLIDANTS WHEN APPROPRIATE. REPAIR WOOD FEATURES BY PATCHING, PIECING, OR REINFORCING THE WOOD USING RECOGNIZED PRESERVATION METHODS. THE NEW WORK SHALL BE PHYSICALLY AND VISUALLY COMPATIBLE AND BE IDENTIFIABLE UPON CLOSE INSPECTION.
 - 7) PROTECT WOOD MEMBERS BY PROVIDING PROPER DRAINAGE AND AVOID WATER ACCUMULATION ON FLAT OR HORIZONTAL SURFACES.
 - 8) NO HARSH TREATMENT OR CHEMICALS SHALL BE USED ON ORIGINAL WOOD MEMBERS. TREATMENTS THAT CAUSE DAMAGE TO ORIGINAL WOOD MEMBERS SHALL NOT BE USED.
 - 9) PATCH AND REPAIR ANY DAMAGED STUCCO AND MATCH EXISTING STUCCO TEXTURE.
 - 10) APPLY COMPATIBLE PAINT OR FINISH COAT SYSTEM FOLLOWING PROPER SURFACE PREPARATION ON STUCCO AND WOOD SURFACES. MATCH EXISTING INTERIOR AND EXTERIOR COLORS.
 - 11) IF ANY SIGNIFICANT ARCHEOLOGICAL RESOURCES ARE FOUND, CONTACT THE CITY OF BERKELEY FOR APPROPRIATE MEASURES.



3 NORTH/SOUTH BUILDING SECTION A-A LOOKING EAST, 1925
A-3

SCALE: 1/8" = 1'-0"



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April 1, 2019 - Submitted for the Permit
April 1, 2019 - Submitted for Structural Alteration Permit & Design Review

THIRD FLOOR
PLANS AND BLDG.
SECTION
SHEET
A-3
of 6

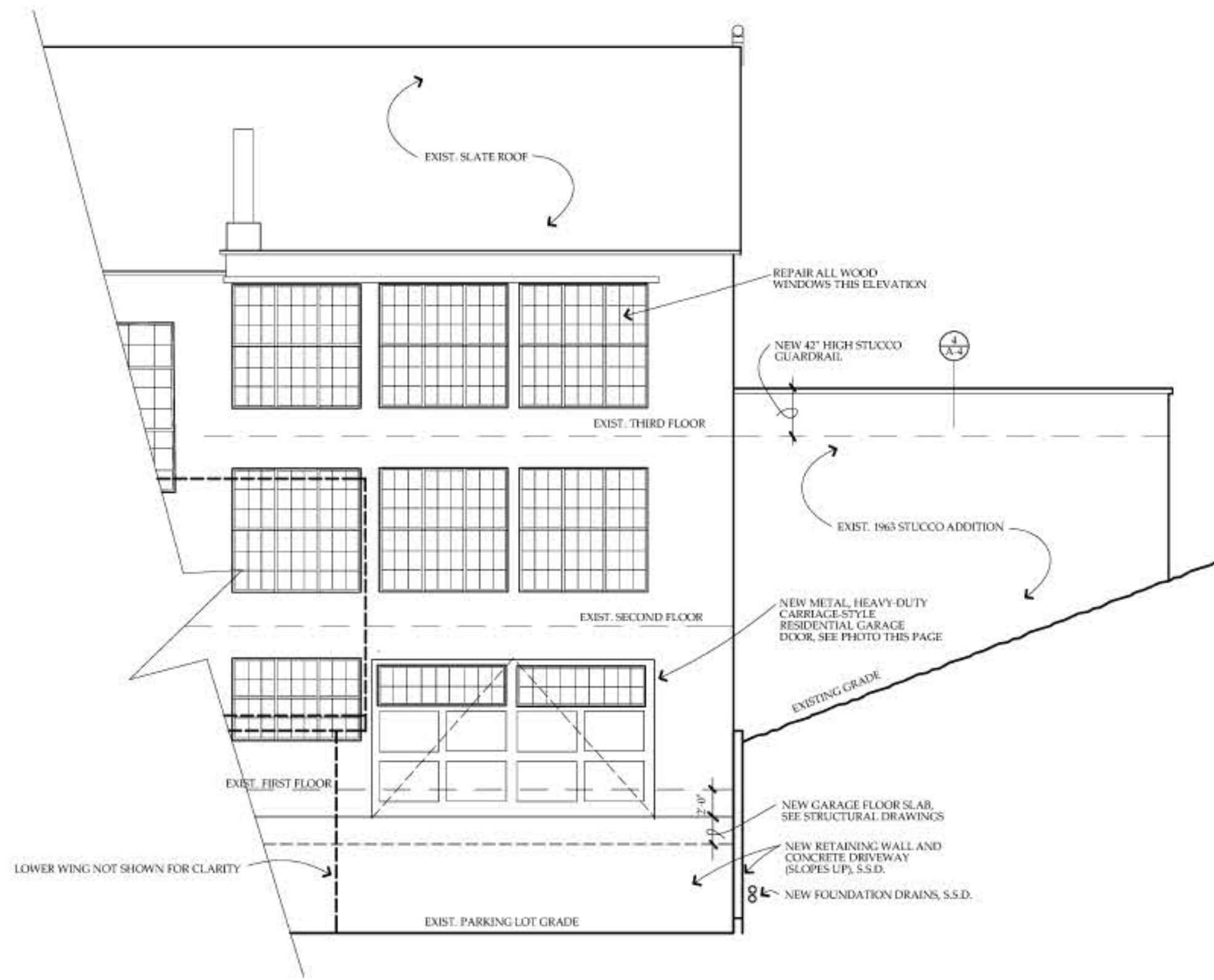




SOUTH ELEVATION PHOTO



PROPOSED GARAGE DOORS



1 SOUTH ELEVATION DETAIL
A-4

SCALE: 1/8" = 1'-0"

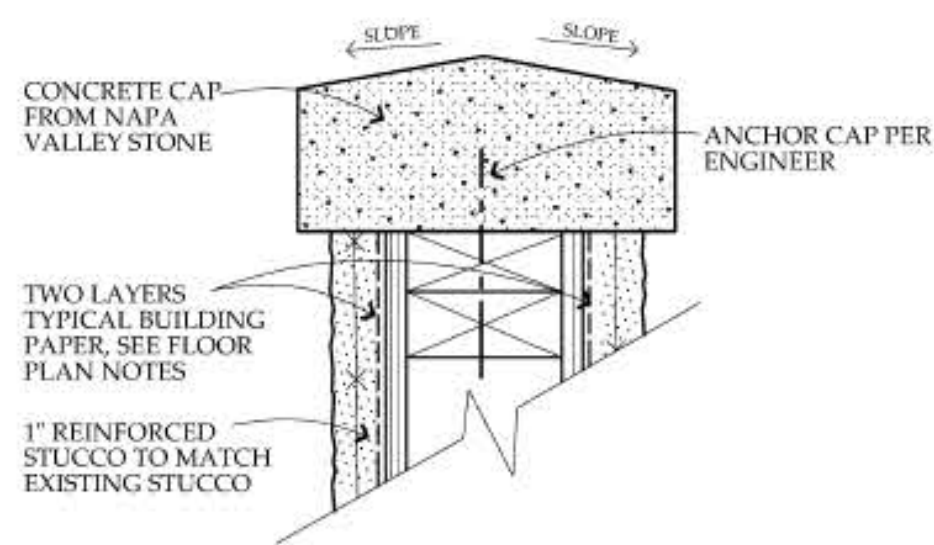


2 EAST ELEVATION DETAIL
A-4

SCALE: 1/8" = 1'-0"



EAST ELEVATION PHOTO

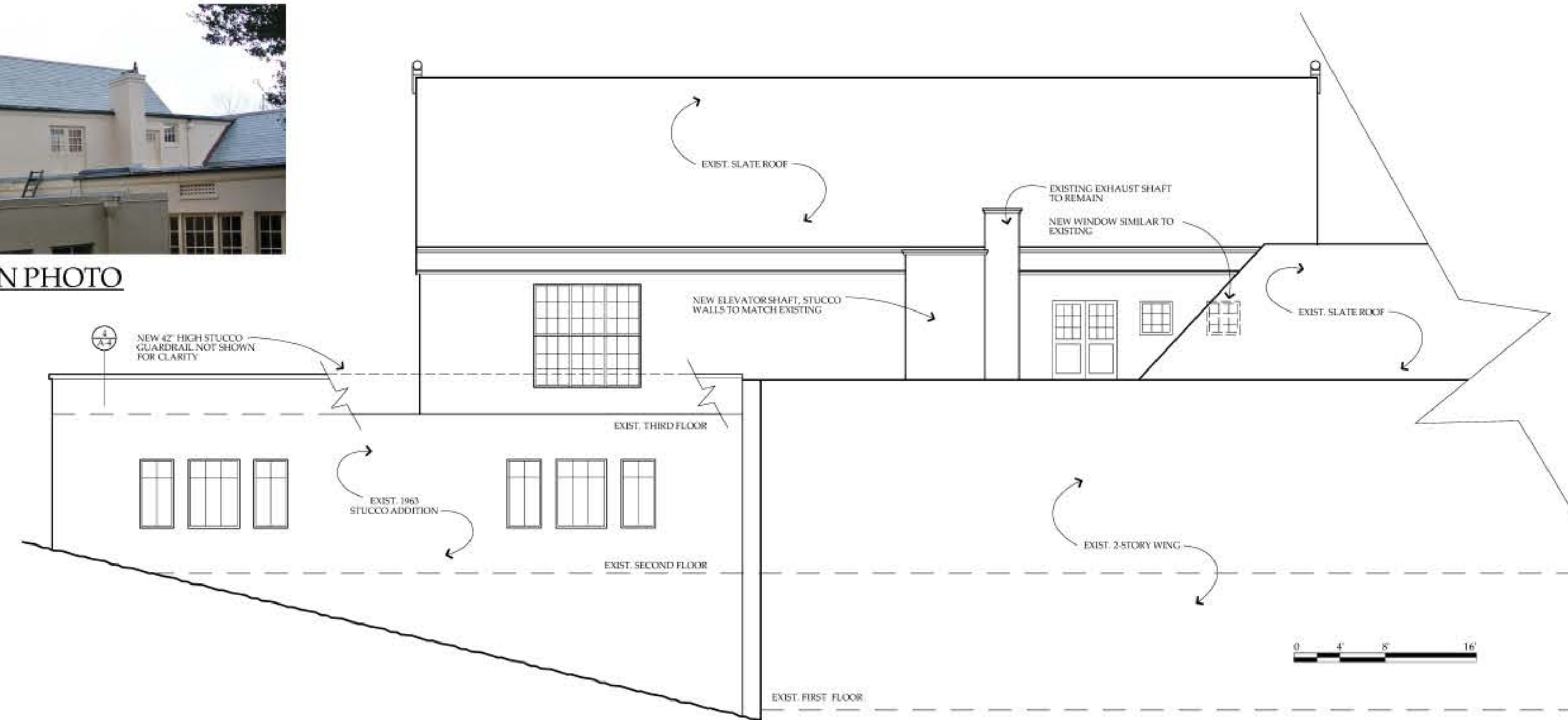


4 STUCCO GUARDRAIL DETAIL
A-4

SCALE: 3" = 1'-0"



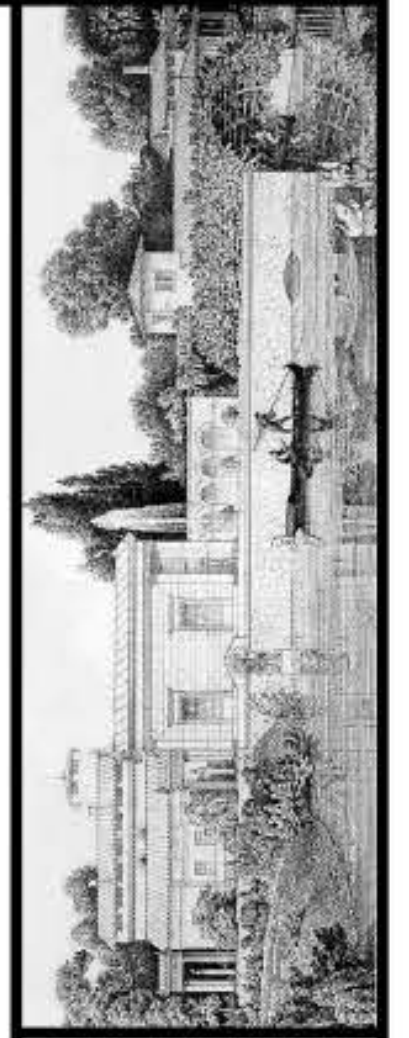
NORTH ELEVATION PHOTO



3 NORTH ELEVATION DETAIL
A-4

SCALE: 1/8" = 1'-0"

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PARTIAL ELEVATIONS & DETAILS

SHEET
A-4



ATTACHMENT 1, EXHIBIT C

FINDINGS AND CONDITIONS

OCTOBER 24, 2019

1581 Le Roy Avenue

Use Permit #ZP2019-0061 convert the vacant, elementary school property to residential use: to establish the approximately 50,000-sq. ft., main building as a single-family residence and accessory dwelling unit, incorporating several former classrooms as private (non-commercial) art studio space; to install an unenclosed swimming pool and hot tub within a new roof deck; to construct an approximately 36-sq. ft., elevator penthouse above the second story (but below the third story roof ridge); to convert a former multi-purpose room to a garage; to create a new, surface parking lot and to locate up to five, new storage sheds within portions of the former playground to be partially re-purposed as an outdoor (non-commercial) art practice space; and to complete landscape improvements along the public interface.

PERMITS REQUIRED

- Use Permit, under BMC (Berkeley Municipal Code) Section 23D.16.030, to create a dwelling unit in the R-1 district;
- Administrative Use Permit, under BMC Section 23D.12.080, to locate parking spaces with the required front yard setback of a residential property;
- Administrative Use Permit, under BMC Section 23D.16.030, to install an unenclosed hot tub on a residential property; and
- Administrative Use Permit, under BMC Section 23D.16.070.C, to construct a residential building addition greater than 14 ft. in average height.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to CEQA Guidelines Section 15301 (“Existing Facilities”), Section 15303 (New Construction or Conversion of Small Structures), and Section 15331 (Historical Resources Restoration/Restoration).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) will not cause a substantial adverse change in the significance of a historical resources as evident in the August 1, 2019 Landmarks Preservation Commission findings of compliance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties.

II. ZONING ORDINANCE FINDINGS FOR APPROVAL

1. As required by Section 23B.32.040.A of the BMC, 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 because:

- A. The proposal to convert and re-purpose the existing, vacant school site to residential use is consistent with the Purposes of the R-1 district (BMC Section 23D.16.020) related to maintaining and protecting the area's existing, low-density development pattern, making housing available to persons who desire relatively large amounts of open space, and protecting adjacent properties from potential sunlight or building mass impacts typically associated with new development.
 - B. The proposal to establish dwelling uses that incorporate a private art practice is consistent with the residential use and character of an R-district, where residents are expected to engage in such private activities and to host visitors. The site conditions are found to sufficiently accommodate the anticipated number of guests and frequency of activities because: (1) the subject site and main building are especially large at approximately 50,000 sq. ft. where residences in the area average 2,700 sq. ft.; and (2) the proposal includes the provision of surplus, off-street parking.
 - C. The proposed art practice and related activities are exclusive to the residential occupants of this property and their invited guest. The proposed art studios and art outdoor "art park" space are permitted for, and shall be limited to, the creation of original works of art and craft products. These spaces and activities are not commercial enterprises. Given these circumstances, the Board finds that the proposed activities are consistent with the private residential use of the subject property.
 - D. The outdoor art practice activities will be limited to the hours between sunrise and sunset, year-round, and will be subject to the Community Noise ordinance (BMC Section 13.42), in order to minimize potential impacts to adjacent residences and the neighborhood, and to ensure compliance with the City's applicable peace and welfare provisions.
2. In accordance with BMC Section 23D.16.070.B and F (*Development Standards*) and 23D.16.080.A (Parking), the Board finds that the proposal to create two new dwelling units at the subject property is permissible because proposed property conditions will adhere to the R-1 district standards for maximum residential density and will surpass the standards for minimum usable open space and off-street parking.
 3. In accordance with BMC Section 23D.16.070.C (*Development Standards* – main building height) and 23D.16.090.B (*Findings*), the Board finds that the proposal to construct an elevator penthouse to a height of 28 ft. above grade is permissible because the new construction is not expected to result in view or sunlight impacts for adjacent residences owing to its proposed location below the existing roof ridge and within the building's existing profile.
 4. In accordance with BMC Section 23D.12.170 (Site, Location and Screening of Uncovered Parking Spaces), the Board finds that the proposal to locate parking spaces within the required 20-ft. front yard setback at the subject property is permissible because the new spaces will be effectively screened by the existing and newly proposed vegetation and plantings, thereby minimizing the potential for parked vehicles to create significant visual impacts.
 5. In accordance with BMC Section 23D.08.020.B (Height Limits for Accessory Buildings or Structures), the proposal to locate as many as five storage sheds of not more than 10 ft. in average height within the front depth of this property is found to be permissible because these

structures will not result in detrimental impacts to light, air (or building-to-building separation), privacy or views of the adjacent properties. The structure are of minimal height, thereby avoiding light and view impacts. They will not include windows or create sightlines, thereby avoiding privacy impacts. They will not be located with protected view corridors, as defined in BMC Section 23C.04 (*Definitions, views*), thereby avoiding view impacts.

6. In accordance with BMC Section 23D.08.060.C (Fences and Other Accessory Structures), Board finds that the proposal to install a new, unenclosed hot tub on the roof of the subject building is permissible because, as conditioned herein, any pump shall be mounted and/or enclosed so that it is not audible beyond the nearest, shared property.

III. 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 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. **Applicant Responsible for Compliance with Conditions**

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. **Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)**

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. **Modification of Permits (Section 23B.56.020)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. 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.

5. **Plans and Representations Become Conditions (Section 23B.56.030)**

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. **Subject to All Applicable Laws and Regulations (Section 23B.56.040)**

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. **Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

- 12. Construction and Demolition.** Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.
- 13. 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 6 months old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at:
 - http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
 - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
 - 3) If the Phase I is over 6 months 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

14. **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).
15. **Public Works.** 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.

During Construction:

16. **Construction Hours.** Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
17. **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.

- 18. 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.
- 19. 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.
- 20. 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.
- 21. 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.

22. 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. 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.
- 23. Public Works - Construction.** Construction must comply with the State-wide general permit requiring owner to (1) notify the State; (2) prepare and implement a Stormwater Pollution Prevention Plan (SWPPP); and (3) monitor the effectiveness of the plan. Additional information may be found online at <http://www.swrcb.ca.gov>. As part of the permit submittal, the Public Works Department will need a) a copy of the “Notice of Intent” filed with the State Water Resources Control Board (SWRCB)/Division of Water Quality; b) the Waste Discharger Identification (WDID) number issued by the SWRCB for the project; c) a copy of the SWWPP prepared for each phase of the project; and d) the name of the individual who will be responsible for monitoring the site for compliance to the approved SWPPP.
- 24. 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.
- 25. 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.

26. 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.
27. 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.
28. 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.
29. 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.
30. 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:

31. Compliance with Conditions. 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.
32. 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 October 10, 2019, except as modified by conditions of approval.
33. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

At All Times:

34. 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.
35. 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.

36. 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.
 37. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
 38. Limited hours of outdoor art activities. The outdoor activities related to the private, residential art practice shall be limited to the hours between sunrise and sunset, year-round.
 39. Subject to Review. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the private, residential art practice has violated any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
 40. Limitation on Use of Property. The subject property shall be maintained exclusively as a single-family residence and accessory dwelling unit. Any changes or additions to the use of this property shall be fully subject to the provisions and requirements of the Berkeley Municipal Code.
 41. Public Safety review required prior to improvements for the pathway between Buena Vista Avenue and Le Roy Avenue. Prior to installation of any improvements or features that will affect access to the pedestrian pathway connecting Buena Vista Avenue and Le Roy Avenue, the property owner shall confer with and obtain sign-off from Public Safety staff.
 42. The pump for the unenclosed hot tub shall be mounted, enclosed and maintained to prevent noise from disturbing the occupants of neighboring properties.
 43. The unenclosed hot tub shall be equipped with safety features in accordance with the California Building Code.
 44. Mechanical operation and use of the unenclosed hot tub must adhere to the exterior noise standards of BMC Section 13.40.050.
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PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

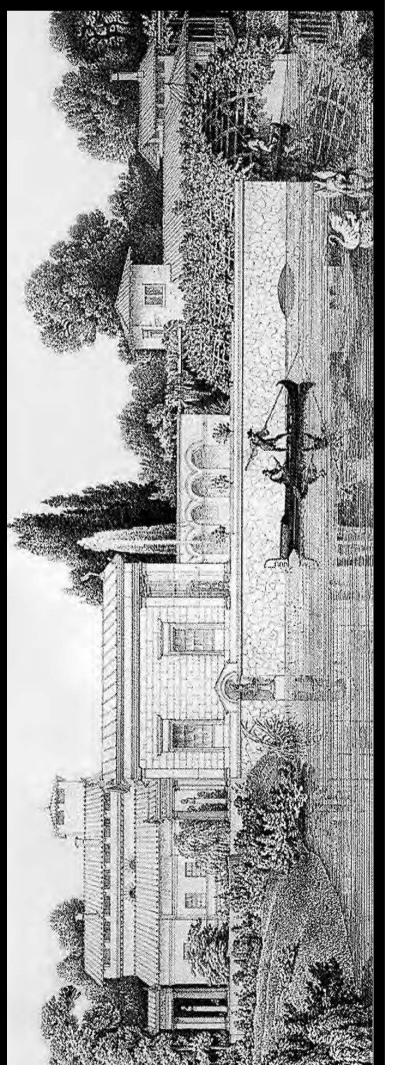
Jerrri Holan

October 24, 2019

SIGNATURE

DATE

* Findings and Conditions Attached



EXISTING WEST ELEVATIONS, 2019

PARCEL CONDITIONS:

- 1) Building is on the National Register of Historic Places and is a City Landmark;
- 2) Building is in the Fault Zone;
- 3) Building is in the Landslide Zone;
- 4) Building is not in a Creek Zone.

SCOPE OF ALTERATION WORK (NO SQUARE FOOTAGE BEING ADDED):

- 1) CHANGE OF OCCUPANCY FROM EDUCATIONAL TO SINGLE-FAMILY RESIDENTIAL WITH ADU;
- 2) REPLACE & RESTORE MISCELLANEOUS DOORS, WINDOWS & SIDELIGHTS;
- 3) RESTORE DAMAGED 3-STORY SOUTH WALL & REPLACE FOUNDATION;
- 4) RESTORE SOUTH TERRACE, ADD WING WALLS AND BRICK STAIRS SIMILAR TO ORIGINAL TERRACE.
- 5) CONVERT KITCHEN TO GARAGE AND ADD NEW CONCRETE DRIVEWAY AND RETAINING WALLS;
- 6) ADD ELEVATOR;
- 7) ADD BATHROOMS TO SECOND FLOOR;
- 8) REMODEL THIRD FLOOR AND ADD REAR DECK WITH STUCCO GUARD RAILS, POOL AND HOT TUB;
- 9) REPLACE ELECTRICAL AND MECHANICAL SYSTEMS;
- 10) ADD SOLAR PANELS;
- 11) ADD NEW FENCING WITH HEDGE SCREENS;
- 12) ADD NEW PARKING AREA 2;
- 13) REPAVE ART PARK AREA WITH INTEGRAL COLOR ASPHALT.

SECRETARY OF THE INTERIOR STANDARDS FOR REHABILITATING HISTORIC BUILDINGS:

As a property on the National Register of Historic Properties, the following Standards shall be followed:

Standard 1 - A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

Standard 2 - The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

Standard 3 - Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties will not be undertaken.

Standard 4 - Changes to a property that have acquired historic significance in their own right will be retained and preserved.

Standard 5 - Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

Standard 6 - Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

Standard 7 - Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

Standard 8 - Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

Standard 9 - New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion and massing to protect the integrity of the property and its environment.

Standard 10 - New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

2016 CALIFORNIA HISTORICAL BUILDING CODE (CHBC) NOTES:

As a qualified historic building, the application of the following provisions of the CHBC apply:

SECTION 8-102.1.6 - Qualified buildings shall not be subject to additional work required by the regular code beyond that required to complete the work undertaken.

SECTION 8-901.5 - Qualified buildings are exempted from compliance with energy conservation standards.

PLANNING, ZONING, & BUILDING INFORMATION:

APN: 058-2245-009-03 Fire Zone 2

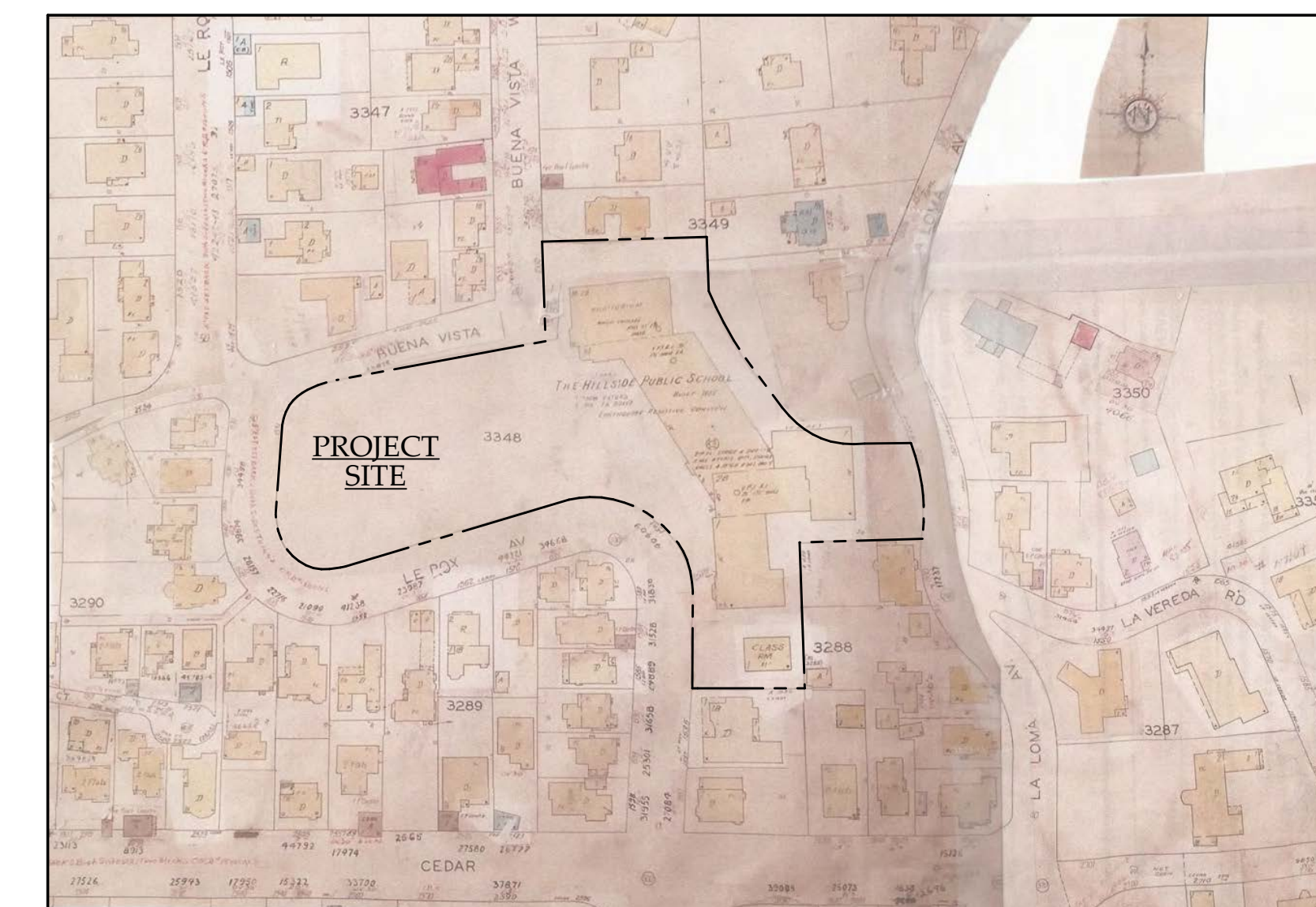
Zoning: R-1H Existing Educational Building Occupancy (E) is converting to Single-family Residential Occupancy (R-3)

Three-story, Type VB Construction, Fully Sprinklered

Lot Size: 117,546 sf Footprint Size: 25,695 sf

First Floor Size: 25,695 sf
Second Floor Size: 21,562 sf
Third Floor Size: 3,045 sf

TOTAL SIZE 50,302 SF



1
T-1 VICINITY MAP

APPROX. SCALE: 1" = 100'



TABULATION FORM

Project Address: 1581 Le Roy Avenue Date: Feb. 20, 2019

Applicant's Name: Jerrri Holan & Associates

Zoning District: R-1H

Please print in ink the following numerical information for your Administrative Use Permit, Use Permit, or Variance application:

	Existing	Proposed	Permitted/Required
Units, Parking Spaces & Bedrooms			
Number of Dwelling Units (#)	0	2	2
Number of Parking Spaces (#)	9	27	1
Number of Bedrooms (#) (R-1, R-1A, R-2, R-2A, and R-3 only)	0	5	0
Yards and Height			
Front Yard Setback (Feet)	10-20	10-20	20
Side Yard Setbacks: (facing property)			
Left: (Feet)	25	25	4
Right: (Feet)	25	25	4
Rear Yard Setback (Feet)	15-40	15-40	20
Building Height*			
Average* (# Stories)	3	3	3
Maximum* (Feet)	35	35	35
Maximum* (Feet)	50	50	35
Areas			
Lot Area (Square-Feet)	117,546	117,546	5,000
Gross Floor Area* (Square-Feet)	50,302	50,302	N/A
Total Area Covered by All Floors (Square-Feet)	25,695	25,695	N/A
Building Footprint* (Square-Feet)	25,695	25,695	N/A
Lot Coverage* (Footprint/Lot Area) (%)	22	22	40
Useable Open Space* (Square-Feet)	91,851	91,851	800
Floor Area Ratio* Non-Residential only (Except ES-R)			

*See Definitions - Zoning Ordinance Title 23F. Revised: 05/15

g:\landuse\forms & instructions\land use planning forms\word files\word_forms_attabulation_form_05-15.doc

JERRI HOLAN & ASSOCIATES
ARCHITECT * ENGINEERS * PLANNERS
1323 Solano Avenue, Suite 204, Albany, CA 94706
www.holanarchitects.com 510.528.1079

Rehabilitation & Remodel of
Hillside School
for
SAMULI SEPPALA
1581 Le Roy Avenue
Berkeley, CA

Revisions:
May 20, 2019 - Supplemental Submissions for Use Permit
July 23, 2019 - Supplemental Submissions for Use Permit
8/19/19 - Planning Revisions
9/10/19 - LPC Revisions
10/10/19 - ZAB Submittal

Issue Date:
April 1, 2019 - Submitted for Use Permit
April 1, 2019 - Submitted for Structural Alteration Permit & Design Review

TITLE SHEET

SHEET

T-1

of 6



LEGAL DESCRIPTION

THE LAND REFERRED TO IS SITUATED IN THE COUNTY OF ALAMEDA, CITY OF BERKELEY, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE INTERSECTION OF THE SOUTHERN LINE OF HILLSIDE WAY WITH THE WESTERN LINE OF LOT NO. 6, IN BLOCK NO. 5, AS SAID WAY, LOT AND BLOCK ARE SHOWN ON THE MAP HERINAFTER REFERRED TO; RUNNING THENCE EASTERLY ALONG SAID LINE OF SAID WAY, 9.78 FEET TO THE WESTERN LINE OF LOT NO. 9, IN SAID BLOCK NO. 5, AS SHOWN ON SAID MAP; THENCE SOUTHERLY ALONG SAID LINE OF SAID LOT NO. 9, 1.66 FEET TO THE SOUTHWESTERN CORNER THEREOF; THENCE EASTERLY ALONG THE SOUTHERN LINE OF SAID LOT 9, 40.35 FEET TO THE NORTHEASTERN CORNER OF SAID LOT 6; THENCE SOUTHERLY ALONG THE EASTERN LINE OF SAID LOT 6, 60 FEET; THENCE AT RIGHT ANGLES WESTERLY, 50 FEET, MORE OR LESS, TO THE WESTERN LINE OF SAID LOT 6; THENCE NORTHERLY ALONG SAID LAST MENTIONED LINE, 60 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT 6 IN BLOCK 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA CO., CALIFORNIA," FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 2:

BEGINNING AT A POINT ON THE EASTERN LINE OF LE ROY AVENUE FORMERLY LOOKOUT PLACE, DISTANT THEREON SOUTHERLY ONE HUNDRED AND TEN AND 12/100 (100.12) FEET FROM THE NORTHWESTERN CORNER OF LOT NO. 13, AS SAID STREET AND LOT ARE SHOWN ON THE MAP HERINAFTER REFERRED TO; RUNNING THENCE NORTHERLY ALONG SAID EASTERN LINE OF LE ROY AVENUE FIFTY AND 12/100 (50.12) FEET TO THE SOUTHWESTERN CORNER OF THE LOT OF LAND HERETOFORE CONVEYED BY GEORGE P.W. JENSEN AND HATTIE L. JENSEN, HIS WIFE, TO ROSA A. COHEN, SINGLE, BY DEED DATED DECEMBER 26, 1908 AND RECORDED JANUARY 17, 1907, IN LIBER 1268 OF DEEDS, PAGE 336; RUNNING THENCE EASTERLY ALONG THE SOUTHERN LINE OF SAID LAND SO CONVEYED TO ROSA A. COHEN, NINETY AND 3/4 (93.75) FEET, MORE OR LESS, TO THE EASTERN LINE OF LOT NO. 13, AS PER SAID MAP, AND DISTANT THEREON SIXTY (60) FEET SOUTHERLY FROM THE NORTHEASTERN CORNER OF SAID LOT NO. 13, THENCE SOUTHERLY ALONG SAID EASTERN LINE OF SAID LOT NO. 13, FIFTY (50) FEET; THENCE WESTERLY IN A STRAIGHT LINE TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT NO. 13, AS SAID LOT IS DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA COUNTY, CALIFORNIA, C.L. ENGGINS, TOWN ENGINEER, OCTOBER 1900," FILED NOVEMBER 12, 1900, IN LIBER 16 OF MAPS, PAGE 13 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF ALAMEDA.

PARCEL 3:

BEGINNING AT THE INTERSECTION OF THE SOUTHERN LINE OF LOT NO. 2, HEREINAFTER REFERRED TO, WITH THE EASTERN LINE OF LE ROY AVENUE, AS SAID LOT AND AVENUE ARE SHOWN ON THE MAP HERINAFTER REFERRED TO; RUNNING THENCE NORTHERLY ALONG SAID EASTERN LINE OF LE ROY AVENUE, 50 FEET; THENCE NORTH 71° 50' EAST 110 FEET; THENCE SOUTHERLY PARALLEL WITH THE SAID LINE OF LEROY AVENUE, 50 FEET TO THE SAID SOUTHERN LINE OF LOT NO. 2; THENCE SOUTH 71° 50' WEST ALONG SAID LAST NAMED LINE 110 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT NO. 2, IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT," FILED OCTOBER 15, 1902 IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 4:

BEGINNING AT A POINT ON THE SOUTHERN LINE OF HILLSIDE WAY WHERE THE SAME IS INTERSECTED BY THE EASTERN LINE OF LOT NOS. 2 AND 3, IN BLOCK NO. 5, AS SAID WAY AND LOTS AND BLOCK ARE SHOWN ON THE MAP HERINAFTER REFERRED TO; RUNNING THENCE SOUTHERLY ALONG SAID EASTERN BOUNDARY LINE 110 FEET; THENCE SOUTH 71° 50' WEST ALONG THE SOUTHERN BOUNDARY LINE OF SAID LOT NO. 2, 40 FEET; THENCE NORTHERLY PARALLEL WITH SAID EASTERN BOUNDARY LINE OF SAID LOT NO. 2, 50 FEET; THENCE SOUTH 71° 50' WEST ALONG THE SOUTHERN BOUNDARY LINE OF SAID LOT NO. 3, 60 FEET; MORE OR LESS, TO THE SAID LINE OF HILLSIDE WAY; THENCE EASTERLY ALONG SAID LINE OF HILLSIDE WAY, 50 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

BEING THE EASTERN 40 FEET OF LOT NO. 2, AND THE EASTERN 50 FEET OF LOT NO. 3, IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT," FILED OCTOBER 15, 1902, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 5:

BEING LOT NO. 9, IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED ON A CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK, AND THE WHEELER TRACT," FILED OCTOBER 15, 1902 IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF ALAMEDA.

PARCEL 6:

LOT NO. 8 IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK, AND THE WHEELER TRACT, BERKELEY, ALAMEDA COUNTY, CALIFORNIA," FILED OCTOBER 15, 1902 IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF THE SAID COUNTY OF ALAMEDA.

PARCEL 7:

BEGINNING AT THE INTERSECTION OF THE NORTHERN LINE OF LE ROY AVENUE, WITH THE EASTERN LINE OF LOT NO. 6, HEREINAFTER REFERRED TO; RUNNING THENCE NORTHERLY ALONG SAID LINE OF LOT NO. 6, 61.70 FEET; THENCE AT RIGHT ANGLE WESTERLY 50 FEET, MORE OR LESS TO THE WESTERN LINE OF SAID LOT 6; THENCE SOUTHERLY ALONG SAID LINE OF LOT NO. 6, 27.40 FEET, MORE OR LESS, TO A POINT DISTANT THEREON NORTHERLY, 71.81 FEET FROM THE POINT NORTHERN LINE OF SAID LE ROY AVENUE; THENCE AT RIGHT ANGLES EASTERLY 3 FEET; THENCE SOUTHERLY PARALLEL WITH SAID WESTERN LINE OF SAID LOT NO. 6, 71 FEET, MORE OR LESS, TO THE NORTHERN LINE OF SAID LE ROY AVENUE; THENCE EASTERLY ALONG SAID LAST MENTIONED LINE, 50 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT NO. 6, IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA CO., CALIFORNIA," FILED OCTOBER 15, 1902 IN LIBER 19 OF MAPS, PAGE 45 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 8:

BEGINNING AT A POINT ON THE SOUTHERN LINE OF BUENA VISTA WAY, FORMERLY HILLSIDE WAY, AT THE INTERSECTION THEREOF WITH THE WESTERN LINE OF LOT NO. 4, IN BLOCK NO. 6, AS SHOWN ON THE MAP HERINAFTER REFERRED TO; PARALLEL WITH THE WESTERN LINE OF SAID LAST NAMED LINE, 85 FEET; THENCE AT RIGHT ANGLES EASTERLY, 50 FEET, MORE OR LESS, TO THE EASTERN LINE OF SAID LOT NO. 4; THENCE NORTHERLY ALONG SAID LAST NAMED LINE TO THE SAID LINE OF BUENA VISTA WAY; THENCE WESTERLY ALONG SAID LINE OF BUENA VISTA WAY TO THE POINT OF BEGINNING.

PARCEL 9 CONTINUED:

BEING A PORTION OF LOT NO. 4, IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA COUNTY, CALIFORNIA," FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 9:

BEGINNING AT A POINT ON THE NORTHERN LINE OF LE ROY AVENUE, THE SAID POINT OF BEGINNING BEING THE SOUTHWESTERN CORNER OF LOT 4 IN BLOCK 5, AS PER MAP HERINAFTER REFERRED TO; RUNNING THENCE NORTHERLY ALONG THE WESTERN LINE OF SAID LOT 4, 87.46 FEET; THENCE AT A RIGHT ANGLE EASTERLY TO THE EASTERN LINE OF SAID LOT 4; THENCE SOUTHERLY ALONG THE SAID EASTERN LINE OF LOT 4, TO THE SAID NORTHERN LINE OF LE ROY AVENUE; THENCE WESTERLY ALONG SAID LAST NAMED LINE, 53.21 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT 4, IN BLOCK 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ETC., FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 10:

LOT NO. 1 IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA CO., CALIFORNIA," FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 46, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 11:

BEGINNING AT A POINT ON THE SOUTHERN LINE OF BUENA VISTA WAY, FORMERLY HILLSIDE WAY, SAID POINT BEING THE NORTHWESTERN CORNER OF LOT NO.5, AS SAID WAY, LOT AND BLOCK ARE SHOWN ON THE MAP HERINAFTER DESCRIBED; RUNNING THENCE SOUTHERLY ALONG THE WESTERN LINE OF SAID LOT NO. 5, SEVENTY-FIVE AND 83/100 (75.83) FEET; THENCE AT RIGHT ANGLES EASTERLY FIFTY (50) FEET MORE OR LESS TO THE EASTERN LINE OF SAID LOT NO. 5; THENCE NORTHERLY ALONG SAID LINE OF LAST MENTIONED LINE EIGHTY-SEVEN AND 40/100 (87.40) FEET MORE OR LESS TO THE SAID LINE OF BUENA VISTA WAY; THENCE WESTERLY ALONG SAID LINE FIFTY-ONE AND 32/100 (51.32) FEET TO THE PLACE OF BEGINNING.

BEING THE NORTHERLY PORTION OF LOT NO. 5, IN BLOCK NO.5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED ON A CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY ALAMEDA COUNTY, CALIFORNIA," FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF ALAMEDA.

PARCEL 12:

BEGINNING AT A POINT ON THE LINE DIVIDING LOTS NOS. 4 AND 5 IN BLOCK NO. 5, AS PER MAP HERINAFTER REFERRED TO; WHERE THE SAME IS INTERSECTED BY THE NORTHERN LINE OF LE ROY AVENUE, RUNNING THENCE NORTHERLY ALONG SAID DIVIDING LINE, 90 FEET; THENCE AT RIGHT ANGLES EASTERLY, 55 FEET; THENCE SOUTHERLY PARALLEL WITH THE LINE DIVIDING LOTS NOS.5 AND 6 AS PER SAID MAP, 71 FEET, MORE OR LESS, TO THE NORTHERN LINE OF LE ROY AVENUE; THENCE SOUTHERLY ALONG SAID LAST NAMED LINE 56.21 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

BEING PORTION OF LOTS NOS. 5 AND 6 IN BLOCK NO. 5, AS SAID LOTS AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA COUNTY, CALIFORNIA," FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 13:

BEGINNING AT A POINT ON THE SOUTHERN LINE OF BUENA VISTA WAY, FORMERLY HILLSIDE WAY, DISTANT THEREON 15 FEET NORTHERLY THE POINT OF INTERSECTION THEREOF WITH THE LINE DIVIDING LOTS NOS. 3 & 4 IN BLOCK NO. 6, AS SAID WAY, LOTS AND BLOCK ARE SHOWN ON THE MAP HERINAFTER REFERRED TO; RUNNING THENCE WESTERLY ALONG SAID LINE OF BUENA VISTA WAY, 64.23 FEET; THENCE CONTINUING ALONG SAID SOUTHERN LINE OF BUENA VISTA WAY AND THE EASTERN LINE OF LE ROY AVENUE, AS SHOWN ON SAID MAP ON THE ARC OF A CIRCLE TO THE LEFT OF THE RADIUS OF WHICH IS 45 FEET, A DISTANT OF 60.45 FEET; THENCE CONTINUING ALONG SAID EASTERN LINE OF LE ROY AVENUE, 24.23 FEET; THENCE EASTERLY ALONG THE SOUTHERN LINE OF SAID LOT NO. 3, 100 FEET; THENCE NORTHERLY PARALLEL WITH THE AFORESAID LINE DIVIDING LOTS NOS. 3 AND 4 IN BLOCK NO. 5, 60 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT NO.3, IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA COUNTY, CALIFORNIA," FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 14:

LOT 10 IN BLOCK 5, AS SAID LOT AND BLOCK ARE SHOWN ON MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA CO., CALIFORNIA," FILED OCTOBER 15, 1902 IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 15:

ALL OF LOT NUMBERED 7 IN BLOCK NUMBERED 6, AS SAID LOT AND BLOCK ARE LAID DOWN AND DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT," FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL16:

BEGINNING AT THE INTERSECTION OF THE WESTERN LINE OF LA LOMA AVENUE WITH A LINE DRAWN PARALLEL WITH THE NORTHERN LINE OF LOT 12 AND DISTANT THEREFROM SOUTHERLY 40 FEET, AS SAID AVENUE AND LOT ARE SHOWN ON MAP HERINAFTER REFERRED TO; RUNNING THENCE WESTERLY ALONG SAID PARALLEL LINE 50 DRAWN 146.46 FEET MORE OR LESS TO THE WESTERN LINE OF SAID LOT 12; THENCE SOUTHERLY ALONG SAID LINE OF SAID LOT 12, 275 FEET TO THE SOUTHERN LINE OF SAID LOT 12; THENCE EASTERLY ALONG THE SOUTHERN LINE OF SAID LOT 12, 108.55 FEET; THENCE AT RIGHT ANGLES NORTHERLY 20 FEET; THENCE EASTERLY PARALLEL WITH SAID SOUTHERN LINE OF SAID LOT 12, 103.03 FEET, MORE OR LESS TO SAID WESTERN LINE OF SAID LA LOMA AVENUE; THENCE NORTHERLY ALONG SAID LINE OF LA LOMA AVENUE TO THE POINT OF BEGINNING.

EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT ON THE WESTERN LINE OF LOT 12, AS SAID LOT IS SHOWN ON MAP HERINAFTER REFERRED TO, DISTANT THEREON FORTY (40) FEET SOUTHERLY FROM THE NORTHWESTERN CORNER OF SAID LOT AND RUNNING THENCE NORTH 80° 39' EAST, PARALLEL WITH THE NORTHERLY LINE OF SAID LOT, ONE HUNDRED FORTY-SIX AND 46/100 (146.46) FEET TO THE WESTERN LINE OF LA LOMA AVENUE; THENCE SOUTHERLY ALONG THE WESTERN LINE OF LA LOMA AVENUE ONE HUNDRED FORTY-FIVE AND 36/100 (145.36) FEET; THENCE SOUTH 80°39' WEST FIFTY-ONE AND 0/100 (51.0) FEET; THENCE NORTHWESTERLY CURVING TO THE RIGHT ON AN ARC WITH A RADIUS OF TWO HUNDRED AND TWENTY-FIVE (225) FEET AND ALONG CHORD WHICH BEARS NORTH 46° 53' WEST ONE HUNDRED EIGHTY AND 55/100 (180.55) FEET TO THE POINT OF BEGINNING.

PARCEL 16 CONTINUED:

BEING A PORTION OF LOT 12, AS SAID LOT IS DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED "LA LOMA PARK, ALAMEDA COUNTY, CALIFORNIA," FILED NOVEMBER 12, 1900 IN LIBER 16 OF MAPS, PAGE 13, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

EXCEPTING THEREFROM, ALL THAT PORTION OF LAND DESCRIBED IN THE DEED TO THE CITY OF BERKELEY, A MUNICIPAL CORPORATION, RECORDED APRIL 24, 1962, REEL 610, IMAGE 300, ALAMEDA COUNTY RECORDS.

PARCEL 17:

THAT PORTION OF LE ROY AVENUE COMMENCING AT THE SOUTHEAST CORNER OF LOT 8, BLOCK 5, AS SAID LOT AND BLOCK ARE SHOWN ON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA COUNTY, CALIFORNIA," FILED IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY, OCTOBER 15, 1902, AND RUNNING THENCE SOUTHWESTERLY ALONG THE NORTHERN LINE OF LE ROY AVENUE ONE HUNDRED TWENTY-SIX AND FORTY-ONE HUNDREDTHS (126.41) FEET; THENCE LEAVING SAID NORTH LINE AND RUNNING NORTHEASTERLY AND SOUTHERLY ON THE ARC OF A CURVE TO THE RIGHT TANGENT TO THE LAST SAID COURSE, THE RADIUS OF WHICH ARC IS EIGHTY-NINE AND TWELVE HUNDREDTHS (89.12) FEET, A DISTANCE ON SAID ARC OF ONE HUNDRED SEVENTY AND FIFTY-TWO HUNDREDTHS (170.52) FEET TO THE EASTERN LINE OF LE ROY AVENUE; THENCE NORTHERLY TANGENT TO THE LAST SAID COURSE ALONG SAID EASTERN LINE OF LE ROY AVENUE ONE HUNDRED TWENTY-SIX AND FORTY-ONE HUNDREDTHS (126.41) FEET TO THE POINT OF BEGINNING.

PARCEL 18:

BEGINNING AT A POINT ON THE EASTERN LINE OF LE ROY AVENUE DISTANT THEREON ONE HUNDRED SEVENTY SIX AND 24/100 (176.24) FEET NORTHERLY FROM THE NORTHERN LINE OF CEDAR STREET AND RUNNING THENCE NORTHERLY ALONG THE EASTERN LINE OF LE ROY AVENUE SIXTY (60) FEET; THENCE EASTERLY PARALLEL WITH THE NORTHERN LINE OF CEDAR STREET EIGHT-EIGHT AND 55/100 (88.55) FEET; THENCE AT A RIGHT ANGLE SOUTHERLY FIFTY NINE AND 85/100 (59.85) FEET; THENCE WESTERLY PARALLEL WITH THE NORTHERN LINE OF CEDAR STREET NINETY TWO AND 740/100 (92.74) FEET TO THE POINT OF BEGINNING.

BEING THE NORTHERN FIFTY NINE AND 85/100 (59.85) FEET OF LOT THIRTEEN AS SAID LOT IS SHOWN ON THE MAP ENTITLED "LA LOMA PARK" FILED IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, CALIFORNIA, NOVEMBER 12, 1900 IN LIBER 16 OF MAPS, AT PAGE 13.

TITLE REPORT

PRELIMINARY REPORT ORDER No. 1117019517-JS, DATED JULY 26, 2018, ISSUED BY OLD REPUBLIC TITLE COMPANY; 555 12TH STREET, SUITE 2000 OAKLAND, CALIF. 94607 TEL (510) 272-1121 CONTACT: JENNIFER SENHAJ

NO EASEMENTS WERE DISCLOSED BY SAID PRELIMINARY REPORT.

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD
Signature: Shamma Alu
Date: October 24, 2019
SIGNATURE DATE
* Findings and Conditions Attached

ASSESSOR PARCEL NUMBER:

073-232-32

LOT AREA:

2.64 ± ACRES

SURVEYOR'S STATEMENT

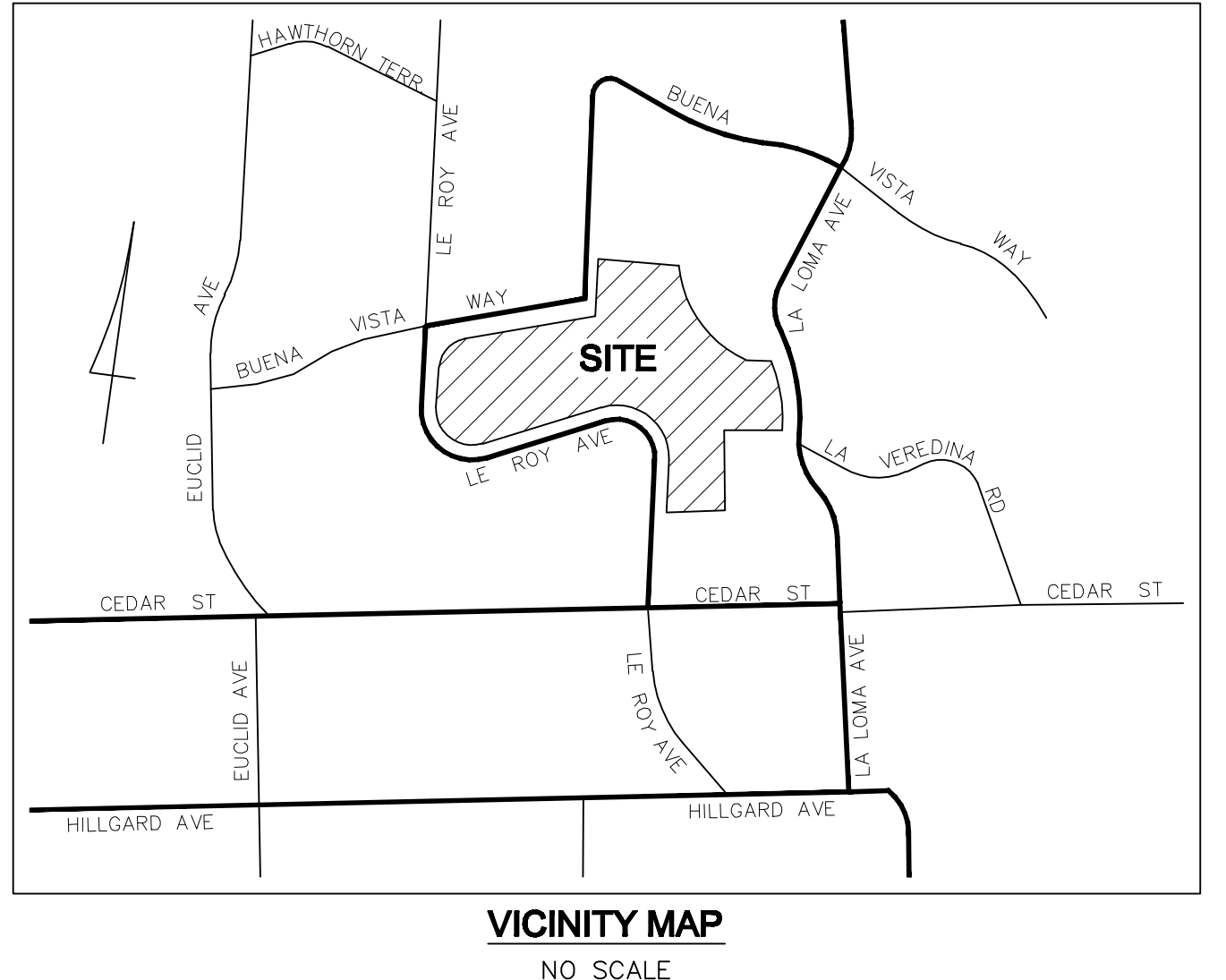
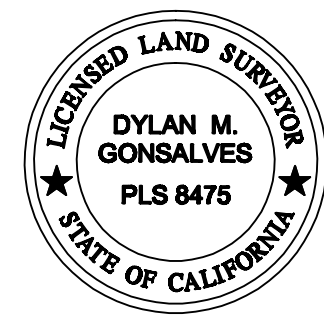
THIS MAP CORRECTLY REPRESENTS A TOPOGRAPHIC AND BOUNDARY SURVEY MADE BY ME OR UNDER MY DIRECTION AT THE REQUEST OF: SAMULI SEPPALA IN: OCTOBER 2018

I HEREBY STATE THAT THE TOPOGRAPHY AND BOUNDARIES SHOWN ON THIS MAP IS BASED UPON A FIELD SURVEY MADE BY ME, DYLAN M. GONSALVES, PLS 8475

DURING THE MONTH OF OCTOBER, 2018

I FURTHER STATE THAT TO THE BEST OF MY KNOWLEDGE ALL PROVISIONS OF APPLICABLE LOCAL ORDINANCES HAVE BEEN COMPLIED WITH.

Signature: Dylan M. Gonsalves
DATE
DYLAN M. GONSALVES P.L.S. 8475



VICINITY MAP
NO SCALE

GENERAL NOTES

- 1. DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.
- 2. GROUND CONDITIONS SHOWN HEREON REFLECT CONDITIONS ON THE DATE OF THE SURVEY.
- 3. FIELD SURVEY PERFORMED IN OCTOBER 2018.
- 4. NO RESPONSIBILITY OF CONTENT, COMPLETENESS OR ACCURACY OF THE CLIENT PROVIDED TITLE REPORT IS ASSUMED BY THIS PLAT OR THE SURVEYOR; ONLY SURVEY RELATED ITEMS ARE SHOWN HEREON.
- 5. DETAILS DRAWN NEAR PROPERTY LINE(S) ARE NOT NECESSARILY TO SCALE.
- 6. ENCROACHMENTS AND OR CLEARANCES ARE SHOWN AT OR NEAR GROUND LEVEL UNLESS OTHERWISE NOTED.
- 7. ENCROACHMENTS UPON AND BY THE ADJOINING PROPERTIES ARE HEREBY NOTED AND IT SHALL BE THE RESPONSIBILITY SOLELY OF THE PROPERTY OWNERS INVOLVED TO RESOLVE ANY ISSUE WHICH MAY ARISE THEREFROM.
- 8. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO HAVE ALL THE UTILITIES MARKED BY THE RESPECTIVE UTILITY COMPANY PRIOR TO CONSTRUCTION.
- 9. PRIOR TO ANY DIGGING, CALL U.S.A. (1-800-642-2444) AT LEAST 48 HOURS IN ADVANCE TO HAVE EXISTING UNDERGROUND UTILITIES MARKED.
- 10. ONLY ACCESSIBLE SURFACE UTILITIES VISIBLE ON THE DATE OF THIS SURVEY WERE LOCATED AND ARE SHOWN.
- 11. THE LOCATIONS OF UNDERGROUND UTILITIES, WHERE SHOWN, ARE NOT DEFINITIVE NOR COMPLETE, AND ARE PER RECORD DRAWINGS PROVIDED BY THE CITY, AND NO RESPONSIBILITY OF CONTENT, COMPLETENESS OR ACCURACY OF THE UNDERGROUND UTILITIES IS ASSUMED BY THIS PLAT OR THE SURVEYOR. ALL USERS ARE ADVISED TO CONTRACT SEPARATELY WITH AN UNDERGROUND UTILITY LOCATION COMPANY AND TO REVIEW PUBLIC, QUASI-PUBLIC AND GIS UTILITY DATA SOURCES IF THEY WANT MORE INFORMATION.

DMG ENGINEERING, Inc.
30 OAKVUE COURT
PLEASANT HILL, CA 94523
PHONE: (925) 787-0453
FAX: (925) 287-8503

DMG ENGINEERING, INC.
RESTRICTED ENGINEERING DRAWING
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REVISIONS

NO.	DATE	BY

TOPOGRAPHIC & BOUNDARY SURVEY
ALAMEDA COUNTY A.P.N. 58-2245-9-3
1581 LE ROY AVENUE
CITY OF BERKELEY - CALIFORNIA
SCALE: 1 INCH = 20 FEET
AUGUST 2019

SHEET 1
OF 2 SHEETS
ORIG.DWG: 8-7-2019
REV.DWG:
JOB: 18-132

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shanna Alva **October 24, 2019**

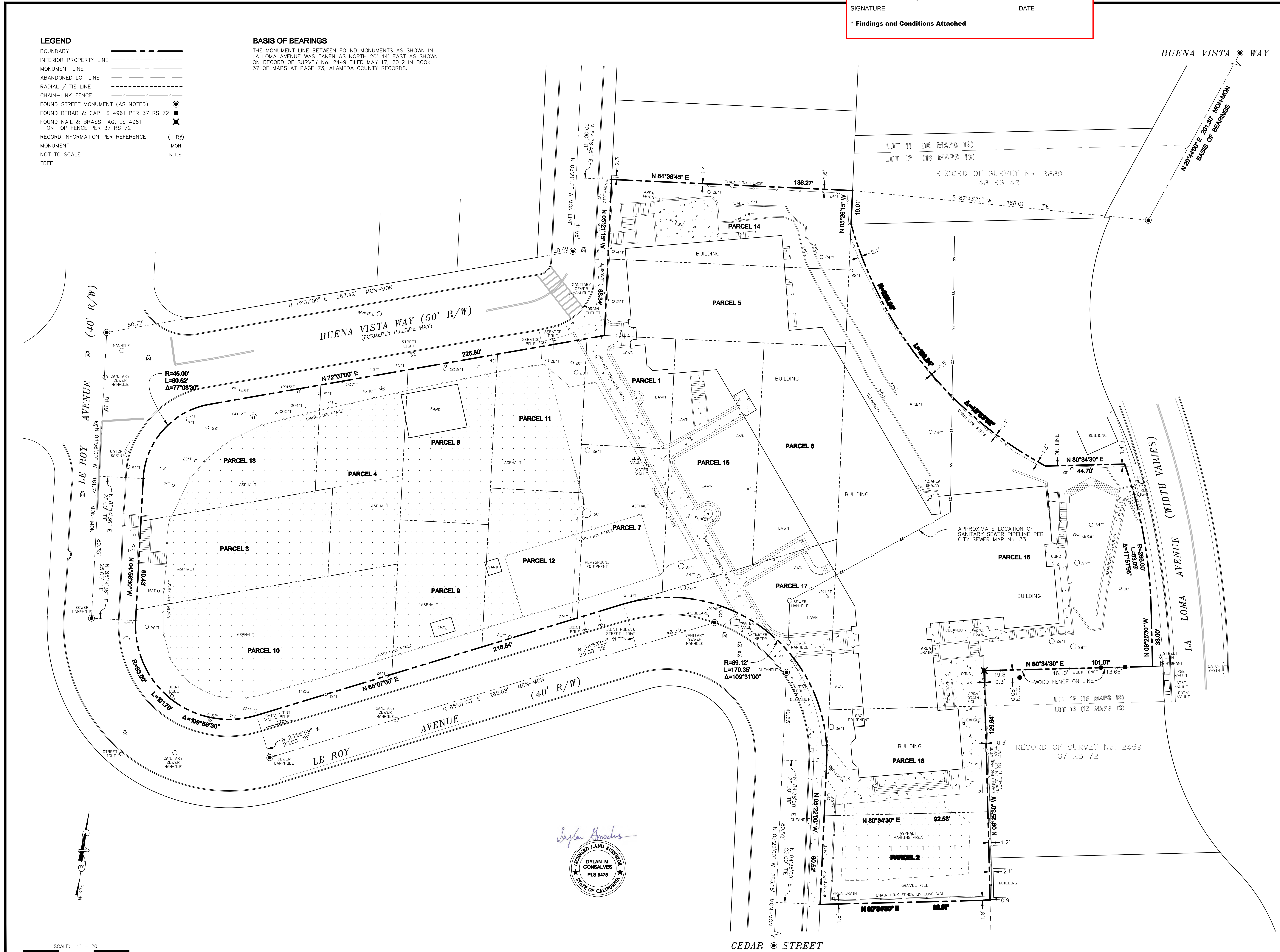
SIGNATURE DATE

* Findings and Conditions Attached

- LEGEND**
- BOUNDARY ————
 - INTERIOR PROPERTY LINE - - - - -
 - MONUMENT LINE ————
 - ABANDONED LOT LINE - - - - -
 - RADIAL / TIE LINE - - - - -
 - CHAIN-LINK FENCE — x — x —
 - FOUND STREET MONUMENT (AS NOTED) ●
 - FOUND REBAR & CAP LS 4961 PER 37 RS 72 ○
 - FOUND NAIL & BRASS TAG, LS 4961 ON TOP FENCE PER 37 RS 72 ✕
 - RECORD INFORMATION PER REFERENCE (R#)
 - MONUMENT MON
 - NOT TO SCALE N.T.S.
 - TREE T

BASIS OF BEARINGS

THE MONUMENT LINE BETWEEN FOUND MONUMENTS AS SHOWN IN LA LOMA AVENUE WAS TAKEN AS NORTH 20° 44' EAST AS SHOWN ON RECORD OF SURVEY No. 2449 FILED MAY 17, 2012 IN BOOK 37 OF MAPS AT PAGE 73, ALAMEDA COUNTY RECORDS.



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REVISIONS

NO.	DATE	BY

TOPOGRAPHIC & BOUNDARY SURVEY

ALAMEDA COUNTY A.P.N. 58-2245-9-3
1581 LE ROY AVENUE
CITY OF BERKELEY - CALIFORNIA

SCALE: 1 INCH = 20 FEET OCTOBER 2018

SHEET 2
OF 2 SHEETS
ORIG.DWG: 8-7-2019
REV.DWG:
JOB: 18-132

Dylan M. Gonsalves

DYLAN M. GONSALVES
PLS 8475
LICENSED LAND SURVEYOR
STATE OF CALIFORNIA



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1939 Harrison Street, Ste. 150
Oakland, CA 94612

CITY OF BERKELEY
CITY CLERK DEPT
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2019 DEC 3 PM 3:47

December 2, 2019

Mark Numainville, City Clerk
City of Berkeley
2180 Milvia Ave., First Floor
Berkeley, CA 94704

Re: Appeal of Zoning Adjustments Board Decision Re: Use Permit #ZP2019-0061; 1581 Le Roy Avenue - Hillside School Project

Dear Mr. Numainville:

On behalf of Hillside Path & Playground Preservation Association, an unincorporated association composed of residents of Berkeley living near the Hillside School located at 1581 Le Roy Avenue in Berkeley (the "Hillside School Property"), along with those persons listed on the signature pages attached hereto as Exhibit 1 (collectively, "Appellants") concerning the application of the current owner of the Hillside School Property to convert it from its previous use as a school, to residential use (Use Permit #ZP2019-0061) (the "Project").

This letter constitutes an appeal of the Zoning Adjustments Board ("ZAB") decision of October 24, 2019 approving 1581 Le Roy Avenue, Use Permit #ZP2019-0061 and ZAB's related CEQA findings that the Project is exempt from environmental review under the California Environmental Quality Act ("CEQA"). By this appeal, Appellants request that the Berkeley City Council: 1) hold a public hearing to hear the concerns of Appellants and other members of the public; 2) deny Use Permit #ZP2019-0061; 3) find that the Project is not exempt from CEQA; and 4) send the Project back to staff for further review under CEQA.

The reasons for this appeal are detailed in the attached two letters. Appellants reserve their right to add additional information prior to or at a hearing on this appeal by the City Council.

Respectfully submitted,

Hillside Path & Playground Preservation Association, and all persons listed on the attached signature list.

Encl.

- Exh. 1 - Names and Signatures of Appellants
- Exh. 2 - Hillside Path & Playground Preservation Association Oct. 17, 2019 Letter to ZAB
- Exh. 3 - Hillside Path & Playground Preservation Association Oct. 24, 2019 Supp. Letter to ZAB

Total 35

Signature Page ZAB:

My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of ZAB's October 24, 2019 decision to approve Use Permit #ZP2019-0061

(Further details attached)

300 feet
~~LeRoy Ave~~

Please Print Name	Signature	Address
300 feet " 1) E Barschi		1597 Le Roy Ave.
" 2) ROBERT D. JACKSON		1597 LeRoy AVE.
" 3) MICHAEL F. SCOTT		1570 LE ROY AVE
" 4) Marian C. O'Regan		1562 Le Roy Ave.
" 5) W.M. Caetsch		1554 LeRoy Ave.
" 6) CARLOS BUSTAMANTE		1544 LeRoy Ave.
" 7) Silvia Bustamante		1544 Le Roy Ave.
" 8) Caterina Migone		1544 LeRoy Ave.
" 9) THOMAS TRIPPE		1551 LA VEREDA RD.
" 10) Kirsten Berg		1551 LaVereda Blvd.
" 11) Sue Londerville		1546 La Loma Ave
" 12) MARIS MEYERSON		1509 LA LOMA AVE
" 13) IVAN MEYERSON		1509 LA LOMA AVE.
" 14) JOHN LIE		2580 BUENA VISTA WAY
" 15) Vicki Pioria		1570 LeRoy Ave.

15 = 300 feet

Signature Page ZAB:

My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of ZAB's October 24, 2019 decision to approve Use Permit #ZP2019-0061. My signature also indicates that I own or lease property within 300 feet of the property located at 1581 Le Roy Avenue, Berkeley, California.

(Further details attached)

300 Feet

Please Print Name	Signature	Address
300 Feet 1) HERTA WEINSTEIN		2525 Buena Vista Way
" 2) PHILLIP COLELLA		1546 LA LOMA AVE.
" 3) MICHAEL S. BANK		1509 Le Roy Ave.
" 4) John Armitage		2545 Buena Vista
" 5) HELANE ZEIGER		1521 Le Roy Ave.
" 6) URSULA SCHULZ		1520 Le Roy Ave
" 7) Mike Apte		1520 Le Roy Ave
" 8) DOUG FONTAINE		1516 Le Roy Ave
" 9) Van Metaxas		1517 Le Roy Avenue
" 10) Michael O'Reilly		1594 Le Roy Ave.
11		
12		
13		
14		
15		

10 = 300 feet

Pg 3 of 5

Signature Page ZAB:

My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of ZAB's October 24, 2019 decision to approve Use Permit #ZP2019-0061

(Further details attached)

300 feet

Buena Vista Way

Please Print Name

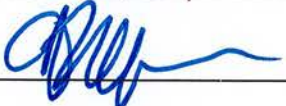
Signature

Address

300 feet
"

1) CAROLINE ARMITAGE  2545 Buena Vista

" 2) AKAL KHALSA  2577 BUENA VISTA

" 3) David Benavente Helmer  2060 Buena Vista Way

4) _____

5) _____

6) _____

7) _____

8) _____

9) _____

10) _____

11) _____

12) _____

13) _____

14) _____

15) _____

3 = 300 = Feet

November 21, 2019

Signature Page ZAB:

My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of ZAB's October 24, 2019 decision to approve Use Permit #ZP2019-0061. My signature also indicates that I own or lease property within 300 feet of the property located at 1581 Le Roy Avenue, Berkeley, California.

(Further details attached)

Not 300

~~Leroy Ave~~

Please Print Name	Signature	Address
1) Beverly A. Cheney	Beverly A. Cheney	1459 Greenwood Terr.
2) Avrum V Gratch	AV Gratch	1459 Greenwood Terr
3) Jay Benveniste		
4) Guy BENVENISTE	Jay Benveniste	150 Montrose Rd
5) Karen Nelson Benveniste	Karen Nelson Benveniste	150 Montrose Rd
6) Nadia Le Bon	Nadia Le Bon	190 Montrose Rd.
7) Charlese Harrington	Charlese Harrington	51 Bonnie Ln
8)		
9)		
10)		
11)		
12)		
13)		
14)		
15)		

November 21, 2019

Signature Page ZAB:

My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of ZAB's October 24, 2019 decision to approve Use Permit #ZP2019-0061

(Further details attached)

~~300 feet~~ Cedar Street Not 300 feet

Please Print Name

Signature

Address

- 1) Debra Kaufman Debra Kauf 1300 Oxford St.
Berkeley CA
- 2) _____
- 3) _____
- 4) _____
- 5) _____
- 6) _____
- 7) _____
- 8) _____
- 9) _____
- 10) _____
- 11) _____
- 12) _____
- 13) _____
- 14) _____
- 15) _____

November 21, 2019



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Oakland, CA 94612

www.lozeaudrury.com
rebecca@lozeaudrury.com

October 17, 2019

Via Email

Shoshana O’Keefe, Chairperson
Denise Pinkston, Vice Chairperson
Igor Tregub, Board Member
Teresa Clarke, Board Member
Patrick Sheahan, Board Member
John Selawsky, Board Member
Carrie Olson, Board Member
Charles Kahn, Board Member
Dohee Kim, Board Member
Zoning Adjustments Board
Land Use Planning Division
City of Berkeley
1947 Center Street, Second Floor
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Greg Powell
Zoning Adjustments Board Secretary
Land Use Planning Division
City of Berkeley
1947 Center Street, Second Floor
Berkeley, CA 94704
zab@cityofberkeley.info

Re: Hillside School Project, 1581 Le Roy Avenue; Use Permit #ZP2019-0061

Dear Chairperson O’Keefe, Vice Chairperson Pinkston, ZAB Members, and ZAB Secretary:

I am writing on behalf of Hillside Path & Playground Preservation Association, an unincorporated association composed of residents of Berkeley living near the Hillside School located at 1581 Le Roy Avenue, concerning the application of the current owner of the Hillside School to convert is from its previous use as a school, to residential use (Use Permit #ZP2019-0061) (the “Project”). Hillside Path & Playground Preservation Association asks the Zoning Adjustment Board (“ZAB”) to reject the Project because it fails to comply with the California Environmental Quality Act (“CEQA”).

This comment was prepared with the assistance of fire expert Noah Brownlow. Mr. Brownlow’s expert comments and CV are attached hereto as Exhibit A.

As discussed below, there is substantial evidence that the Project will adversely impact public safety, and will adversely impact the historic significance of the Hillside School property. Because of these significant impacts, the City cannot exempt the Project from CEQA. CEQA review is needed to analyze the Project’s impacts and implement feasible mitigation measures and alternatives to reduce adverse impacts to public safety and historic resources.

1581 Le Roy Avenue (Hillside School)
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I. FACTUAL BACKGROUND

A. Hillside School

The Hillside School was built at 1581 Le Roy Avenue in 1925, following the 1923 Berkeley Hills Fire, which destroyed a number of houses previously located on the property. Once opened, the Hillside School operated as a public school until 1983, when Hillside School closed. Berkeley Unified School District (“BUSD”) then leased the space to various educational institutions for approximately 30 years. In 2008 BUSD approved the sale of Hillside School to the German International School, which in turn sold it in September 2018 to Samuli Seppala, the current owner and Project proponent.

Designed by Master Architect Walter Ratcliff, the Hillside School serves as an important historic resource for Berkeley, and was designated City Landmark #61 in 1980. In 1982 it was recognized nationally and placed on the National Register of Historic Places. The local and national historic designations were made for the entire Hillside School property, including the path that runs in front of the school building that connects Le Roy Avenue and Buena Vista Way (the “Path”), as well as the playground in front of the school building (the “Playground”).

B. Proposed Project

The new owner of the Hillside School, Mr. Seppala, now seeks a use permit to convert the Hillside School into a single family residence with an accessory dwelling unit. He will convert the south wing of the building into living quarters, which he will use as his primary residence. Mr. Seppala also plans to create an Accessory Dwelling Unit for an artist-in-residence, and to repurpose the existing classrooms into art studios to be used by Mr. Seppala and guest artists. The Project also proposes to build a pool and hot tub on a new rooftop deck, and an elevator to serve the Mr. Seppala’s new main residence.

Mr. Seppala is also seeking a Moderate Home Occupation Permit for artistic activities he plans on hosting at the Project site, including private art classes, seminars, workshops, and retreats at the property. Specifically, he plans to host up to 25 artists at the property, twice per month, for “art-related projects.” To accommodate all of these new uses, Mr. Seppala plans to transform two-thirds of the Playground into a parking lot for 18 cars or trailers and an art display area. In addition, the Project seeks to install up to five massive sheds on the current Playground for storage purposes.

Mr. Seppala has allowed access on the Path and Playground “for the time being.” While this is appreciated, nothing in the Project requires him to do so. Under CEQA, a lead agency must analyze the impacts of all activity allowed under a permit, not just what is currently proposed. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645; *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398. Here, if the Project is approved, there is nothing preventing Mr. Seppala from cutting off public access to the Path or Playground. In doing so, he would limit potentially life-saving strategies that contribute to

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public safety during an emergency. The impact of this action must be analyzed under CEQA.

C. Fire History

The possibility of catastrophic wildfire near the Project in the Berkeley Hills is very real. The Hillside School is located in a high-risk fire zone, a landslide zone, and a fault zone. There are a number of factors that make the neighborhood at a particularly high risk for fires, including its proximity to park land where the fuel load is high, narrow, curvy roads that hamper access by first responders and obstruct efficient evacuation routes, and steep topography, among others.

It is these conditions that have contributed to the East Bay Hills' long and tragic history of catastrophic fires. In 1923, a wildfire swept through north Berkeley, in the same spot the Project is located, destroying more than 600 584 homes and 100 structures. *Id.* In 1970, the Hills Fire burned more than 400 acres, destroying 37 homes. *Id.* The Wildcat Canyon Fire in 1980 destroyed five homes in just minutes. *Id.* More recently, the Tunnel Fire, in 1991, caused more than \$1 billion in damage, and took the lives of 25 people. *Id.*

As a result of climate change, since the 1991 Tunnel Fire, “wildfires have become larger, hotter, more destructive, and more difficult to control,” Councilmember Wengraf Memo to City Council Supporting Resolution Declaring Wildfire Prevention and Safety a Top Priority in the City of Berkeley (Oct. 15, 2019) (“Wengraf Memo”). We are beginning to better understand the importance of fire safety mitigation measures. This was demonstrated by the City’s recent adoption of a resolution declaring wildfire prevention and safety a top priority in the City of Berkeley. CITE. Our increasing awareness of fire danger, particularly near Wildland Urban Interfaces in wooded areas with congested narrow streets, underscores the importance of public paths for use as evacuation routes, and open spaces for use as a staging area of emergency vehicles and a safe zone for people and pets.

D. The Path and Playground

For the past 93 years, the Playground and Path have been open to and used by the public for recreational and social activities. The Playground contains a number of metal play structures, basketball hoops, and a large open play space. See Photographs in Exhibit ___. Activities taking place at the Playground go beyond just playing on the metal structures and include basketball, baseball, Frisbee, bike riding, tag, capture the flag, and picnicking, just to name a few.

The Playground has been a defining part of the neighborhood for nearly a century. It has been used and enjoyed by residents of all ages, for multiple generations. Comments submitted to the Landmark Preservation Committee, and likely submitted to ZAB in this proceeding as well, recount dozens of stories of Berkeley residents who climbed on the playground structures as children, took their children to the playground, and now take their grandchildren to there. CITE. The Playground’s central role in the neighborhood was by design. As Mr. Seppala’s Applicant Statement for the Project acknowledges, “[t]he front yard of the school was designed as a playground for both the school and the neighborhood.” Applicant’s Statement, Hillside School,

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1581 Le Roy Avenue, p. 1 (March 11, 2019) (emph. added).

As an open space, the Playground is vital to the Hillside community, which has very limited free space. The Playground is the only open space where families and community members could gather in case of an emergency due to fire, earthquake, or other tragic event. As discussed in detail below, loss of access to this open space would limit potentially life-saving strategies that contribute to public safety during an emergency.

The Path is a similarly vital asset to the neighborhood. Neighbors have walked the Path in front of the school to get from Le Roy Avenue to Buena Vista Way for nearly a century. It serves as a normal and often daily route for residents when accessing the UC Campus by foot or bike, as well as downtown Berkeley and BART. ~~Some neighbors have described walking the Path daily, as it is the best way to get to the UC campus.~~

As detailed below, the Project and its potential to cut off public access to the Path and Playground not only changes the character of the neighborhood and the historic nature of the property, but it also poses a serious public safety risk.

II. LEGAL BACKGROUND

A. California Environmental Quality Act

CEQA mandates that “the long-term protection of the environment ... shall be the guiding criterion in public decisions” throughout California. Public Resources Code (“PRC”) § 21001(d). CEQA applies to “discretionary projects” unless they are specifically exempted. PRC § 21080(a). A “project” is “the whole of an action” directly undertaken, supported, or authorized by a public agency “which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” PRC § 21065; CEQA Guidelines, 14 CCR § 15378(a). CEQA is concerned with an action’s ultimate “impact on the environment.” *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283. CEQA requires environmental factors to be considered at the “earliest possible stage . . . before [the project] gains irreversible momentum,” *id.* at 277, “at a point in the planning process where genuine flexibility remains.” *Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.

CEQA has a three-tiered structure for protecting the environment. 14 CCR § 15002(k); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185-86 (“*Hollywoodland*”). First, if a project is exempt under CEQA or if it is certain that the project “will not have a significant effect on the environment,” there need be no further agency evaluation. *Id.* But “where there is a reasonable possibility that a project or activity may have a significant impact on the environment, an exemption is improper.” *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 206. Second, “if there is a possibility the project will have a significant effect on the environment, the agency must perform an initial threshold study.” *Hollywoodland*, 161 Cal.App.4th at 1185-86; 14 CCR § 15063(a). If the study indicates that there is no substantial evidence that the project or any of its aspects may cause a significant

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effect on the environment, the agency may issue a negative declaration. *Hollywoodland*, 161 Cal.App.4th at 1185-86; 14 CCR §§ 15063(b)(2), 15070. Third, an environmental impact report (“EIR”) is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” PRC § 21080(d); *see also Communities for a Better Env’t v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.

“Significant environmental effect” as used in this three-tiered test is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” PRC § 21068; *see also* 14 CCR § 15382. An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 83. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Communities for a Better Env’t v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109.

Here, because City staff proposes to exempt the Project entirely from all CEQA review, the first step of the CEQA process is at issue.

B. Categorical Exemptions

CEQA identifies certain classes of projects that are exempt from the provisions of CEQA. These are called categorical exemptions. PRC § 21084(a); 14 CCR §§ 15300, 15354. Categorical exemptions are certain classes of activities that generally do not have a significant effect on the environment. *Id.* Public agencies utilizing such exemptions must support their determination with substantial evidence. PRC § 21168.5. CEQA exemptions are narrowly construed and “[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.” *Mountain Lion Found. v. Fish & Game Comm’n* (1997) 16 Cal.4th 105, 125; *McQueen v. Bd. of Dirs.* (1988) 202 Cal. App. 3d 1136, 1148. Erroneous reliance by an agency on a categorical exemption constitutes a prejudicial abuse of discretion and a violation of CEQA. *Azusa*, 52 Cal. App. 4th at 1192. “[I]f the court perceives there was substantial evidence that the project might have an adverse impact, but the agency failed to secure preparation of an EIR, the agency’s action must be set aside because the agency abused its discretion by failing to follow the law.” *Dunn-Edwards*, 9 Cal. App. 4th at 656.

C. Exceptions to Categorical Exemptions

CEQA contains several exceptions to categorical exemptions. 14 CCR § 15300.2. If an exception applies, the exemption cannot be used, and the agency must instead prepare an initial study and CEQA document. *McQueen*, 202 Cal. App. 3d at 1149; *Hollywoodland*, 161 Cal. App. 4th at 1187. “Even if a project falls within the description of one of the exempt classes, it may nonetheless have a significant effect on the environment based on factors such as location, cumulative impact, or unusual circumstances.” *Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist.* (2006) 141 Cal. App. 4th 677, 689. The “unusual circumstances” exception

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provides that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to “unusual circumstances.” 14 CCR §15300.2(c).

In the context of the unusual circumstances exception, what is “unusual” is “judged relative to the *typical* circumstances related to an otherwise typical exempt project.” *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal. App. 4th 786, 801 (emphasis added). An unusual circumstance is “some feature of the project that distinguishes it from others in the exempt class.” *San Lorenzo Valley*, 139 Cal. App. 4th at 1381. The *Azusa* Court held that the unusual circumstances test would be satisfied where the circumstances of a particular project: (i) differ from the general circumstances of the projects covered by a particular categorical exemption, and (ii) those circumstances create an environmental risk that does not exist for the general class of exempt projects. *Azusa*, 52 Cal. App. 4th at 1207; *Hollywoodland*, 161 Cal. App. 4th at 1187 (construction of new fence atop historic granite wall posed environmental risk that did not exist for “general class of exempt projects” under the Class 5 exemption due to differing historic nature of wall); *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1260-1261 (court looked for “some feature of the project that distinguishes it from any other small, run-of-the-mill commercial building or use” covered by claimed exemption).

Here, the City’s determination that the Project is exempt under the “Historical Resource Restoration/Rehabilitation” exemption fails because the Project goes beyond the scope of the exemption on its face, and because the unusual circumstances exception applies, precluding reliance on an exemption.

III. ANALYSIS

A. **The Historical Resource Restoration/Rehabilitation exemption does not apply on its face.**

The City claims that the Historic Resource Restoration/Rehabilitation CEQA exemption¹ applies to the Project. 14 CCR § 15331. The City’s reliance on this exemption is misplaced.

The exemption is narrow in scope, and applies only to:

[P]rojects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer.

¹ The Historic Resource Restoration/Rehabilitation exemption is also known as a Class 31 exemption.

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14 CCR § 15331.

CEQA exemptions, such as the Historic Resource Restoration/Rehabilitation exemption, are narrowly construed, and limited to their terms. *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257, 1268; *Mountain Lion Found. v. Fish & Game Comm'n* (1997) 16 Cal.4th 105, 125; *McQueen v. Bd. of Dirs.* (1988) 202 Cal. App. 3d 1136, 1148. Strict construction is required in order to interpret categorical exemptions in a manner that affords the greatest environmental protection within the reasonable scope of their statutory language. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966. “Since a determination that a project falls within a categorical exemption excuses any further compliance with CEQA whatsoever, we must construe the exemptions narrowly in order to afford the fullest possible environmental protection.” *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697.

In the case of *Castaic Lake Water Agency v. Santa Clarita* (1995) 41 Cal.App.4th 1257, 1268, the court held that CEQA’s earthquake exemption did not apply to a city project involving earthquake retrofitting because the project also included other elements only loosely related to earthquakes. Similarly here, while the Project includes some maintenance, repair, and restoration, it includes many other elements that go far beyond the limited terms of the exemption. Thus, the exemption does not apply.

In addition to “maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction,” the Project also includes many activities that go far beyond the language of the exemption, including:

- Construct a new roof deck;
- Install an unenclosed swimming pool and hot tub within the new roof deck;
- Construct a 36-square foot elevator penthouse above the second story;
- Create a new surface parking lot where the playground is now located
- Install up to five storage shed within portions of the former playground
- Repurpose part of the playground as an outdoor art space

Notice of Public Hearing (mailed Oct. 9, 2019).

With these elements, the proposed Project does not fit within the Class 31 exemption because is clearly not “limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction” of the Hillside School as a historic resource. The Project clearly does *include* restoration and rehabilitation activities. The problem is that the Project is not *limited* to those activities. The Project goes far beyond merely maintaining or repairing the Hillside School and Playground. Instead, the Applicant seeks to build new structures that never existed on the site before, and take away portions that are included as part of the Historic Landmark Designation. CITE. Among other things, the Applicant seeks to build a rooftop pool and hot tub, a new parking lot and five large storage sheds on what had previously

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been a historic playground. Yet the Class 31 exemption does not exempt projects that seek to add a pool or a parking lot to a historic resource. Similarly, ~~paving over~~ converting two-thirds of the playground to ~~convert it into~~ a parking lot and building five sheds on the parking lot does not fit within the plain terms of the exemption. The Project goes far beyond just maintenance or repair of an historic resource – the Project changes the historic resource. Since the Project goes far beyond the scope CEQA Guidelines section 15331, the exemption does not apply to the Project. *See, Castaic Lake*, 41 Cal. App. 4th at 1268 (CEQA earthquake exemption did not apply to rebuilding of City center because rebuilding project included elements beyond mere earthquake repairs and reconstruction).

Since the Project goes far beyond the limited terms of the exemption, the exemption is legally precluded.

B. The Project cannot be exempt from CEQA because it will have significant environmental impacts due to unusual circumstances.

Even assuming *arguendo* that the Project did fall within the Class 31 exemption (which it does not), the Project is still not exempt from CEQA because it falls under the “unusual circumstances” exception to categorical exemptions. 14 CCR § 15300.2(c). A categorical exemption is inapplicable “where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” *Id.* Here, Shuttle Project does not present the same general risk of environmental impact as other projects falling under the Class 31 exemption, and therefore the Class 31 exemption is inapplicable.

In *Berkeley Hillside*, the California Supreme Court explained that there are two ways a party may invoke the unusual circumstances exception. First, “a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect. That evidence, if convincing, necessarily also establishes ‘a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.’” *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105 (emph. added). Alternatively, “[a] party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance.” *Id.*

Both of these alternatives are established here because there are unusual circumstances that distinguish this Project from other Class 31 exemption projects, and there is substantial evidence that the Project will have a significant effect on the environment.

- 1. They City cannot rely on a CEQA exemption because the Project will have a significant impact on public safety.**

1581 Le Roy Avenue (Hillside School)
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Appendix G of the CEQA Guidelines provides that a Project will have a significant impact if it would “[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.” CEQA Guidelines, Appendix G. There is substantial evidence that the Project will expose people and structures to a significant risk of loss, injury or death involving wildfires in an area where residences are intermixed with wildlands.

Wildfire fighting expert Noah Brownlow submitted herewith a detailed analysis demonstrating that the Project will put people and property at risk. According to Mr. Brownlow, the Project “represents a threat to public safety by reducing access and egress to the Berkeley hills and by eliminating a potential safety zone or fire shelter deployment site for firefighters responding to [Wildland Urban Interface] fires.” Brownlow, p. 1. The increased danger stems, in part from the ability for the Project owner to cut off public access to the pathway that runs in front of the Hillside School, and connects Le Roy Avenue and Buena Vista Way. *Id.* Mr. Brownlow explains that cutting off this public access poses a threat to community members trying to evacuate, and impede emergency vehicle access. Brownlow, p. 1. The Project “would decrease both emergency vehicle access to the area, and civilian opportunities for egress. When a Northeast wind-driven fire is sweeping through the hills firefighters and residents need as many open pathways as possible, and restricting or eliminating these pathways ignores the unique threats posed to this neighborhood.” Brownlow, p. 1.

Mr. Brownlow concludes that:

If a fire does occur in the Berkeley Hills, this pathway could prove crucial to the safety of nearby residents in escaping a fire. By closing this pathway to the public, the public faces an increased risk of harm if a fire does occur.

Id.

The Project will also increase the risk to human life and property if a fire or other emergency occurs because firefighters and other emergency workers will face additional constraints in handling a fire or other emergency.

In both the 1991 Tunnel Fire and the 1923 Berkeley Hills Fire, “emergency personnel access and civilian egress were a limiting factor in incident stabilization and contributing factor to fatalities and property loss.” Brownlow, p. 1. In his comment letter, Mr. Brownlow describes the specific type of risks posed by Wildland Urban Interface (“WUI”) fires, and the importance of open spaces and egresses. “Due to their potential for extreme and unpredictable behavior, huge energy and potential for loss of life, firefighters have certain protocols that must be in place before they attempt to engage WUI fires.” Brownlow, p. 2. One such rule is that fire fighters must ensure that four conditions are in place at all times: 1) lookouts, 2) communications, 3) escape routes, and 4) safety zones. *Id.* The Project would impact fire fighters’ ability to safely tackle a fire at or near the Project because these conditions would not be met. *Id.* The Project “would eliminate a potential escape route and safety zone, denying firefighters a currently

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existing space in which to deploy personal fire shelters if overrun or to escape a deadly fire altogether.” *Id.*

Mr. Brownlow’s comments constitute substantial evidence that loss of public access to the path between Le Roy Avenue and Buena Vista Way and loss of public access to the playground will “[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires.” This significant impact precludes the City from relying on an exemption to avoid CEQA review. The City must analyze the Project’s impact on public safety under CEQA, and implement all feasible mitigation measures.

This public safety issue should be analyzed and mitigated in the open and public process created by CEQA. A CEQA process would allow the City to consider and impose feasible mitigation measures to reduce public safety risks. This may include, for example, a condition requiring the pathway between Le Roy and Buena Vista and a portion of the playground be kept open to the public and unobstructed. Public Safety experts for the City should be consulted to determine impact the Project will have on neighbors, fire fighters, and other emergency service workers in the event of a fire or earthquake. This information must all be disclosed to the public for review and comment.

The City’s failure to include any analysis or mitigation of the Project’s public safety impacts must be cured before the Project is approved.

2. The Project involves an unusual circumstance, precluding reliance on a CEQA exemption.

Even if there were not evidence that the Project *will* have a significant environmental impact, the unusual circumstances exception would still apply because, unlike “usual” or “typical” Historical Resource Restoration/Rehabilitation projects, this Project creates a significant public safety risk.

At least two elements of the Project that distinguish it from other projects in the exempt class, and these characteristics create environmental risks not generally present for “Historical Resource Restoration/Rehabilitation” projects. The first unusual circumstance is the Project’s location. Unlike most restorations, the Project is located in a High Fire Zone, within the State-designated Alquist-Priolo Earthquake Fault Zone, and is also in an earthquake-induced landslide area mapped by the California Geologic Survey on its Seismic Hazard Mapping Act map. The location of the Project makes it and the surrounding area unusually susceptible to a natural disaster. The second unusual circumstance is that, unlike most restorations, the Project may cut off a previously public path and open space, both of which are vital to public safety in the event of a fire or earthquake.

Once it is determined that a project presents an unusual circumstance, an exemption is precluded if there is substantial evidence that a project *may* have significant environmental impacts. Here, such evidence exists. As discussed above, because of the high risk location of

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the Project, and its potential to cut off public access to the Path and Playground open space, the Project may “decrease both emergency vehicle access to the area, and civilian opportunities for egress.” Brownlow, p. 1.

The Project’s unusual circumstances, together with Mr. Brownlow’s expert comments, preclude the City from relying on a CEQA exemption for the Project.

C. CEQA exemption is not allowed because the Project may have an adverse impact on a historic resource.

CEQA section 21084.1 prohibits the use of a CEQA exemption for projects that **may** cause a substantial adverse change in the significance of a historical resource. CEQA § 21084.1, CEQA Guidelines 15300.2(f). CEQA defines a “substantial adverse change” as the physical demolition, destruction, relocation or alteration of the historical resource or its immediate surroundings such that the significance of the historical resource would be materially impaired. CEQA goes on to define “materially impaired” as work that materially alters, in an adverse manner, those physical characteristics that convey the resource’s historical significance and justify its inclusion in the California Register of Historic Places, a local register of historical resources, or an historical resource survey. CEQA Guidelines 15064.5(b).

As discussed above, the Hillside School, path, and playground *collectively* are listed on the National Register of Historic Places. The Project will adversely affect the Hillside School, pathway, and playground as a historic resource. As discussed above, the Project goes beyond merely restoring or rehabilitating the Hillside School.

As proposed, the school playground that has been used by community members for more than 90 years, will be ~~paved over, in part, and~~ made into a parking lot for up to 18 vehicles. CITE. The Project also permits the owner to install up to five massive, garage-like sheds on the newly paved parking lot. See Exhibit ___. In addition, the Project would turn the remaining playground into a collection space for some type of sculptural art. CITE. None of this is consistent with the historic nature of the site. Instead, the action would transform the playground from a historically significant element of the property into a parking lot. Changing the Playground from its current aesthetic that is cohesive with the school, into a parking lot with five large storage sheds and random art pieces would change the character of the property as a whole. Because these changes may have an adverse impact on the Hillside school, Path, and Playground as a historic resource, the City may not exempt the Project from CEQA. Pub. Res. Code § 21084.1.

D. CEQA does not allow mitigated categorical exemptions.

A project that requires mitigation measures cannot be exempted from CEQA, nor can the agency rely on mitigation measures as a basis for determining that one of the significant effects exceptions does not apply. *Salmon Pro. & Watershed Network v. County of Marin* (2004) 125 Cal.App4th 1098, 1102. The City has imposed numerous mitigation measures on the Project.

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For example, the August 1, 2019 Landmarks Preservation Commission staff report includes the following conditions, among others:

- **Repair and replacement of character-defining features.** Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
- **Chemical Treatments.** Any chemical treatments needed as construction progresses will be undertaken using the gentlest means possible.
- **Roof equipment.** Any above ground or roof equipment, such as transformer(s), utilities, fire apparatus, air conditioning units, compressors, etc. shall be shown to scale on the architectural drawings of the building permit set of drawings in both plan and elevation, in order to determine if additional screening and design review may be required.
- **Clear glass.** All glass is assumed to be clear glass. Any proposed glass that is not clear glass shall be indicated on all drawings, and shall be reviewed for approval by historic preservation staff, prior to approval of any building permit for this project.
- **Exterior Lighting.** Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
- **Landscape Plan.** Prior to approval of any building permit for this project, the proposed landscape improvements shall be revised to include new plantings to screen—or to supplement existing plantings – on both the north *and* south sides of the former playground area. Further, the landscape plan may be modified as needed to ensure compliance with zoning criterion for open space pavement.
- **Irrigated, water efficient landscape.** New areas of landscape shall provide irrigation. This shall be called out on Landscape building permit drawings. The property owner shall maintain automatic irrigation and drainage facilities adequate to assure healthy growing conditions for all required planting and landscape. The landscape shall be drought-tolerant and achieve maximum water efficiency.
- **Storage sheds within the front yard area.** The storage sheds shall be limited to not more than five total and to their proposed height, floor area and locations.
- **Curb cuts.** All curbs and curb cuts shall be constructed per the standards and specifications of the Public Works Department. Curb cuts no longer utilized shall be restored per the Public Works Department specifications.

Since the City has imposed numerous mitigation measures, a CEQA exemption is prohibited. An agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects. *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1108 (“SPAWN”); *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1198-1201. If mitigation measures are necessary, then at a minimum, the agency must prepare a mitigated negative declaration to analyze the impacts, and to determine whether the mitigation measures are adequate to reduce the impacts to below significance. The public must be allowed

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to analyze the proposed mitigation, comment on their adequacy, and suggest alternative measures.

CEQA requires the mitigation measures to be developed in a public process, with public review and comment, not in closed door negotiations between the city and the project proponent. Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project.

The formulation of mitigation measures may not be delegated to staff, because mitigation measures must be subjected to public review. The City may not delegate the formulation and approval of programs to address environmental impacts because an agency's legislative body must ultimately review and vouch for all environmental analysis mandated by CEQA. *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 306-308. "[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.

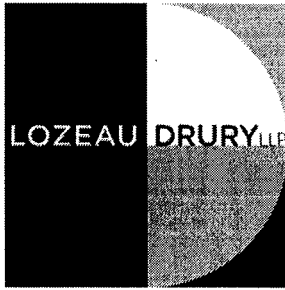
IV. CONCLUSION

In light of the above comments, the Hillside Path & Playground Preservation Association requests that the Zoning Adjustment Board deny Use Permit #ZP2019-0061, and send the Project back to staff with direction to review the Project's environmental impacts under CEQA.

Sincerely,



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October 23, 2019

Via Email

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Re: Hillside School Project, 1581 Le Roy Avenue; Use Permit #ZP2019-0061

Dear Chairperson O’Keefe, Vice Chairperson Pinkston, ZAB Members, and ZAB Secretary:

I am writing on behalf of Hillside Path & Playground Preservation Association, an unincorporated association composed of residents of Berkeley living near the Hillside School located at 1581 Le Roy Avenue (the “Hillside School Property”), concerning the application of the current owner to convert the property from its previous use as a school, to residential use (Use Permit #ZP2019-0061) (the “Project”). This letter supplements Hillside Path & Playground Preservation Association’s October 17, 2019 letter (the “October 17 Letter”). As described in the October 17 Letter, and for the supplemented reasons stated below, Hillside Path & Playground Preservation Association asks the Zoning Adjustment Board (“ZAB”) to reject the Project because it fails to comply with the California Environmental Quality Act (“CEQA”), and conflicts with Berkeley’s General Plan and Municipal Code (“BMC”).

A. The Project violates the Berkeley Municipal Code.

The ZAB Staff Report for the Project admits that, “[a]s a private residence located in a residential district, the [Project] site is not permitted to establish an ‘arts/craft studio’ use (BMC Section 23F.04, ‘Definitions’), generally defined as an *establishment*, which staff interprets to be

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a commercial or institutional, or otherwise non-residential, land use activity.” Staff Report, p. 10. The Municipal Code defines an arts/craft studio as:

An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable district’s requirements for incidental sales of goods made on site. Art/Craft Studios also include rehearsal spaces not designed for public performances.

Examples of individuals typically engaged in this work include, but are not limited to, woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with the definition above.

Berkeley Municipal Code § 23F.04. This is precisely the type of use the Project is proposing – space for multiple people, including non-residents, to make and show art. But, as Staff recognizes, Berkeley’s zoning ordinance does not permit an arts/craft studio” use in a residential district. Because the Project proposed an arts/craft studio use in a zone that does not permit that use, ZAB must deny the permit.

After determining that an “arts/craft studio” use is not permitted, Staff goes on to note that “artist studio” is a similar use that is allowed in a residential district. The Municipal Code defines an artist studio as:

A detached accessory building, used by residents of a main dwelling Unit on the same lot, to create original works of art and crafts products, but not for living quarters or sleeping purposes.

Berkeley Municipal Code § 23F.04.

The Project’s proposed use does not meet the definition of an artist studio. First, the Project owner is not proposing to create art in a “detached accessory building.” Instead, he is proposing to create art in the main school building. This alone precludes the proposed use. Second, an artist studio is limited to being “used by residents of a main dwelling Unit.” Under this definition, not even the “artist in residence” proposed to reside in the accessory dwelling unit would be permitted to use the property for creating original works of art. Further, allowing up to 25 guests to come onto the Property to create art would be even more inconsistent with the “artist studio” land use.

In an attempt to justify permitting the Project owner’s proposed inconsistent use, the Staff Report says:

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In this case, the applicant proposes such a use, though not located in a detached, accessory building and, instead, contained within a large main building and a confined outdoor area. Staff concludes, therefore, that the art activity is permissible on this residential property and, further, that the proposed location within the main building would be reasonable because the approximately 50,000-sq. ft. building could provide adequate space to sufficiently maintain both the dwelling uses and the art practice.

Staff Report, p. 10.

Staff’s interpretation is directly at odds with the plain meaning of the Municipal Code, and cannot be upheld. The activities proposed by the Project are inconsistent with the Municipal code provisions in residential districts. The Project permit must therefore be denied.

B. ZAB cannot make the findings required for approval of a use permit for the Project.

In order to issue a use permit for the Project, ZAB must find:

that the establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, ***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.

BMC § 23B.32.040(A). If ZAB cannot make any of these findings, ZAB must deny the permit.
BMC § 23B.32.040(C).

Here, ZAB must deny the permit because the Project will be detrimental to the safety, comfort, and general welfare of people living in the neighborhood, and would be detrimental or injurious to properties in the neighborhood. The ability of the Project owner to cut off the public’s access to the Path and Playground is be detrimental to the safety of neighbors and their properties. As discussed in Noah Brownlow’s expert comments¹:

If a fire does occur in the Berkeley Hills, this pathway could prove crucial to the safety of nearby residents in escaping a fire. By closing this pathway to the public, the public faces an increased risk of harm if a fire does occur.

. . .

¹ Attached as Exhibit A to Hillside Path & Playground Preservation Association’s October 17, 2019 letter to ZAB.

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The proposed development would decrease both emergency vehicle access to the area, and civilian opportunities for egress. When a Northeast wind-driven fire is sweeping through the hills firefighters and residents need as many open pathways as possible, and restricting or eliminating these pathways ignores the unique threats posed to this neighborhood.

Brownlow, p. 2.²

In addition to posing a danger to neighbors and their properties, the Project would also be detrimental to the peace and comfort of neighbors as a result of the Project owner's plans to throw monthly parties for up to 100 people, combined with a new roof deck, pool, and hot tub. No explanation has been given as to where the additional 80 guests will park, given the proposal for an 18-car parking lot. On top of this, there will be additional traffic and noise created by the Project every other week when the owner holds outdoor art events in the art park for 50-75 people.

Because ZAB cannot make the findings required by BMC § 23B.32.040(A), ZAB must deny the permit.

C. The Project is inconsistent with Berkeley's General Plan and Municipal Code.

The Project is inconsistent with a number of General Plan Policies and Actions, including the following:

- **Policy LU-7 (Neighborhood Quality of Life):** Preserve and protect the quality of life in Berkeley's residential areas through careful land use decisions.
- **Policy LU-7, Action A:** Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
- **Policy LU-9 (Non-Residential Traffic):** Minimize or eliminate traffic impacts on residential areas from institutional and commercial uses through careful land use decisions.
- **Policy LU-8 (Home Occupations):** Monitor and evaluate the present and future effects of home occupations, home offices, and other similar developments on residential areas.
- **Policy LU-11 (Pedestrian and Bicycle Friendly Neighborhoods):** Ensure that neighborhoods are pedestrian- and bicycle-friendly with well-maintained streets, street trees, sidewalks, and pathways.
- **Policy LU-11, Action A:** Ensure that any City-owned pathways or dedicated easements adjacent to, abutting, or through private property are preserved when reviewing new development proposals.

² See also, Berkeleyside article, "The Berkeley Hills are kindling: City takes steps to tackle wildfire danger, Oct. 17, 2019, attached hereto as Exhibit 1.

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Each of these General Plan policies and actions is meant to protect the character, safety, and enjoyment of Berkeley's residential neighborhoods. Yet the proposed Project would do the exact opposite. It would change the character of the neighborhood. The hosting of indoor and outdoor parties for up to 100 people several times per month would negatively impact the quality of life of nearby neighbors. In addition to the increased noise generated, the Project would potentially require an additional 100 cars to drive and park near the Project, in the residential neighborhood. The scale of the proposed use is simply incompatible with the surrounding neighborhood.

The Project is similarly inconsistent with the Municipal Code. The Berkeley Municipal Code specifies that one of the purposes of the Single Family Residential (R-1) Districts, including the R-1H district, is to: "Recognize and protect the existing pattern of development in the low density, single family residential areas of the City in accordance with the Master Plan." BMC § 23D.16.020(A).

Conversion of the Hillside School Property into a de facto event center that will host large parties would not protect the existing pattern of development in this single family residential neighborhood. Instead, the proposed Project will result in a dramatic increase in traffic, parking, and noise as a result of the proposed new use of the Property.

ZAB should deny the use permit because the Project is inconsistent with the General Plan and Municipal Code.

D. The Project is not exempt from CEQA.

The ZAB Notice of Public Hearing for the Project that was sent neighbors and other interested parties stated: "CEQA STATUS: Categorically exempt pursuant to Section 15331 for 'Historical Resource Restoration/Rehabilitation' of the CEQA Guidelines." A copy of this notice is attached hereto as Exhibit 2. In the ZAB Staff Report, posted only days before the ZAB meeting, the City claims for the first time that, in addition to the Class 31 Historical Resources Restoration/Rehabilitation exemption, the Project is also exempt under Class 1 and Class 3 CEQA exemptions. As detailed below, even the late addition of these exemptions are not sufficient to relieve the City of its obligation to conduct CEQA review for this Project. Neither of these two additional exemptions apply.

1. The Class 1 exemption does not apply on its face.

The City's exemption of the Project from CEQA now relies upon the Class 1 exemption for "operation, repair, maintenance, or minor alteration of existing structures or facilities." 14 CCR § 15301. This exemption does not apply on its face. The Class 1 exemption states:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

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The types of “existing facilities” itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. ***The key consideration is whether the project involves negligible or no expansion of use.***

The key limitation on the face of the Class 1 exemption is that it applies only to activities involving “negligible” or “no expansion” of previous use beyond that existing at the time of the lead agency’s determination. In contrast to the plain meaning of the exemption, the proposed Project involves a major expansion of use beyond the property’s current use.

As the Applicant’s Statement notes, the Project owner proposes to hold large events at the Hillside School Property on a monthly basis, expecting up to 100 people to attend. Oct. 8, 2019 Applicant’s Statement, p. 3. Separately, twice per month, the owner plans for art showings at the property attracting 50-75 visitors. *Id.* On a daily and weekly basis, “use would accommodate 25-50 artists and visitors.” *Id.* This constitutes a major expansion beyond the current use, which involves very few visitors, if any. As a result, the Class 1 exemption does not apply on its face, and cannot be relied on by the City.

2. Exceptions preclude reliance on the Class 1 or Class 3 exemptions.

As with the Class 31 exemption,³ the Class 1 and 3 exemptions do not apply because the Project falls within two exceptions to CEQA exemptions: 1) the “unusual circumstances” exception, and 2) the “historical resources” exception to categorical exemptions. 14 CCR § 15300.2(c), (f).

i. The Project will have significant environmental impacts due to unusual circumstances, precluding reliance on a CEQA exemption.

A categorical exemption is inapplicable “where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” *Id.* Here, the Project does not present the same general risk of environmental impact as other projects falling under the Class 1, 3, or 31 exemptions, and therefore the exemptions cannot apply.

In *Berkeley Hillside*, the California Supreme Court explained that there are two ways a party may invoke the unusual circumstances exception. First, “a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect. That evidence, if convincing, necessarily also establishes ‘a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.’” *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105 (emph. added). Alternatively, “[a] party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from

³ See discussion in Hillside Path & Playground Preservation Association’s October 17, 2019 letter to ZAB.

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others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance.” *Id.*

Both of these alternatives are established here because there are unusual circumstances that distinguish this Project from other Class 31 exemption projects, and there is substantial evidence that the Project will have a significant effect on the environment.

a. They City cannot rely on a CEQA exemption because the Project will result in a significant land use and planning impact.

A project has a significant land use impact if it would:

Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.

CEQA Guidelines, App. G § X(b).

As discussed above, the Project could conflict with a number of general plan policies and zoning ordinances. The general plan policies and zoning ordinances were designed to avoid or mitigate a variety of environmental effects including noise, traffic, parking, aesthetics, among other things. In addition to violating the General Plan and zoning ordinance, these land use conflicts constitute a significant impact under CEQA, and preclude reliance on an exemption.

b. They City cannot rely on a CEQA exemption because the Project will have a significant impact on public safety.

As discussed in Hillside Path & Playground Preservation Association’s October 17 Letter, the Project will have a significant impact on public safety because it will “[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.” CEQA Guidelines, Appendix G.

Fire expert Noah Brownlow’s expert comments constituted substantial evidence that the Project will expose people and structures to a significant risk of loss, injury or death involving wildfires in an area where residences are intermixed with wildlands.

c. They City cannot rely on a CEQA exemption because the Project will result in inadequate emergency access, precluding reliance on a CEQA exemption.

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CEQA Guidelines Appendix G provides that a project will have a significant impact if the project will “[r]esult in inadequate emergency access.” CEQA Guidelines, Appendix G § XVI(e). As explained in Mr. Brownlow’s expert comments, the Project will have a significant impact on emergency vehicle access. According to Mr. Brownlow’s expert opinion, the Project would decrease emergency vehicle access to the area. Brownlow, p. 1. He further explained that, by converting the Playground into a parking lot and art park, the Project is “eliminating a potential safety zone or fire shelter deployment site for firefighters responding to WUI fires.” *Id.*

This significant impact is an unusual circumstances, and precludes reliance on a categorical exemption.

d. They City cannot rely on a CEQA exemption because the Project will have significant traffic and parking impacts.

CEQA Guidelines Appendix G provides that a project will have a significant impact if it will;

Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

CEQA Guidelines, Appendix G § XVI(d).

The steep, narrow, meandering streets of the Berkeley Hills are difficult to navigate. This includes Le Roy Avenue and Buena Vista Way, and La Loma Avenue, the streets adjacent to the Project. In many locations, it is difficult – if not impossible - for two cars traveling opposite directions to drive by each other, particularly where cars are parked on the street. With events being held at the Hillside School Property for 50 to 100 people, and only 18 parking spots provided, the Project may result in up to 80 additional cars being parked on the streets surrounding the property. This will make an already dangerous driving environment even worse, substantially increasing the hazardous driving environment. This significant impact is an unusual circumstances, and precludes reliance on a categorical exemption.

e. The Project involves an unusual circumstance, precluding reliance on a CEQA exemption.

Even if there were not evidence that the Project *will* have a significant environmental impact, the unusual circumstances exception would still apply because, unlike “usual” or “typical” Class 1 and Class 3 exemptions,⁴ Historical Resource Restoration/Rehabilitation projects, this Project creates a significant public safety risk.

⁴ See October 17 Letter for discussion of the Project’s unusual circumstances compared to other Class 31 Historical Resources Restoration/Rehabilitation project.

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The Class 1 exemption consists of “Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.” 14 CCR § 15301. Class 3 exemption consist of “construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.” 14 CCR § 15303.

At least three elements of the Project distinguish it from other projects in the Class 1 and Class 3 exemption categories, and these characteristics create environmental risks not generally present for Class 1 and Class 3 projects. Once it is determined that a project presents an unusual circumstance, an exemption is precluded if there is substantial evidence that a project *may* have significant environmental impacts.

The first unusual circumstance is that the Hillside School Property is listed on the National Register of Historic Places and is listed as a local landmark. The impact of alterations, modifications, and construction that may ordinarily be exempt under Class 1 or 3 may have additional impacts when the existing facility is a historical resource. Here, the Project proposes to convert a large portion of the Playground to a parking lot and art park, which is inconsistent with the Project’s historic resource listing.

Second, unlike most Class 1 and 3 projects, the Project is located in a High Fire Zone, within the State-designated Alquist-Priolo Earthquake Fault Zone, and is also in an earthquake-induced landslide area mapped by the California Geologic Survey on its Seismic Hazard Mapping Act map. The location of the Project makes it and the surrounding area unusually susceptible to a natural disaster. The second unusual circumstance is that, unlike most Class 1 and 3 projects, the Project may cut off a previously public path and open space, both of which are vital to public safety in the event of a fire or earthquake. As discussed above, because of the high risk location of the Project, and its potential to cut off public access to the Path and Playground open space, the Project may “decrease both emergency vehicle access to the area, and civilian opportunities for egress.” Brownlow, p. 1.

Third, the scale of the changed use – from a vacant parcel to a pseudo-event center hosting parties for up to 100 people, is unusual. As a result of this unusual circumstance, the Project may have a significant noise impact.

CEQA Guidelines Appendix G provides that a project will have a significant impact if it will result in:

A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.

CEQA Guidelines, Appendix G § XII(d).

1581 Le Roy Avenue (Hillside School)
City of Berkeley
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The California courts have held that CEQA review is required for noise-producing events, just like those that will be held at the Property. In the case of *Keep Our Mountains Quiet v. City of Santa Clara* (2015) 236 Cal.App.4th 714, 722, the court of appeal has held that an EIR was required for a permit allowing weddings of 150 people at a private home. This Project is no different. The Project owner seeks the right to host parties once per month for up to 100 people, and events for between 50 and 75 people every other week. These events will take place both indoors and outdoors, and will result in a “substantial temporary or periodic increase in ambient noise levels.”

The Project’s unusual circumstances preclude the City from relying on a CEQA exemption for the Project.

ii. The Historical Resources exception precludes reliance on a categorical exemption.

The CEQA guidelines provide that a “categorical exemption shall not be used for a project which *may* cause a substantial adverse change in the significance of a historical resource.” 14 CCR § 15300.2 (emph. added). As discussed in the October 17 Letter, Hillside School, Path, and Playground *collectively* are listed on the National Register of Historic Places and as a Berkeley local landmark. The Project will adversely affect the Hillside School, Path, and Playground as a historic resource because the Project goes beyond merely restoring or rehabilitating the Hillside School. As a result, the Project must be analyzed under CEQA, and cannot be exempt.

As proposed, the school playground that has been used by community members for more than 90 years, will be made into a parking lot for up to 18 vehicles. The Project also permits the owner to install up to five unsightly, garage-like sheds on the new parking lot. In addition, the Project would turn the remaining playground into a collection space for undescribed “art.” None of this is consistent with the historic nature of the site. Instead, the action would transform the playground from a historically significant element of the property into a parking lot. Changing the Playground from its current aesthetic that is cohesive with the school, into a parking lot with five large storage sheds and random art pieces would change the character of the property as a whole. Because these changes may have an adverse impact on the Hillside School, Path, and Playground as a historic resource, the City may not exempt the Project from CEQA. 14 CCR § 15300.2; Pub. Res. Code § 21084.1.

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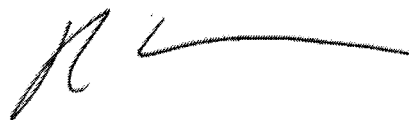
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1581 Le Roy Avenue (Hillside School)
City of Berkeley
October 23, 2019
Page 11 of 11

I. CONCLUSION

Based on these comments, and those in the October 17 Letter, the Hillside Path & Playground Preservation Association requests that the Zoning Adjustment Board deny Use Permit #ZP2019-0061, and send the Project back to staff with direction to review the Project's environmental impacts under CEQA.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Davis', with a long horizontal flourish extending to the right.

Rebecca L. Davis
Lozeau Drury LLP



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F 510.836.4205

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Oakland, CA 94612

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CITY OF BERKELEY
CITY CLERK DEPT

2019 DEC -3 PM 3:47

December 2, 2019

Mark Numainville, City Clerk
City of Berkeley
2180 Milvia Ave., First Floor
Berkeley, CA 94704

Re: Appeal of Zoning Adjustments Board Decision Re: Structural Alteration Permit #LMSAP2019-0004; 1581 Le Roy Avenue - Hillside School Project

Dear Mr. Numainville:

On behalf of Hillside Path & Playground Preservation Association, an unincorporated association composed of residents of Berkeley living near the Hillside School located at 1581 Le Roy Avenue in Berkeley (the "Hillside School Property"), along with those persons listed on the signature pages attached hereto as Exhibit 1 (collectively, "Appellants") concerning the application of the current owner of the Hillside School Property to make exterior alterations to a City Landmark school building and site in order to convert the property to residential use (Structural Alteration Permit #LMSAP2019-0004) (the "Project").

This letter constitutes an appeal of the Landmark Preservation Commission's ("LPC") decision of August 1, 2019 approving 1581 Le Roy Avenue, Structural Alteration Permit #LMSAP2019-0004 and LPC's related CEQA findings that the Project is exempt from environmental review under the California Environmental Quality Act ("CEQA"). By this appeal, Appellants request that the Berkeley City Council: 1) hold a public hearing to hear the concerns of Appellants and other members of the public; 2) deny Structural Alteration Permit #LMSAP2019-0004; 3) find that the Project is not exempt from CEQA; and 4) send the Project back to staff for further review under CEQA.

The reasons for this appeal are detailed in the attached two letters. Appellants reserve their right to add additional information prior to or at a hearing on this appeal by the City Council.

Respectfully submitted,

Hillside Path & Playground Preservation Association, and all persons listed on the attached signature list.

Encl.

- Exh. 1 - Names and Signatures of Appellants
- Exh. 2 - Hillside Path & Playground Preservation Association Oct. 17, 2019 Letter to ZAB
- Exh. 3 - Hillside Path & Playground Preservation Association Oct. 24, 2019 Supp. Letter to ZAB

Signature Page Landmarks:

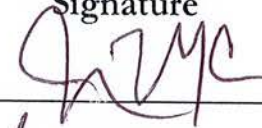
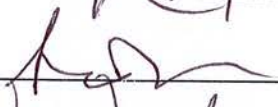
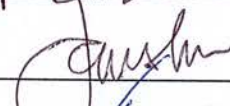
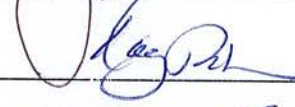

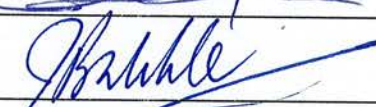
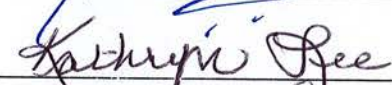
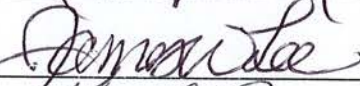
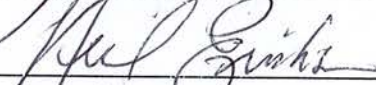
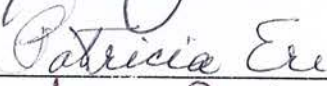
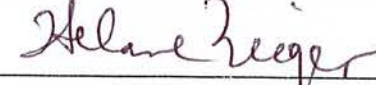
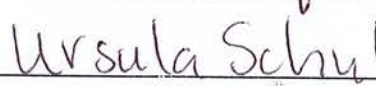

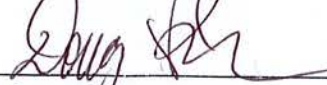
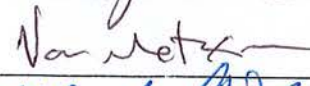

My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of Berkeley Landmarks Preservation Commission Thursday, August 1, 2019, 1581 LeRoy Avenue, Structural Alteration Permit LMSAP2019-0004

Please Print Name	Signature	Address
1) John Armitage Duplicate	[Signature]	2545 Buena Vista
2) CAROLINE ARMITAGE 300 Feet	[Signature]	2545 Buena Vista
" 3) AKAL KHALSA	[Signature]	2577 BUENA VISTA
" 4) David Benayahu Helfand	[Signature]	2660 Buena Vista Way
" 5) Vicki Piovra	[Signature]	1576 LeRoy Ave.
" 6) PHILLIP COLELLA	[Signature]	1546 LA LOMA AVE.
" 7) HERTA WEINSTEIN	[Signature]	2525 Buena Vista Way
8) _____		
9) _____		
10) _____		
11) _____		
12) _____		
13) _____		
14) _____		
15) _____		

6 = 300 feet

Signature Page Landmarks (Berkeley Residents Only):

My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of Berkeley Landmarks Preservation Commission Thursday, August 1, 2019, 1581 LeRoy Avenue, Structural Alteration Permit LMSAP2019-0004

Please Print Name	Signature	Address
1) James McCathy		1216 Blake St Berkeley
2) SIMON ANDERSON		2708 Adeluce St. Berkeley CA
3) JAMES MORAN JAMES MORAN		1030 SASTRUCKS BLDG
4) NANCY PARK		1614 Capistrano Ave Berk
5) Robin Kaer		1614 Capistrano Ave Berk
6) JANAKI BAKHLE		670 San Luis Rd, Berk
7) Kathryn Lee		595 Santa Barbara Rd Berk.
8) JAMES W LEE		595 SANTA BARBARA ROAD BERK
9) NEIL ERIKSEN		381 Vermont Ave, BERK
10) Patricia Eriksen		381 Vermont Ave. Berk.
300 feet 11) HELANE ZEIGER		1521 Le Roy Ave.
" 12) Ursula Schulz		1520 Le Roy Ave
" 13) Mike Apte		1520 Le Roy Ave.
" 14) DOUG FONTAINE		1516 Le Roy Ave
" 15) Van Metaxas		1517 Le Roy Ave.
" 16) Michael D. O'Reilly		1594 Le Roy Ave.

300 feet

Signature Page Landmarks:

My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of Berkeley Landmarks Preservation Commission Thursday, August 1, 2019, 1581 LeRoy Avenue, Structural Alteration Permit LMSAP2019-0004

(Further details attached)

Please Print Name Signature Address

- 2006 Oct 1) E Barschi E Barschi 1597 Le Roy Ave.
- " 2) ROBERT J. JACKSON Robert Jackson 1597 Le Roy Ave.
- " 3) MICHAEL F. SCOTT Michael Scott 1570 LE ROY AVE.
- " 4) Marian C. O'Regan Marian O'Regan 1562 Le Roy Ave.
- ~~5) ^{Not Berkeley} Henry Simmons Henry Simmons 1507 Park Ave, Emeryville~~
- " 6) W.M. Caetsch W.M. Caetsch 1554 Le Roy Ave
- " 7) CARLOS BUSTAMANTE Carlos Bustamante 1544 Le Roy Ave.
- " 8) Silvia Bustamante Silvia Bustamante 1544 Le Roy Ave.
- " 9) Caterina Migone Caterina Migone 1544 Le Roy Ave.
- X 10) S.B. Masten S.B. Masten 4 Greenwood Cmn
- ok X 11) THOMAS TRIPPE Thomas Trippe 1551 LA VEREDA RD.
- ok X 12) Kirsten Berg Kirsten Berg 1551 La Vereda Rd,
- " 13) Sue Londerville Sue Londerville 1546 La Loma Ave
- " 14) Potter CW Potter CW 2545 BUENA VISTA WAY
- " 15) John Armitage John Armitage 2545 Buena Vista Way

13 ~~13~~ = 300 feet

November 21, 2019

4 of 7

Plot 300 feet except for one

Signature Page Landmarks:

My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of Berkeley Landmarks Preservation Commission Thursday, August 1, 2019, 1581 LeRoy Avenue, Structural Alteration Permit LMSAP2019-0004

(Further details attached)

Please Print Name	Signature	Address
1) Beverly A. Cheney	Beverly A. Cheney	1459 Greenwood Terr.
2) Avrum V Gratch	avgratch	"
3) Guy BENVENISTE	Guy Benveniste	150 Montrose Rd
4) Karen Nelson	Karen Nelson Benveniste	150 Montrose Rd
Benveniste		
5) Nadia Le Bon	Nadia Le Bon	190 Montrose Rd.
6) Charlotte Harrington	Charlotte Harrington	51 Bonnie LN
7) Mary Reed Johnson	Mary Reed Johnson	1401 Greenwood Terrace
8) Caddy Looy	Caddy Looy	1409 Greenwood Terrace
9) Lois Brandwynne	Lois Brandwynne	2621 Rose St.
10) Ernst Valtor	Ernst Valtor	" "
11) Kathie Hardy	Kathie Hardy	1633 Addison
12) Ponnig Rasmussen	Ponnig Rasmussen	1440 Walnut #6
13) Lorraine L. Sykes	Lorraine Sykes	(510) 549-3321
		1240 MLK Way
		570-524-0310
14) Jacqueline Beth	Jacqueline Beth	1517 Grant Ave.
		(510) 375-9130
15) ALAN SPINKS	Alan Spinks	1633 ADDISON
300 feet 16. MICHAEL S. BANK	Michael S. Bank	1509 Le Roy Ave.

1 = 300 feet

November 21, 2019

Not 300 Feet 5 of 7

Signature Page Landmarks:

My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of Berkeley Landmarks Preservation Commission Thursday, August 1, 2019, 1581 LeRoy Avenue, Structural Alteration Permit LMSAP2019-0004

(Further details attached)

Please Print Name	Signature	Address
1) Wendy Swiggett	<i>Wendy Swiggett</i>	865 The Alameda, Berkeley
2) Ben Swiggett	<i>Ben Swiggett</i>	865 The Alameda, Berkeley
3) Virginia Gray	<i>Virginia Gray</i>	560 Colusa Ave
4) August Fern	<i>August Fern</i>	2839 Ellsworth ^{Berkeley} Berkeley
5)		
6)		
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November 21, 2019

Not 300 fee

6 of 7

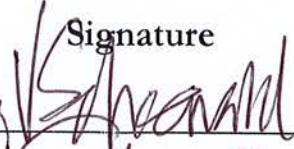
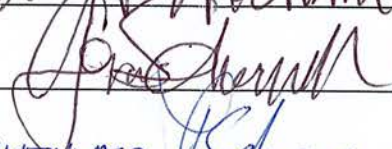
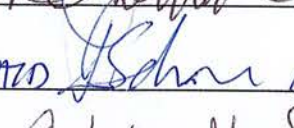
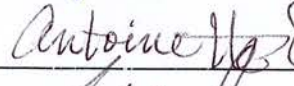
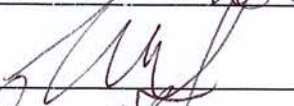
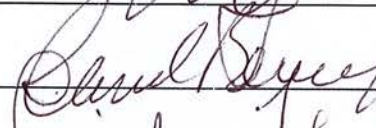

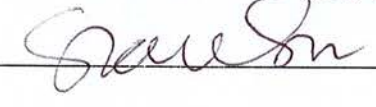
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My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of Berkeley Landmarks Preservation Commission Thursday, August 1, 2019, 1581 LeRoy Avenue, Structural Alteration Permit LMSAP2019-0004

Please Print Name

Signature

Address

- 1) Victoria Schoenwald  6 Vallejo St. Berkeley CA 94707
- 2) GRACE SCHOENWALD  6 Vallejo St. Berkeley CA 94707
- 3) ~~Ben Berman~~ BENNSCHENWALD  6 VALLEJO ST BERKELEY CA 94707
- 4) Antoinette O. Conrad  2817 Piedmont Berkeley, CA 94707
- 5) Noah Mizrahi  101 Parkside Drive Berkeley CA 94705
- 6) CARL BENIOPF  209 Jones St. Berkeley CA 94710
- 7) LINDA HESS  1520 Blake St 94703
- 8) Shari Ser  1930 Russell St 94708
- 9) _____
- 10) _____
- 11) _____
- 12) _____
- 13) _____
- 14) _____
- 15) _____

November 29, 2019

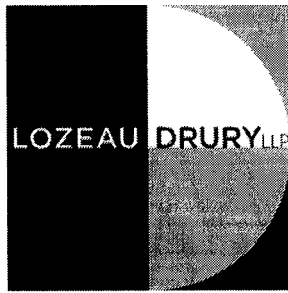
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7 of 7

Signature Page Landmarks (Berkeley Residents Only):

My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of Berkeley Landmarks Preservation Commission Thursday, August 1, 2019, 1581 LeRoy Avenue, Structural Alteration Permit LMSAP2019-0004

Please Print Name	Signature	Address
1) Monica Hayward	[Signature]	1239 Glen Ave Berkeley 94708
2) RAYMOND L. HAYWOOD	[Signature]	1239 GLEN AVE BERKELEY CA 94708
3) Barry Fike	[Signature]	1223 Allston Way Berkeley, CA 94703
4) Annelia Campos	[Signature]	1149 High Ct. Berkeley CA
5) Eli Waldman	Eli Waldman	2528 Milvia St Berkeley Ca 94704 94708
6) JOHN FIKE	John Fike	1149 HIGH CT. 94708
7) Melina Fike	[Signature]	1149 High Ct.
8) MARK THOMSEN	Mark Thomsen	1287 Campus Drive Berkeley CA 94709
9) Kathryn McCarthy	[Signature]	111 Sabathin Ave Berkeley, CA 94701
10) Kevin McCarthy	[Signature]	U
11) Spencer McCarthy	[Signature]	I
12) Matilde Merello	Matilde Merello	1210 Blake St Berk 94702
13) Mark Simmons	[Signature]	1316 Orloway St. BERK 94702
14) Anne Marie Praetzel	[Signature]	1097 Creston rd Berkeley CA
15) Francisco Di Domenico	[Signature]	11 11 Berkeley CA



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October 17, 2019

Via Email

Shoshana O’Keefe, Chairperson
Denise Pinkston, Vice Chairperson
Igor Tregub, Board Member
Teresa Clarke, Board Member
Patrick Sheahan, Board Member
John Selawsky, Board Member
Carrie Olson, Board Member
Charles Kahn, Board Member
Dohee Kim, Board Member
Zoning Adjustments Board
Land Use Planning Division
City of Berkeley
1947 Center Street, Second Floor
Berkeley, CA 94704
zab@cityofberkeley.info

Greg Powell
Zoning Adjustments Board Secretary
Land Use Planning Division
City of Berkeley
1947 Center Street, Second Floor
Berkeley, CA 94704
zab@cityofberkeley.info

Re: Hillside School Project, 1581 Le Roy Avenue; Use Permit #ZP2019-0061

Dear Chairperson O’Keefe, Vice Chairperson Pinkston, ZAB Members, and ZAB Secretary:

I am writing on behalf of Hillside Path & Playground Preservation Association, an unincorporated association composed of residents of Berkeley living near the Hillside School located at 1581 Le Roy Avenue, concerning the application of the current owner of the Hillside School to convert is from its previous use as a school, to residential use (Use Permit #ZP2019-0061) (the “Project”). Hillside Path & Playground Preservation Association asks the Zoning Adjustment Board (“ZAB”) to reject the Project because it fails to comply with the California Environmental Quality Act (“CEQA”).

This comment was prepared with the assistance of fire expert Noah Brownlow. Mr. Brownlow’s expert comments and CV are attached hereto as Exhibit A.

As discussed below, there is substantial evidence that the Project will adversely impact public safety, and will adversely impact the historic significance of the Hillside School property. Because of these significant impacts, the City cannot exempt the Project from CEQA. CEQA review is needed to analyze the Project’s impacts and implement feasible mitigation measures and alternatives to reduce adverse impacts to public safety and historic resources.

1581 Le Roy Avenue (Hillside School)
City of Berkeley
October 17, 2019
Page 2 of 13

I. FACTUAL BACKGROUND

A. Hillside School

The Hillside School was built at 1581 Le Roy Avenue in 1925, following the 1923 Berkeley Hills Fire, which destroyed a number of houses previously located on the property. Once opened, the Hillside School operated as a public school until 1983, when Hillside School closed. Berkeley Unified School District (“BUSD”) then leased the space to various educational institutions for approximately 30 years. In 2008 BUSD approved the sale of Hillside School to the German International School, which in turn sold it in September 2018 to Samuli Seppala, the current owner and Project proponent.

Designed by Master Architect Walter Ratcliff, the Hillside School serves as an important historic resource for Berkeley, and was designated City Landmark #61 in 1980. In 1982 it was recognized nationally and placed on the National Register of Historic Places. The local and national historic designations were made for the entire Hillside School property, including the path that runs in front of the school building that connects Le Roy Avenue and Buena Vista Way (the “Path”), as well as the playground in front of the school building (the “Playground”).

B. Proposed Project

The new owner of the Hillside School, Mr. Seppala, now seeks a use permit to convert the Hillside School into a single family residence with an accessory dwelling unit. He will convert the south wing of the building into living quarters, which he will use as his primary residence. Mr. Seppala also plans to create an Accessory Dwelling Unit for an artist-in-residence, and to repurpose the existing classrooms into art studios to be used by Mr. Seppala and guest artists. The Project also proposes to build a pool and hot tub on a new rooftop deck, and an elevator to serve the Mr. Seppala’s new main residence.

Mr. Seppala is also seeking a Moderate Home Occupation Permit for artistic activities he plans on hosting at the Project site, including private art classes, seminars, workshops, and retreats at the property. Specifically, he plans to host up to 25 artists at the property, twice per month, for “art-related projects.” To accommodate all of these new uses, Mr. Seppala plans to transform two-thirds of the Playground into a parking lot for 18 cars or trailers and an art display area. In addition, the Project seeks to install up to five massive sheds on the current Playground for storage purposes.

Mr. Seppala has allowed access on the Path and Playground “for the time being.” While this is appreciated, nothing in the Project requires him to do so. Under CEQA, a lead agency must analyze the impacts of all activity allowed under a permit, not just what is currently proposed. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645; *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398. Here, if the Project is approved, there is nothing preventing Mr. Seppala from cutting off public access to the Path or Playground. In doing so, he would limit potentially life-saving strategies that contribute to

1581 Le Roy Avenue (Hillside School)
City of Berkeley
October 17, 2019
Page 3 of 13

public safety during an emergency. The impact of this action must be analyzed under CEQA.

C. Fire History

The possibility of catastrophic wildfire near the Project in the Berkeley Hills is very real. The Hillside School is located in a high-risk fire zone, a landslide zone, and a fault zone. There are a number of factors that make the neighborhood at a particularly high risk for fires, including its proximity to park land where the fuel load is high, narrow, curvy roads that hamper access by first responders and obstruct efficient evacuation routes, and steep topography, among others.

It is these conditions that have contributed to the East Bay Hills' long and tragic history of catastrophic fires. In 1923, a wildfire swept through north Berkeley, in the same spot the Project is located, destroying more than 600 584 homes and 100 structures. *Id.* In 1970, the Hills Fire burned more than 400 acres, destroying 37 homes. *Id.* The Wildcat Canyon Fire in 1980 destroyed five homes in just minutes. *Id.* More recently, the Tunnel Fire, in 1991, caused more than \$1 billion in damage, and took the lives of 25 people. *Id.*

As a result of climate change, since the 1991 Tunnel Fire, "wildfires have become larger, hotter, more destructive, and more difficult to control," Councilmember Wengraf Memo to City Council Supporting Resolution Declaring Wildfire Prevention and Safety a Top Priority in the City of Berkeley (Oct. 15, 2019) ("Wengraf Memo"). We are beginning to better understand the importance of fire safety mitigation measures. This was demonstrated by the City's recent adoption of a resolution declaring wildfire prevention and safety a top priority in the City of Berkeley. CITE. Our increasing awareness of fire danger, particularly near Wildland Urban Interfaces in wooded areas with congested narrow streets, underscores the importance of public paths for use as evacuation routes, and open spaces for use as a staging area of emergency vehicles and a safe zone for people and pets.

D. The Path and Playground

For the past 93 years, the Playground and Path have been open to and used by the public for recreational and social activities. The Playground contains a number of metal play structures, basketball hoops, and a large open play space. See Photographs in Exhibit ___. Activities taking place at the Playground go beyond just playing on the metal structures and include basketball, baseball, Frisbee, bike riding, tag, capture the flag, and picnicking, just to name a few.

The Playground has been a defining part of the neighborhood for nearly a century. It has been used and enjoyed by residents of all ages, for multiple generations. Comments submitted to the Landmark Preservation Committee, and likely submitted to ZAB in this proceeding as well, recount dozens of stories of Berkeley residents who climbed on the playground structures as children, took their children to the playground, and now take their grandchildren to there. CITE. The Playground's central role in the neighborhood was by design. As Mr. Seppala's Applicant Statement for the Project acknowledges, "[t]he front yard of the school was designed as a playground for both the school and the neighborhood." Applicant's Statement, Hillside School,

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1581 Le Roy Avenue, p. 1 (March 11, 2019) (emph. added).

As an open space, the Playground is vital to the Hillside community, which has very limited free space. The Playground is the only open space where families and community members could gather in case of an emergency due to fire, earthquake, or other tragic event. As discussed in detail below, loss of access to this open space would limit potentially life-saving strategies that contribute to public safety during an emergency.

The Path is a similarly vital asset to the neighborhood. Neighbors have walked the Path in front of the school to get from Le Roy Avenue to Buena Vista Way for nearly a century. It serves as a normal and often daily route for residents when accessing the UC Campus by foot or bike, as well as downtown Berkeley and BART. ~~Some neighbors have described walking the Path daily, as it is the best way to get to the UC campus.~~

As detailed below, the Project and its potential to cut off public access to the Path and Playground not only changes the character of the neighborhood and the historic nature of the property, but it also poses a serious public safety risk.

II. LEGAL BACKGROUND

A. California Environmental Quality Act

CEQA mandates that “the long-term protection of the environment ... shall be the guiding criterion in public decisions” throughout California. Public Resources Code (“PRC”) § 21001(d). CEQA applies to “discretionary projects” unless they are specifically exempted. PRC § 21080(a). A “project” is “the whole of an action” directly undertaken, supported, or authorized by a public agency “which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” PRC § 21065; CEQA Guidelines, 14 CCR § 15378(a). CEQA is concerned with an action’s ultimate “impact on the environment.” *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283. CEQA requires environmental factors to be considered at the “earliest possible stage . . . before [the project] gains irreversible momentum,” *id.* at 277, “at a point in the planning process where genuine flexibility remains.” *Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.

CEQA has a three-tiered structure for protecting the environment. 14 CCR § 15002(k); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185-86 (“*Hollywoodland*”). First, if a project is exempt under CEQA or if it is certain that the project “will not have a significant effect on the environment,” there need be no further agency evaluation. *Id.* But “where there is a reasonable possibility that a project or activity may have a significant impact on the environment, an exemption is improper.” *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 206. Second, “if there is a possibility the project will have a significant effect on the environment, the agency must perform an initial threshold study.” *Hollywoodland*, 161 Cal.App.4th at 1185-86; 14 CCR § 15063(a). If the study indicates that there is no substantial evidence that the project or any of its aspects may cause a significant

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effect on the environment, the agency may issue a negative declaration. *Hollywoodland*, 161 Cal.App.4th at 1185-86; 14 CCR §§ 15063(b)(2), 15070. Third, an environmental impact report (“EIR”) is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” PRC § 21080(d); *see also Communities for a Better Env’t v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.

“Significant environmental effect” as used in this three-tiered test is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” PRC § 21068; *see also* 14 CCR § 15382. An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 83. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Communities for a Better Env’t v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109.

Here, because City staff proposes to exempt the Project entirely from all CEQA review, the first step of the CEQA process is at issue.

B. Categorical Exemptions

CEQA identifies certain classes of projects that are exempt from the provisions of CEQA. These are called categorical exemptions. PRC § 21084(a); 14 CCR §§ 15300, 15354. Categorical exemptions are certain classes of activities that generally do not have a significant effect on the environment. *Id.* Public agencies utilizing such exemptions must support their determination with substantial evidence. PRC § 21168.5. CEQA exemptions are narrowly construed and “[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.” *Mountain Lion Found. v. Fish & Game Comm’n* (1997) 16 Cal.4th 105, 125; *McQueen v. Bd. of Dirs.* (1988) 202 Cal. App. 3d 1136, 1148. Erroneous reliance by an agency on a categorical exemption constitutes a prejudicial abuse of discretion and a violation of CEQA. *Azusa*, 52 Cal. App. 4th at 1192. “[I]f the court perceives there was substantial evidence that the project might have an adverse impact, but the agency failed to secure preparation of an EIR, the agency’s action must be set aside because the agency abused its discretion by failing to follow the law.” *Dunn-Edwards*, 9 Cal. App. 4th at 656.

C. Exceptions to Categorical Exemptions

CEQA contains several exceptions to categorical exemptions. 14 CCR § 15300.2. If an exception applies, the exemption cannot be used, and the agency must instead prepare an initial study and CEQA document. *McQueen*, 202 Cal. App. 3d at 1149; *Hollywoodland*, 161 Cal. App. 4th at 1187. “Even if a project falls within the description of one of the exempt classes, it may nonetheless have a significant effect on the environment based on factors such as location, cumulative impact, or unusual circumstances.” *Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist.* (2006) 141 Cal. App. 4th 677, 689. The “unusual circumstances” exception

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provides that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to “unusual circumstances.” 14 CCR §15300.2(c).

In the context of the unusual circumstances exception, what is “unusual” is “judged relative to the *typical* circumstances related to an otherwise typical exempt project.” *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal. App. 4th 786, 801 (emphasis added). An unusual circumstance is “some feature of the project that distinguishes it from others in the exempt class.” *San Lorenzo Valley*, 139 Cal. App. 4th at 1381. The *Azusa* Court held that the unusual circumstances test would be satisfied where the circumstances of a particular project: (i) differ from the general circumstances of the projects covered by a particular categorical exemption, and (ii) those circumstances create an environmental risk that does not exist for the general class of exempt projects. *Azusa*, 52 Cal. App. 4th at 1207; *Hollywoodland*, 161 Cal. App. 4th at 1187 (construction of new fence atop historic granite wall posed environmental risk that did not exist for “general class of exempt projects” under the Class 5 exemption due to differing historic nature of wall); *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1260-1261 (court looked for “some feature of the project that distinguishes it from any other small, run-of-the-mill commercial building or use” covered by claimed exemption).

Here, the City’s determination that the Project is exempt under the “Historical Resource Restoration/Rehabilitation” exemption fails because the Project goes beyond the scope of the exemption on its face, and because the unusual circumstances exception applies, precluding reliance on an exemption.

III. ANALYSIS

A. **The Historical Resource Restoration/Rehabilitation exemption does not apply on its face.**

The City claims that the Historic Resource Restoration/Rehabilitation CEQA exemption¹ applies to the Project. 14 CCR § 15331. The City’s reliance on this exemption is misplaced.

The exemption is narrow in scope, and applies only to:

[P]rojects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer.

¹ The Historic Resource Restoration/Rehabilitation exemption is also known as a Class 31 exemption.

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14 CCR § 15331.

CEQA exemptions, such as the Historic Resource Restoration/Rehabilitation exemption, are narrowly construed, and limited to their terms. *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257, 1268; *Mountain Lion Found. v. Fish & Game Comm'n* (1997) 16 Cal.4th 105, 125; *McQueen v. Bd. of Dirs.* (1988) 202 Cal. App. 3d 1136, 1148. Strict construction is required in order to interpret categorical exemptions in a manner that affords the greatest environmental protection within the reasonable scope of their statutory language. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966. “Since a determination that a project falls within a categorical exemption excuses any further compliance with CEQA whatsoever, we must construe the exemptions narrowly in order to afford the fullest possible environmental protection.” *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697.

In the case of *Castaic Lake Water Agency v. Santa Clarita* (1995) 41 Cal.App.4th 1257, 1268, the court held that CEQA’s earthquake exemption did not apply to a city project involving earthquake retrofitting because the project also included other elements only loosely related to earthquakes. Similarly here, while the Project includes some maintenance, repair, and restoration, it includes many other elements that go far beyond the limited terms of the exemption. Thus, the exemption does not apply.

In addition to “maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction,” the Project also includes many activities that go far beyond the language of the exemption, including:

- Construct a new roof deck;
- Install an unenclosed swimming pool and hot tub within the new roof deck;
- Construct a 36-square foot elevator penthouse above the second story;
- Create a new surface parking lot where the playground is now located
- Install up to five storage shed within portions of the former playground
- Repurpose part of the playground as an outdoor art space

Notice of Public Hearing (mailed Oct. 9, 2019).

With these elements, the proposed Project does not fit within the Class 31 exemption because is clearly not “limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction” of the Hillside School as a historic resource. The Project clearly does *include* restoration and rehabilitation activities. The problem is that the Project is not *limited* to those activities. The Project goes far beyond merely maintaining or repairing the Hillside School and Playground. Instead, the Applicant seeks to build new structures that never existed on the site before, and take away portions that are included as part of the Historic Landmark Designation. CITE. Among other things, the Applicant seeks to build a rooftop pool and hot tub, a new parking lot and five large storage sheds on what had previously

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been a historic playground. Yet the Class 31 exemption does not exempt projects that seek to add a pool or a parking lot to a historic resource. Similarly, ~~paving over~~ converting two-thirds of the playground ~~to convert it into~~ a parking lot and building five sheds on the parking lot does not fit within the plain terms of the exemption. The Project goes far beyond just maintenance or repair of an historic resource – the Project changes the historic resource. Since the Project goes far beyond the scope CEQA Guidelines section 15331, the exemption does not apply to the Project. *See, Castaic Lake*, 41 Cal. App. 4th at 1268 (CEQA earthquake exemption did not apply to rebuilding of City center because rebuilding project included elements beyond mere earthquake repairs and reconstruction).

Since the Project goes far beyond the limited terms of the exemption, the exemption is legally precluded.

B. The Project cannot be exempt from CEQA because it will have significant environmental impacts due to unusual circumstances.

Even assuming *arguendo* that the Project did fall within the Class 31 exemption (which it does not), the Project is still not exempt from CEQA because it falls under the “unusual circumstances” exception to categorical exemptions. 14 CCR § 15300.2(c). A categorical exemption is inapplicable “where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” *Id.* Here, Shuttle Project does not present the same general risk of environmental impact as other projects falling under the Class 31 exemption, and therefore the Class 31 exemption is inapplicable.

In *Berkeley Hillside*, the California Supreme Court explained that there are two ways a party may invoke the unusual circumstances exception. First, “a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect. That evidence, if convincing, necessarily also establishes ‘a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.’” *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105 (emph. added). Alternatively, “[a] party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance.” *Id.*

Both of these alternatives are established here because there are unusual circumstances that distinguish this Project from other Class 31 exemption projects, and there is substantial evidence that the Project will have a significant effect on the environment.

1. They City cannot rely on a CEQA exemption because the Project will have a significant impact on public safety.

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Appendix G of the CEQA Guidelines provides that a Project will have a significant impact if it would “[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.” CEQA Guidelines, Appendix G. There is substantial evidence that the Project will expose people and structures to a significant risk of loss, injury or death involving wildfires in an area where residences are intermixed with wildlands.

Wildfire fighting expert Noah Brownlow submitted herewith a detailed analysis demonstrating that the Project will put people and property at risk. According to Mr. Brownlow, the Project “represents a threat to public safety by reducing access and egress to the Berkeley hills and by eliminating a potential safety zone or fire shelter deployment site for firefighters responding to [Wildland Urban Interface] fires.” Brownlow, p. 1. The increased danger stems, in part from the ability for the Project owner to cut off public access to the pathway that runs in front of the Hillside School, and connects Le Roy Avenue and Buena Vista Way. *Id.* Mr. Brownlow explains that cutting off this public access poses a threat to community members trying to evacuate, and impede emergency vehicle access. Brownlow, p. 1. The Project “would decrease both emergency vehicle access to the area, and civilian opportunities for egress. When a Northeast wind-driven fire is sweeping through the hills firefighters and residents need as many open pathways as possible, and restricting or eliminating these pathways ignores the unique threats posed to this neighborhood.” Brownlow, p. 1.

Mr. Brownlow concludes that:

If a fire does occur in the Berkeley Hills, this pathway could prove crucial to the safety of nearby residents in escaping a fire. By closing this pathway to the public, the public faces an increased risk of harm if a fire does occur.

Id.

The Project will also increase the risk to human life and property if a fire or other emergency occurs because firefighters and other emergency workers will face additional constraints in handling a fire or other emergency.

In both the 1991 Tunnel Fire and the 1923 Berkeley Hills Fire, “emergency personnel access and civilian egress were a limiting factor in incident stabilization and contributing factor to fatalities and property loss.” Brownlow, p. 1. In his comment letter, Mr. Brownlow describes the specific type of risks posed by Wildland Urban Interface (“WUI”) fires, and the importance of open spaces and egresses. “Due to their potential for extreme and unpredictable behavior, huge energy and potential for loss of life, firefighters have certain protocols that must be in place before they attempt to engage WUI fires.” Brownlow, p. 2. One such rule is that fire fighters must ensure that four conditions are in place at all times: 1) lookouts, 2) communications, 3) escape routes, and 4) safety zones. *Id.* The Project would impact fire fighters’ ability to safely tackle a fire at or near the Project because these conditions would not be met. *Id.* The Project “would eliminate a potential escape route and safety zone, denying firefighters a currently

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existing space in which to deploy personal fire shelters if overrun or to escape a deadly fire altogether.” *Id.*

Mr. Brownlow’s comments constitute substantial evidence that loss of public access to the path between Le Roy Avenue and Buena Vista Way and loss of public access to the playground will “[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires.” This significant impact precludes the City from relying on an exemption to avoid CEQA review. The City must analyze the Project’s impact on public safety under CEQA, and implement all feasible mitigation measures.

This public safety issue should be analyzed and mitigated in the open and public process created by CEQA. A CEQA process would allow the City to consider and impose feasible mitigation measures to reduce public safety risks. This may include, for example, a condition requiring the pathway between Le Roy and Buena Vista and a portion of the playground be kept open to the public and unobstructed. Public Safety experts for the City should be consulted to determine impact the Project will have on neighbors, fire fighters, and other emergency service workers in the event of a fire or earthquake. This information must all be disclosed to the public for review and comment.

The City’s failure to include any analysis or mitigation of the Project’s public safety impacts must be cured before the Project is approved.

2. The Project involves an unusual circumstance, precluding reliance on a CEQA exemption.

Even if there were not evidence that the Project *will* have a significant environmental impact, the unusual circumstances exception would still apply because, unlike “usual” or “typical” Historical Resource Restoration/Rehabilitation projects, this Project creates a significant public safety risk.

At least two elements of the Project that distinguish it from other projects in the exempt class, and these characteristics create environmental risks not generally present for “Historical Resource Restoration/Rehabilitation” projects. The first unusual circumstance is the Project’s location. Unlike most restorations, the Project is located in a High Fire Zone, within the State-designated Alquist-Priolo Earthquake Fault Zone, and is also in an earthquake-induced landslide area mapped by the California Geologic Survey on its Seismic Hazard Mapping Act map. The location of the Project makes it and the surrounding area unusually susceptible to a natural disaster. The second unusual circumstance is that, unlike most restorations, the Project may cut off a previously public path and open space, both of which are vital to public safety in the event of a fire or earthquake.

Once it is determined that a project presents an unusual circumstance, an exemption is precluded if there is substantial evidence that a project *may* have significant environmental impacts. Here, such evidence exists. As discussed above, because of the high risk location of

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the Project, and its potential to cut off public access to the Path and Playground open space, the Project may “decrease both emergency vehicle access to the area, and civilian opportunities for egress.” Brownlow, p. 1.

The Project’s unusual circumstances, together with Mr. Brownlow’s expert comments, preclude the City from relying on a CEQA exemption for the Project.

C. CEQA exemption is not allowed because the Project may have an adverse impact on a historic resource.

CEQA section 21084.1 prohibits the use of a CEQA exemption for projects that **may** cause a substantial adverse change in the significance of a historical resource. CEQA § 21084.1, CEQA Guidelines 15300.2(f). CEQA defines a “substantial adverse change” as the physical demolition, destruction, relocation or alteration of the historical resource or its immediate surroundings such that the significance of the historical resource would be materially impaired. CEQA goes on to define “materially impaired” as work that materially alters, in an adverse manner, those physical characteristics that convey the resource’s historical significance and justify its inclusion in the California Register of Historic Places, a local register of historical resources, or an historical resource survey. CEQA Guidelines 15064.5(b).

As discussed above, the Hillside School, path, and playground *collectively* are listed on the National Register of Historic Places. The Project will adversely affect the Hillside School, pathway, and playground as a historic resource. As discussed above, the Project goes beyond merely restoring or rehabilitating the Hillside School.

As proposed, the school playground that has been used by community members for more than 90 years, will be ~~paved over, in part, and~~ made into a parking lot for up to 18 vehicles. ~~CITE.~~ The Project also permits the owner to install up to five massive, garage-like sheds on the ~~newly paved~~ parking lot. See Exhibit ___. In addition, the Project would ~~turn the remaining playground into a collection space for some type of sculptural art.~~ ~~CITE.~~ None of this is consistent with the historic nature of the site. Instead, the action would transform the playground from a historically significant element of the property into a parking lot. Changing the Playground from its current aesthetic that is cohesive with the school, into a parking lot with five large storage sheds and random art pieces would change the character of the property as a whole. Because these changes may have an adverse impact on the Hillside school, Path, and Playground as a historic resource, the City may not exempt the Project from CEQA. Pub. Res. Code § 21084.1.

D. CEQA does not allow mitigated categorical exemptions.

A project that requires mitigation measures cannot be exempted from CEQA, nor can the agency rely on mitigation measures as a basis for determining that one of the significant effects exceptions does not apply. *Salmon Pro. & Watershed Network v. County of Marin* (2004) 125 Cal.App4th 1098, 1102. The City has imposed numerous mitigation measures on the Project.

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For example, the August 1, 2019 Landmarks Preservation Commission staff report includes the following conditions, among others:

- **Repair and replacement of character-defining features.** Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
- **Chemical Treatments.** Any chemical treatments needed as construction progresses will be undertaken using the gentlest means possible.
- **Roof equipment.** Any above ground or roof equipment, such as transformer(s), utilities, fire apparatus, air conditioning units, compressors, etc. shall be shown to scale on the architectural drawings of the building permit set of drawings in both plan and elevation, in order to determine if additional screening and design review may be required.
- **Clear glass.** All glass is assumed to be clear glass. Any proposed glass that is not clear glass shall be indicated on all drawings, and shall be reviewed for approval by historic preservation staff, prior to approval of any building permit for this project.
- **Exterior Lighting.** Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
- **Landscape Plan.** Prior to approval of any building permit for this project, the proposed landscape improvements shall be revised to include new plantings to screen—or to supplement existing plantings – on both the north *and* south sides of the former playground area. Further, the landscape plan may be modified as needed to ensure compliance with zoning criterion for open space pavement.
- **Irrigated, water efficient landscape.** New areas of landscape shall provide irrigation. This shall be called out on Landscape building permit drawings. The property owner shall maintain automatic irrigation and drainage facilities adequate to assure healthy growing conditions for all required planting and landscape. The landscape shall be drought-tolerant and achieve maximum water efficiency.
- **Storage sheds within the front yard area.** The storage sheds shall be limited to not more than five total and to their proposed height, floor area and locations.
- **Curb cuts.** All curbs and curb cuts shall be constructed per the standards and specifications of the Public Works Department. Curb cuts no longer utilized shall be restored per the Public Works Department specifications.

Since the City has imposed numerous mitigation measures, a CEQA exemption is prohibited. An agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects. *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1108 (“SPAWN”); *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1198-1201. If mitigation measures are necessary, then at a minimum, the agency must prepare a mitigated negative declaration to analyze the impacts, and to determine whether the mitigation measures are adequate to reduce the impacts to below significance. The public must be allowed

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to analyze the proposed mitigation, comment on their adequacy, and suggest alternative measures.

CEQA requires the mitigation measures to be developed in a public process, with public review and comment, not in closed door negotiations between the city and the project proponent. Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project.

The formulation of mitigation measures may not be delegated to staff, because mitigation measures must be subjected to public review. The City may not delegate the formulation and approval of programs to address environmental impacts because an agency's legislative body must ultimately review and vouch for all environmental analysis mandated by CEQA. *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 306-308. "[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.

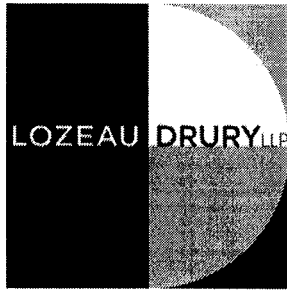
IV. CONCLUSION

In light of the above comments, the Hillside Path & Playground Preservation Association requests that the Zoning Adjustment Board deny Use Permit #ZP2019-0061, and send the Project back to staff with direction to review the Project's environmental impacts under CEQA.

Sincerely,



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October 23, 2019

Via Email

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Denise Pinkston, Vice Chairperson
Igor Tregub, Board Member
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Re: Hillside School Project, 1581 Le Roy Avenue; Use Permit #ZP2019-0061

Dear Chairperson O’Keefe, Vice Chairperson Pinkston, ZAB Members, and ZAB Secretary:

I am writing on behalf of Hillside Path & Playground Preservation Association, an unincorporated association composed of residents of Berkeley living near the Hillside School located at 1581 Le Roy Avenue (the “Hillside School Property”), concerning the application of the current owner to convert the property from its previous use as a school, to residential use (Use Permit #ZP2019-0061) (the “Project”). This letter supplements Hillside Path & Playground Preservation Association’s October 17, 2019 letter (the “October 17 Letter”). As described in the October 17 Letter, and for the supplemented reasons stated below, Hillside Path & Playground Preservation Association asks the Zoning Adjustment Board (“ZAB”) to reject the Project because it fails to comply with the California Environmental Quality Act (“CEQA”), and conflicts with Berkeley’s General Plan and Municipal Code (“BMC”).

A. The Project violates the Berkeley Municipal Code.

The ZAB Staff Report for the Project admits that, “[a]s a private residence located in a residential district, the [Project] site is not permitted to establish an ‘arts/craft studio’ use (BMC Section 23F.04, ‘Definitions’), generally defined as an *establishment*, which staff interprets to be

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a commercial or institutional, or otherwise non-residential, land use activity.” Staff Report, p. 10. The Municipal Code defines an arts/craft studio as:

An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable district’s requirements for incidental sales of goods made on site. Art/Craft Studios also include rehearsal spaces not designed for public performances.

Examples of individuals typically engaged in this work include, but are not limited to, woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with the definition above.

Berkeley Municipal Code § 23F.04. This is precisely the type of use the Project is proposing – space for multiple people, including non-residents, to make and show art. But, as Staff recognizes, Berkeley’s zoning ordinance does not permit an arts/craft studio” use in a residential district. Because the Project proposed an arts/craft studio use in a zone that does not permit that use, ZAB must deny the permit.

After determining that an “arts/craft studio” use is not permitted, Staff goes on to note that “artist studio” is a similar use that is allowed in a residential district. The Municipal Code defines an artist studio as:

A detached accessory building, used by residents of a main dwelling Unit on the same lot, to create original works of art and crafts products, but not for living quarters or sleeping purposes.

Berkeley Municipal Code § 23F.04.

The Project’s proposed use does not meet the definition of an artist studio. First, the Project owner is not proposing to create art in a “detached accessory building.” Instead, he is proposing to create art in the main school building. This alone precludes the proposed use. Second, an artist studio is limited to being “used by residents of a main dwelling Unit.” Under this definition, not even the “artist in residence” proposed to reside in the accessory dwelling unit would be permitted to use the property for creating original works of art. Further, allowing up to 25 guests to come onto the Property to create art would be even more inconsistent with the “artist studio” land use.

In an attempt to justify permitting the Project owner’s proposed inconsistent use, the Staff Report says:

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In this case, the applicant proposes such a use, though not located in a detached, accessory building and, instead, contained within a large main building and a confined outdoor area. Staff concludes, therefore, that the art activity is permissible on this residential property and, further, that the proposed location within the main building would be reasonable because the approximately 50,000-sq. ft. building could provide adequate space to sufficiently maintain both the dwelling uses and the art practice.

Staff Report, p. 10.

Staff's interpretation is directly at odds with the plain meaning of the Municipal Code, and cannot be upheld. The activities proposed by the Project are inconsistent with the Municipal code provisions in residential districts. The Project permit must therefore be denied.

B. ZAB cannot make the findings required for approval of a use permit for the Project.

In order to issue a use permit for the Project, ZAB must find:

that the establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, *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.

BMC § 23B.32.040(A). If ZAB cannot make any of these findings, ZAB must deny the permit.
BMC § 23B.32.040(C).

Here, ZAB must deny the permit because the Project will be detrimental to the safety, comfort, and general welfare of people living in the neighborhood, and would be detrimental or injurious to properties in the neighborhood. The ability of the Project owner to cut off the public's access to the Path and Playground is be detrimental to the safety of neighbors and their properties. As discussed in Noah Brownlow's expert comments¹:

If a fire does occur in the Berkeley Hills, this pathway could prove crucial to the safety of nearby residents in escaping a fire. By closing this pathway to the public, the public faces an increased risk of harm if a fire does occur.

. . .

¹ Attached as Exhibit A to Hillside Path & Playground Preservation Association's October 17, 2019 letter to ZAB.

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The proposed development would decrease both emergency vehicle access to the area, and civilian opportunities for egress. When a Northeast wind-driven fire is sweeping through the hills firefighters and residents need as many open pathways as possible, and restricting or eliminating these pathways ignores the unique threats posed to this neighborhood.

Brownlow, p. 2.²

In addition to posing a danger to neighbors and their properties, the Project would also be detrimental to the peace and comfort of neighbors as a result of the Project owner's plans to throw monthly parties for up to 100 people, combined with a new roof deck, pool, and hot tub. No explanation has been given as to where the additional 80 guests will park, given the proposal for an 18-car parking lot. On top of this, there will be additional traffic and noise created by the Project every other week when the owner holds outdoor art events in the art park for 50-75 people.

Because ZAB cannot make the findings required by BMC § 23B.32.040(A), ZAB must deny the permit.

C. The Project is inconsistent with Berkeley's General Plan and Municipal Code.

The Project is inconsistent with a number of General Plan Policies and Actions, including the following:

- **Policy LU-7 (Neighborhood Quality of Life):** Preserve and protect the quality of life in Berkeley's residential areas through careful land use decisions.
- **Policy LU-7, Action A:** Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
- **Policy LU-9 (Non-Residential Traffic):** Minimize or eliminate traffic impacts on residential areas from institutional and commercial uses through careful land use decisions.
- **Policy LU-8 (Home Occupations):** Monitor and evaluate the present and future effects of home occupations, home offices, and other similar developments on residential areas.
- **Policy LU-11 (Pedestrian and Bicycle Friendly Neighborhoods):** Ensure that neighborhoods are pedestrian- and bicycle-friendly with well-maintained streets, street trees, sidewalks, and pathways.
- **Policy LU-11, Action A:** Ensure that any City-owned pathways or dedicated easements adjacent to, abutting, or through private property are preserved when reviewing new development proposals.

² See also, Berkeley side article, "The Berkeley Hills are kindling: City takes steps to tackle wildfire danger, Oct. 17, 2019, attached hereto as Exhibit 1.

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Each of these General Plan policies and actions is meant to protect the character, safety, and enjoyment of Berkeley's residential neighborhoods. Yet the proposed Project would do the exact opposite. It would change the character of the neighborhood. The hosting of indoor and outdoor parties for up to 100 people several times per month would negatively impact the quality of life of nearby neighbors. In addition to the increased noise generated, the Project would potentially require an additional 100 cars to drive and park near the Project, in the residential neighborhood. The scale of the proposed use is simply incompatible with the surrounding neighborhood.

The Project is similarly inconsistent with the Municipal Code. The Berkeley Municipal Code specifies that one of the purposes of the Single Family Residential (R-1) Districts, including the R-1H district, is to: "Recognize and protect the existing pattern of development in the low density, single family residential areas of the City in accordance with the Master Plan." BMC § 23D.16.020(A).

Conversion of the Hillside School Property into a de facto event center that will host large parties would not protect the existing pattern of development in this single family residential neighborhood. Instead, the proposed Project will result in a dramatic increase in traffic, parking, and noise as a result of the proposed new use of the Property.

ZAB should deny the use permit because the Project is inconsistent with the General Plan and Municipal Code.

D. The Project is not exempt from CEQA.

The ZAB Notice of Public Hearing for the Project that was sent neighbors and other interested parties stated: "CEQA STATUS: Categorically exempt pursuant to Section 15331 for 'Historical Resource Restoration/Rehabilitation' of the CEQA Guidelines." A copy of this notice is attached hereto as Exhibit 2. In the ZAB Staff Report, posted only days before the ZAB meeting, the City claims for the first time that, in addition to the Class 31 Historical Resources Restoration/Rehabilitation exemption, the Project is also exempt under Class 1 and Class 3 CEQA exemptions. As detailed below, even the late addition of these exemptions are not sufficient to relieve the City of its obligation to conduct CEQA review for this Project. Neither of these two additional exemptions apply.

1. The Class 1 exemption does not apply on its face.

The City's exemption of the Project from CEQA now relies upon the Class 1 exemption for "operation, repair, maintenance, or minor alteration of existing structures or facilities." 14 CCR § 15301. This exemption does not apply on its face. The Class 1 exemption states:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

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The types of “existing facilities” itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. ***The key consideration is whether the project involves negligible or no expansion of use.***

The key limitation on the face of the Class 1 exemption is that it applies only to activities involving “negligible” or “no expansion” of previous use beyond that existing at the time of the lead agency’s determination. In contrast to the plain meaning of the exemption, the proposed Project involves a major expansion of use beyond the property’s current use.

As the Applicant’s Statement notes, the Project owner proposes to hold large events at the Hillside School Property on a monthly basis, expecting up to 100 people to attend. Oct. 8, 2019 Applicant’s Statement, p. 3. Separately, twice per month, the owner plans for art showings at the property attracting 50-75 visitors. *Id.* On a daily and weekly basis, “use would accommodate 25-50 artists and visitors.” *Id.* This constitutes a major expansion beyond the current use, which involves very few visitors, if any. As a result, the Class 1 exemption does not apply on its face, and cannot be relied on by the City.

2. Exceptions preclude reliance on the Class 1 or Class 3 exemptions.

As with the Class 31 exemption,³ the Class 1 and 3 exemptions do not apply because the Project falls within two exceptions to CEQA exemptions: 1) the “unusual circumstances” exception, and 2) the “historical resources” exception to categorical exemptions. 14 CCR § 15300.2(c), (f).

i. The Project will have significant environmental impacts due to unusual circumstances, precluding reliance on a CEQA exemption.

A categorical exemption is inapplicable “where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” *Id.* Here, the Project does not present the same general risk of environmental impact as other projects falling under the Class 1, 3, or 31 exemptions, and therefore the exemptions cannot apply.

In *Berkeley Hillside*, the California Supreme Court explained that there are two ways a party may invoke the unusual circumstances exception. First, “a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect. That evidence, if convincing, necessarily also establishes ‘a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.’” *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105 (emph. added). Alternatively, “[a] party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from

³ See discussion in Hillside Path & Playground Preservation Association’s October 17, 2019 letter to ZAB.

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others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance.” *Id.*

Both of these alternatives are established here because there are unusual circumstances that distinguish this Project from other Class 31 exemption projects, and there is substantial evidence that the Project will have a significant effect on the environment.

a. They City cannot rely on a CEQA exemption because the Project will result in a significant land use and planning impact.

A project has a significant land use impact if it would:

Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.

CEQA Guidelines, App. G § X(b).

As discussed above, the Project could conflict with a number of general plan policies and zoning ordinances. The general plan policies and zoning ordinances were designed to avoid or mitigate a variety of environmental effects including noise, traffic, parking, aesthetics, among other things. In addition to violating the General Plan and zoning ordinance, these land use conflicts constitute a significant impact under CEQA, and preclude reliance on an exemption.

b. They City cannot rely on a CEQA exemption because the Project will have a significant impact on public safety.

As discussed in Hillside Path & Playground Preservation Association’s October 17 Letter, the Project will have a significant impact on public safety because it will “[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.” CEQA Guidelines, Appendix G.

Fire expert Noah Brownlow’s expert comments constituted substantial evidence that the Project will expose people and structures to a significant risk of loss, injury or death involving wildfires in an area where residences are intermixed with wildlands.

c. They City cannot rely on a CEQA exemption because the Project will result in inadequate emergency access, precluding reliance on a CEQA exemption.

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CEQA Guidelines Appendix G provides that a project will have a significant impact if the project will “[r]esult in inadequate emergency access.” CEQA Guidelines, Appendix G § XVI(e). As explained in Mr. Brownlow’s expert comments, the Project will have a significant impact on emergency vehicle access. According to Mr. Brownlow’s expert opinion, the Project would decrease emergency vehicle access to the area. Brownlow, p. 1. He further explained that, by converting the Playground into a parking lot and art park, the Project is “eliminating a potential safety zone or fire shelter deployment site for firefighters responding to WUI fires.” *Id.*

This significant impact is an unusual circumstances, and precludes reliance on a categorical exemption.

d. They City cannot rely on a CEQA exemption because the Project will have significant traffic and parking impacts.

CEQA Guidelines Appendix G provides that a project will have a significant impact if it will;

Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

CEQA Guidelines, Appendix G § XVI(d).

The steep, narrow, meandering streets of the Berkeley Hills are difficult to navigate. This includes Le Roy Avenue and Buena Vista Way, and La Loma Avenue, the streets adjacent to the Project. In many locations, it is difficult – if not impossible - for two cars traveling opposite directions to drive by each other, particularly where cars are parked on the street. With events being held at the Hillside School Property for 50 to 100 people, and only 18 parking spots provided, the Project may result in up to 80 additional cars being parked on the streets surrounding the property. This will make an already dangerous driving environment even worse, substantially increasing the hazardous driving environment. This significant impact is an unusual circumstances, and precludes reliance on a categorical exemption.

e. The Project involves an unusual circumstance, precluding reliance on a CEQA exemption.

Even if there were not evidence that the Project *will* have a significant environmental impact, the unusual circumstances exception would still apply because, unlike “usual” or “typical” Class 1 and Class 3 exemptions,⁴ Historical Resource Restoration/Rehabilitation projects, this Project creates a significant public safety risk.

⁴ See October 17 Letter for discussion of the Project’s unusual circumstances compared to other Class 31 Historical Resources Restoration/Rehabilitation project.

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The Class 1 exemption consists of “Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.” 14 CCR § 15301. Class 3 exemption consist of “construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.” 14 CCR § 15303.

At least three elements of the Project distinguish it from other projects in the Class 1 and Class 3 exemption categories, and these characteristics create environmental risks not generally present for Class 1 and Class 3 projects. Once it is determined that a project presents an unusual circumstance, an exemption is precluded if there is substantial evidence that a project *may* have significant environmental impacts.

The first unusual circumstance is that the Hillside School Property is listed on the National Register of Historic Places and is listed as a local landmark. The impact of alterations, modifications, and construction that may ordinarily be exempt under Class 1 or 3 may have additional impacts when the existing facility is a historical resource. Here, the Project proposes to convert a large portion of the Playground to a parking lot and art park, which is inconsistent with the Project’s historic resource listing.

Second, unlike most Class 1 and 3 projects, the Project is located in a High Fire Zone, within the State-designated Alquist-Priolo Earthquake Fault Zone, and is also in an earthquake-induced landslide area mapped by the California Geologic Survey on its Seismic Hazard Mapping Act map. The location of the Project makes it and the surrounding area unusually susceptible to a natural disaster. The second unusual circumstance is that, unlike most Class 1 and 3 projects, the Project may cut off a previously public path and open space, both of which are vital to public safety in the event of a fire or earthquake. As discussed above, because of the high risk location of the Project, and its potential to cut off public access to the Path and Playground open space, the Project may “decrease both emergency vehicle access to the area, and civilian opportunities for egress.” Brownlow, p. 1.

Third, the scale of the changed use – from a vacant parcel to a pseudo-event center hosting parties for up to 100 people, is unusual. As a result of this unusual circumstance, the Project may have a significant noise impact.

CEQA Guidelines Appendix G provides that a project will have a significant impact if it will result in:

A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.

CEQA Guidelines, Appendix G § XII(d).

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The California courts have held that CEQA review is required for noise-producing events, just like those that will be held at the Property. In the case of *Keep Our Mountains Quiet v. City of Santa Clara* (2015) 236 Cal.App.4th 714, 722, the court of appeal has held that an EIR was required for a permit allowing weddings of 150 people at a private home. This Project is no different. The Project owner seeks the right to host parties once per month for up to 100 people, and events for between 50 and 75 people every other week. These events will take place both indoors and outdoors, and will result in a “substantial temporary or periodic increase in ambient noise levels.”

The Project’s unusual circumstances preclude the City from relying on a CEQA exemption for the Project.

ii. The Historical Resources exception precludes reliance on a categorical exemption.

The CEQA guidelines provide that a “categorical exemption shall not be used for a project which *may* cause a substantial adverse change in the significance of a historical resource.” 14 CCR § 15300.2 (emph. added). As discussed in the October 17 Letter, Hillside School, Path, and Playground *collectively* are listed on the National Register of Historic Places and as a Berkeley local landmark. The Project will adversely affect the Hillside School, Path, and Playground as a historic resource because the Project goes beyond merely restoring or rehabilitating the Hillside School. As a result, the Project must be analyzed under CEQA, and cannot be exempt.

As proposed, the school playground that has been used by community members for more than 90 years, will be made into a parking lot for up to 18 vehicles. The Project also permits the owner to install up to five unsightly, garage-like sheds on the new parking lot. In addition, the Project would turn the remaining playground into a collection space for undescribed “art.” None of this is consistent with the historic nature of the site. Instead, the action would transform the playground from a historically significant element of the property into a parking lot. Changing the Playground from its current aesthetic that is cohesive with the school, into a parking lot with five large storage sheds and random art pieces would change the character of the property as a whole. Because these changes may have an adverse impact on the Hillside School, Path, and Playground as a historic resource, the City may not exempt the Project from CEQA. 14 CCR § 15300.2; Pub. Res. Code § 21084.1.

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I. CONCLUSION

Based on these comments, and those in the October 17 Letter, the Hillside Path & Playground Preservation Association requests that the Zoning Adjustment Board deny Use Permit #ZP2019-0061, and send the Project back to staff with direction to review the Project's environmental impacts under CEQA.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Davis', with a long horizontal flourish extending to the right.

Rebecca L. Davis
Lozeau Drury LLP



L A N D M A R K S
P R E S E R V A T I O N
C O M M I S S I O N

S T A F F R E P O R T

FOR COMMISSION ACTION
AUGUST 1, 2019

1581 Le Roy Avenue – Hillside School

Structural Alteration Permit (#LMSAP2019-0004) to make exterior alterations to a City Landmark school building and site in order to convert the property to residential use; changes include installation of a vehicle door, new windows, a rooftop swimming pool and hot tub, a surface parking lot, three storage sheds, perimeter fences and landscape improvements.

I. Application Basics

A. Land Use Designations:

- Zoning: Single Family Residential, Hillside Overlay (R-1H)

B. CEQA Determination: categorially exempt from environmental review pursuant to CEQA Guidelines Section 15331 for Historical Resource Restoration/Rehabilitation.

C. Parties Involved:

- Property Owner: Samuli Seppälä
1581 Le Roy Avenue
Berkeley, CA 94704
- Project Applicant & Architect: Jerri Holan, Historic Architect, AIA
Jerri Holan & Associate
1323 Solano Avenue, #204
Albany, CA 94706

Figure 1: Vicinity Map showing nearby City Landmarks & Districts

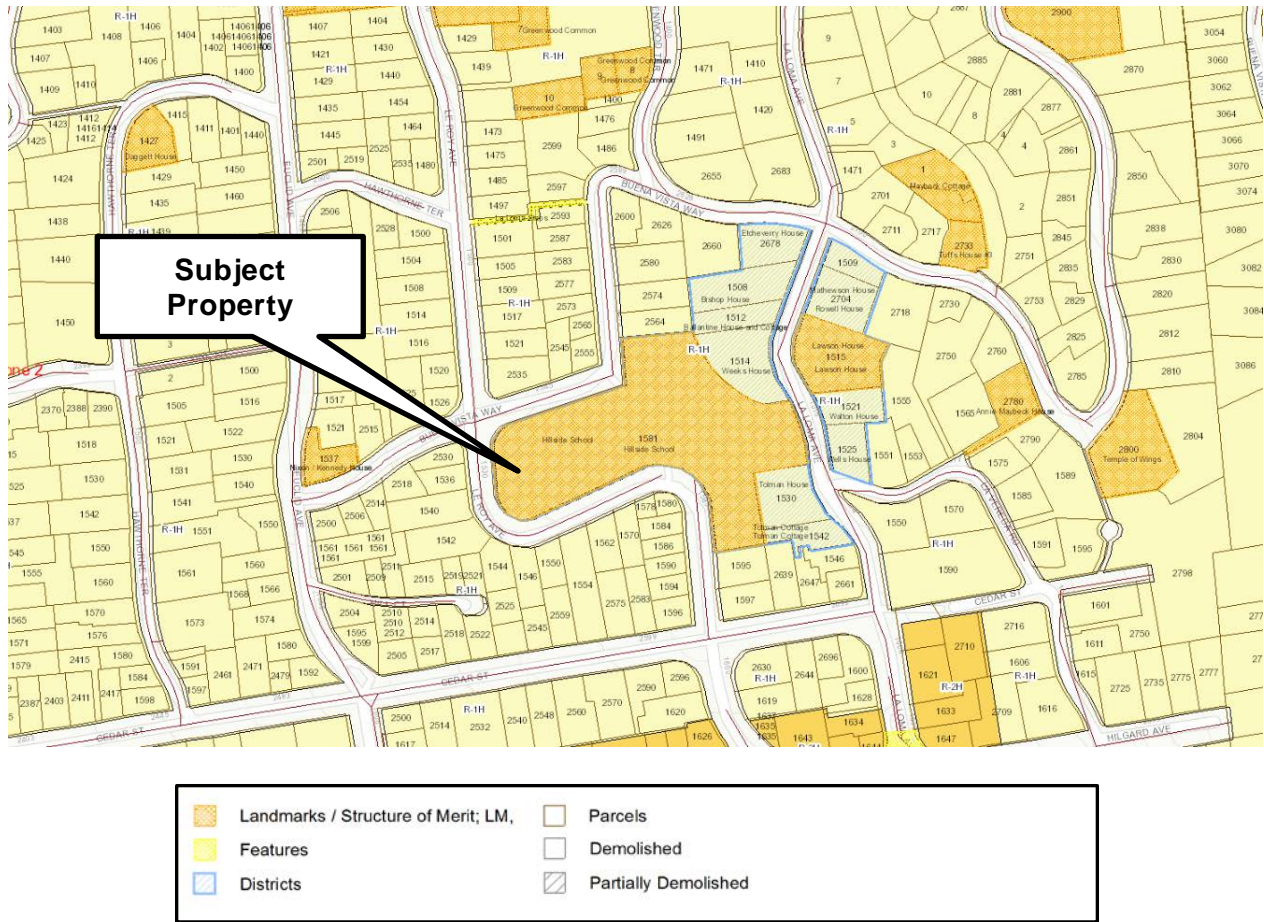


Figure 2: Aerial photograph of subject building (omitting kindergarten wing), looking northeast



II. Background

Site Information

The subject property is a large, approximately 117,500-sq. ft., through lot parcel that is oriented in the east-west direction, with street frontage on Le Roy Avenue and Buena Vista Way on its western end, and La Loma Street on its eastern end. The parcel is irregularly-shaped, and laterally abuts several interior parcels on the north and south.

The Hillside School, the subject main building, was constructed in 1925 and then substantially rehabilitated between 1934 and 1938. It was designed in the Tudor Revival style by prominent Berkeley architect Walter H. Ratcliff Jr. (1881-1978). The building ranges from one to three stories in height. In 1963, a modern-era, single-story addition designed by the Ratcliff firm was constructed on the eastern portion. The building is approximately 50,000 sq. ft. in total area and located on the west side of the subject parcel.

The subject building consists of five primary segments:

- Auditorium wing – one story with a basement
- Central classroom wing – two stories
- Southern classroom wing – three stories
- Kindergarten wing – one story
- 1963 building addition – one story

There are landscaped and terraced areas immediately surrounding the building, and a large, approximately 44,000-sq. ft. open area featuring the school playground on the east side of the property, which is partially landscaped but primarily paved with asphalt.

This property is listed on the National Register of Historic Places, and was designated as a City Landmark in 1982. A copy of the landmark designation Notice of Decision (NOD) is attached to this report (Attachment 4); the NOD includes excerpts of the National Register nomination document.

The building and site operated as a school until 2017, when the last school organization relocated and sold the property after concluding that the structural and seismic rehabilitation program required for an expanded school use at this site would be cost-prohibitive. The current owner is a private individual who purchased the property in 2018.

Application Chronology

On April 10, 2019, historic architect Jerri Holan of Jerri Holan & Associates, submitted a Structural Alteration Permit application requesting permission to complete exterior changes to the Hillside School building and site, in order to convert the property from its historic K-12 school use to residential use. This SAP application submittal was accompanied by a submission of a Use Permit application (#ZP2019-0061) requesting permission to change the use to a single family residential dwelling and an accessory dwelling unit. The Use Permit hearing has not yet been scheduled.

On May 1, 2019, after reviewing the application submittal, staff determined that the materials were incomplete and requested supplemental reports and revised information. On May 21, 2019, the applicant submitted new materials in response to staff's request. On June 6, 2019, the Commission opened the hearing on this matter in accordance with Berkeley Municipal Code (BMC) Section 3.24.220 for *Permit Application – data and public hearing required*, which requires the timely review of these applications to begin within 70 days of submittal. The Commission continued the hearing in order to allow for additional time to review the application materials and prepare a staff recommendation.

The hearing on this matter continues tonight. In preparation for tonight's hearing, staff mailed and posted ten-day advance public notices on July 22, 2019, in accordance with the requirements of BMC Section 3.24.230.

III. Project Description

The applicant proposes to convert the Hillside School building and site to private residential use as a single-family residence and accessory dwelling unit. The proposed change-of-use is the subject of the pending Use Permit application; the associated exterior changes to this City Landmark property are the subject of this Structural Alteration Permit (SAP) approval.

The proposed exterior improvements that would result in visible changes to the building, its design, and features of the site, are as follows:

Main Building

- Repair and replace select doors, windows and skylights to match.
- Restore two windows on the third story of the west elevation of the southern classroom wing, and install a new solar tube on the roof.
- Remove windows on lower portion of southern classroom wing and replace with new vehicle doors in order to create a new, interior multi-vehicle garage.
- Remove exterior stairs and replace with a new sloped driveway along the east side of the kindergarten wing.
- Install a new swimming pool and hot tub on the roof of the 1963 building addition, and increase the parapet that currently ranges in height from 0.5 to 2 ft., to a new height of 3.75 ft. in order to serve as a safety enclosure for this new roof deck area.
- Introduce a new window and a double door with transom on the east elevation of the southern classroom wing, adjacent to the proposed roof deck and pool area.
- Install a new, roof-top elevator penthouse on the central classroom wing for a new elevator that would serve the proposed new residence in the southern classroom wing.

Outdoor and Landscape

- Consolidate the existing play equipment into a smaller, designated area of the former playground area; create a surface parking lot for a total of 18 vehicles within a portion of the paved former playground; and establish a new "Art Park" for private use by the residential occupants in the remainder of the paved area.
- Construct a total of five 120-sq. ft. storage sheds in the proposed "Art Park" with an average height of not more than 10 ft.

- Legalize installation of a chain link fence estimated to be 10 ft. in height on the perimeter of the site's playground area, which is proposed to be converted to a condensed play area, new surface parking lot and private "Art Park."
- Install planting to screen the chain link fence and the new surface parking lot.

For specific details, please refer to the proposed project plans, included as Attachment 2 of this report. Presently, the building will be undergoing ministerial structural pest repairs and a voluntary seismic retrofit under active Building Permits B2019-0228 and B2019-0352.

Interior alterations to a privately-owned City Landmark property are not subject to Structural Alteration Permit approval. Therefore, the following description about proposed interior renovations to Hillside School is provided as information only. The project would create a total of two dwelling units: a five-bedroom, primary dwelling unit within the two upper stories of the southern classroom wing; and an 800-sq. ft. accessory dwelling unit on a portion of the lower story of the central classroom wing. Eight remaining classrooms (located within the central classroom wing and the kindergarten wing) would be used by the residential occupants and their guests as art studio space. The auditorium, restrooms and most storage rooms would maintain as such. The auditorium would be used for entertaining and hosting events by the resident occupants for themselves and their guests. Some rooms would be converted to service use for the proposed improvements and new uses, such as an elevator shaft and pool equipment room. The proposed floor plans are included with Attachment 2.

IV. Issues and Analysis

Staff has identified the following relevant criteria pertinent to this project from the Secretary of the Interior's Standards for the Treatment of Historic Properties (1977), the Landmarks Preservation Ordinance (BMC Section 3.24), and the Zoning Ordinance (BMC Chapter 23).

A. The Secretary of the Interior's Standards for Rehabilitation

The Secretary of the Interior (SOI)'s Standards for the Treatment of Historic Properties defines *Rehabilitation* as "the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values." The applicant's request represents a *Rehabilitation* project because it proposes adaptive re-use of the school site as a residence and includes alterations to the exterior for this purpose. The analysis below summarizes staff's findings for this project with respect to all ten of the Secretary's Standards.

SOI Standard 1

A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

Analysis: With this proposal, the subject property and main building would be given a new residential use where it has historically been used as a K-12 school. The exterior building and landscape changes that are proposed for the adaptive re-use of site (itemized in Section III of this report) are considered to be minimal because they would not result in significant changes to character-defining features of the site, such as its Tudor Revival design, building massing, roof form, architectural and decorative building details, composition of the building façade, and spatial organization of the site overall.

Further, the proposed landscape improvements would enhance the vegetation surrounding the open front yard area and provide subtle screening from the public right-of-way. These plantings would also screen the proposed parking lot, to be located on the existing asphalt pavement. These interventions would be easily reversed in the future and would not permanently alter the historic character of the property.

Therefore, the project would not result in significant changes to the distinctive materials, features spaces and spatial relationships of the Hillside School site.

SOI Standard 2

The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

Analysis: Because the proposed exterior changes to this site are limited and expected to have a limited overall effect on the character of the site, as described above, this property is expected to retain its historic character as perceived through its building and site design. The proposed project scope does not include removal of distinctive building materials or alteration of its historic features, spaces and spatial relationships.

SOI Standard 3

Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

Analysis: The Hillside School would continue to be recognized a physical record of Berkeley's primary school and neighborhood development, where this site is the focal point of the immediate area. The building would retain its appearance, Tudor Revival style, location and relation to its surroundings. The proposed exterior changes to the historic building are not expected to create a false sense of historical development owing to their limited scope, which would result in minimal changes overall.

SOI Standard 4

Changes to a property that have acquired historic significance in their own right will be retained and preserved.

Analysis: No changes to a property that have acquired historic significance in their own right are the subject of this request. Certain new work – such as installation of a roof deck, swimming pool and hot tub – would occur on 1963 building addition, which is not historically significant.

SOI Standard 5

Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

Analysis: The distinctive materials and features of this Tudor Revival building – such as its half-timber details and decorative architectural details – would not be affected by this request for exterior alterations and, therefore, would be preserved.

SOI Standard 6

Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

Analysis: This project applicant states that certain exterior doors and windows require repair or replacement. However, should this project be approved, then it would be subject to Conditions of Approval to ensure repair and replacement work is designed to match the building's historic style, color, texture and, where possible, materials.

SOI Standard 7

Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

Analysis: If approved, this project would be subject to a Condition that ensures only the gentlest measures are employed when chemical treatments are required.

SOI Standard 8

Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

Analysis: Because limited (or no) excavation would be required for the proposed alterations of this building and site, any existing archeological resources at this site would be unaffected by this proposal. Subsequent Use Permit approval of this project would include the City's standards conditions upon the discovery of any subsurface resources.

SOI Standard 9

New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

Analysis: The applicant has carefully designed the proposed project to adhere to these preservation principals. As discussed under the analysis for SOI Standards 2 and 3, above, the proposed project in its entirety is not expected to result in the destruction of historic fabric, materials, features or spatial relationships at this Landmark site. Certain new work – such as installation of a roof deck, swimming pool and hot tub – would occur on a portion of the building that is not historically significant, in and of itself. All other new work is limited in size and scale and, the thereby, would be compatible with the current conditions of this Landmark site.

SOI Standards 10

New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Analysis: Staff concurs with the applicant's observation that the proposed new windows, garage door, and increased parapet height are alterations that could be removed and reversed in the future without affecting the form and overall integrity of the historic building. Similarly, the proposed landscape improvements and creation of a parking lot on the existing asphalt surface within the front yard area, do not represent permanent structural changes to the site and would be reversible in the future.

B. Landmarks Preservation Ordinance Review Standards and Criteria

The Landmarks Preservation Ordinance (LPO) requires the Commission to review and approve all requests for projects on a City Landmark property that are subject a City permit. In this case, the project proposal for the Hillside School is subject to Use Permit approval for the change-of-use, and building permit approval for the list of exterior building and site changes that is itemized in Section III of this report.

Uses not subject to LPO review. In accordance with BMC Sections 3.24.060.B and 3.24.200, the Commission's purview in this case is specific to the proposed physical alteration and new construction on this site or its features. Neither the LPO nor the LPC regulate the *use* of a City Landmark site. Several members of the public have expressed concern about possible changes to the current use of the subject property. Their correspondences are provided as Attachment 5 of this report. Their use-related concerns include: the change to residential use, which is exclusively private; the unknown scale of a private, residential art practice at the site; future occupants' ability to host large events; and the possible preclusion of public access to this site, the play area and the private walkway between Buena Vista Way on the north and Le Roy Avenue on the south.

However, these topics are not the subject of this hearing or consideration by the Commission.

In order to approve a request for a SAP to complete exterior changes on a City Landmark site, the Commission must find that the proposal would not adversely affect the features or special character of the subject structure or property. An analysis of the project with respect to the required findings of the LPO is outlined below.

BMC Section 3.24.260, Paragraph C.1

“For applications relating to landmark sites, the proposed work shall not adversely affect the exterior architectural features of the landmark and, where specified in the designation for a publicly owned landmark, its major interior architectural features...”

Analysis: As discussed previously in the analysis of the SOI Standards, the proposal would not adversely affect exterior architectural features of the Hillside School building and site. The proposed building alterations are designed to either restore character-defining features, such as windows and doors, or replicate and compliment these details with new windows and doors.

Within the playground area, the proposal to legalize installation of the existing chain link fence is found to be reasonable because the 10-ft. height is effective for securing the site and the design and materials maintain a visually open interface with the public right-of-way. Further, the proposed new planting screen for the proposed surface parking lot would enhance the partial vegetative screening of the fence and the open yard area. Staff believes the new plantings could be installed on the north side of the open yard, and not only on the south side as the applicant proposes, in order to screen the activity of the proposed, new Art Park. Therefore, as a Condition of Approval (COA), staff recommends that the Commission require the new plantings to surround the open yard in locations that would supplement the existing vegetation and trees that will remain. Please see COA #12 of Attachment 1.

The installation of five, 120-sq. ft. storage sheds is found to be permissible under the LPO because the sheds could be removed in the future without permanent impact to the historic character of the site. Further, the sheds are relatively small in comparison to the main building and the open yard area in which they would be located. However, the proposed sheds are not of the highest quality or design and, therefore, should be limited in their number in order to reduce their potential to adversely affect the overall quality of the open yard area. For this reason, staff will recommend that the Zoning Adjustments Board limit them to only the five that have been proposed, if the Commission approves their design and installation in the yard area.

In summary, the proposed building alterations and new perimeter plants are not expected to result in adverse effects on this Landmark site and would likely enhance and improve the current conditions. The proposed storage sheds are permissible owing to their modest size and temporary nature, but should be limited to only five in

total to avoid the proliferation of structures within the front yard area of a Landmark site that otherwise lack high quality design.

“...nor shall the proposed work adversely affect the special character or special historical, architectural or aesthetic interest or value of the landmark and its site, as viewed both in themselves and in their setting.”

Analysis: The special historic and aesthetic interest and value of the Hillside School lie in its Tudor Revival architectural design, its location and highly-visible placement in relation to the Le Roy/Buena Vista right-of-way, and the open space used erstwhile as a school yard playground. The proposed project would retain, repair and restore the architectural features of the main building, and introduce sensitive and compatible alterations, such as new garage doors of the south elevation in the historic service area of the building. There would be no significant changes to the location and setting of the building and the project site features.

The creations of a surface parking lot in the currently open yard area would be permissible under the LPO because it would not permanently impact or alter this Landmark site’s integrity or historic fabric. Its superficial and impermanent nature make this proposal easily reversible in the future. The proposed, new landscape planting would screen any parked vehicles from the Le Roy right-of-way. This organic and subtle form of screening combined with the existing chain link fence is preferred to any opaque screen, such as a solid fence, which would limit visual penetrability and create a wall along the property’s currently open public interface.

For all of these reasons, the proposed project is found be to permissible under the LPO, and staff recommends that Commission consider approving it as Conditioned in Attachment 1, *Draft Finding and Conditions for Approval*.

C. Zoning Ordinance conformance for open space pavement

In its proposed condition, the Art Park and other open areas in the former playground on this property may not satisfy the Zoning ordinance criteria for usable open space (BMC Section 23D.04.050 – Usable Open Space) and, therefore, the proposed site and landscape plan may require further refinement. Specifically, the area may contain pavement in excess of the Zoning ordinance requirement, and the Use Permit proposal would have to reduce the portions of the existing asphalt pavement and/or replace with other kinds of pavement (such as decorative pavement) or landscaped planting. Precise calculations of the open space areas will be required prior to Use Permit approval in order to confirm compliance.

If refinements to the pavement within the Art Park area are required subsequent to LPC action on this SAP request, then staff recommends that LPC permit the applicant to make necessary changes prior to final staff approval of any building permit for this project. Therefore, draft Condition of Approval #12 includes this directive.

V. Recommendation

Staff recommends that the Commission hold a hearing on this matter and, upon close of the hearing, consider this request for a Structural Alteration Permit and then take favorable action pursuant to BMC Section 3.24.220.

Attachments:

1. *Draft* Findings and Conditions of Approval
2. Project Plans, received July 24, 2019
3. Applicant Statements, dated March 11 and May 20, 2019
4. Landmarks designation Notice of Decision, June 21, 1982
5. Correspondences received

Prepared by: Fatema Crane, Senior Planner, fcrane@cityofberkeley.info; 510-981-7410



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

FOR BOARD ACTION
OCTOBER 24, 2019

1581 Le Roy Avenue – The Hillside School

Use Permit #ZP2019-0061 to convert the vacant, elementary school property to residential use: to establish the approximately 50,000-sq. ft., main building as a single-family residence and accessory dwelling unit, incorporating several former classrooms as private (non-commercial) art studio space; to install an unenclosed swimming pool and hot tub within a new roof deck; to construct an approximately 36-sq. ft., elevator penthouse above the second story (but below the third story roof ridge); to convert a former multi-purpose room to a garage; to create a new, surface parking lot and to locate up to five, new storage sheds within portions of the former playground to be partially re-purposed as an outdoor (non-commercial) art practice space; and to complete landscape improvements along the public interface.

I. Background

A. Land Use Designations:

- General Plan: Low Density Residential
- Zoning: Single-Family Residential/Hillside Overlay (R-1/H)

B. Zoning Permits Required:

- Use Permit, under BMC (Berkeley Municipal Code) Section 23D.16.030, to create a dwelling unit in the R-1 district;
- Administrative Use Permit, under BMC Section 23D.12.080, to locate parking spaces with the required front yard setback of a residential property;
- Administrative Use Permit, under BMC Section 23D.16.030, to install an unenclosed hot tub on a residential property; and
- Administrative Use Permit, under BMC Section 23D.16.070.C, to construct a residential building addition greater than 14 ft. in average height.

C. CEQA Determination: Categorically exempt pursuant to the following Sections of the CEQA Guidelines: Section 15301 for “Existing Facilities,” 15303 for “New Construction or Conversion of Small Structures,” and 15331 for “Historical Resources Restoration/Restoration.”

D. Parties Involved:

- Applicant/Architect Jerri Holan, AIA, Holan & Associates, 1323 Solano Ave., Albany, CA
- Property Owner Samuli Seppälä, 1581 Le Roy Avenue, Berkeley, CA

Figure 1: Vicinity Map

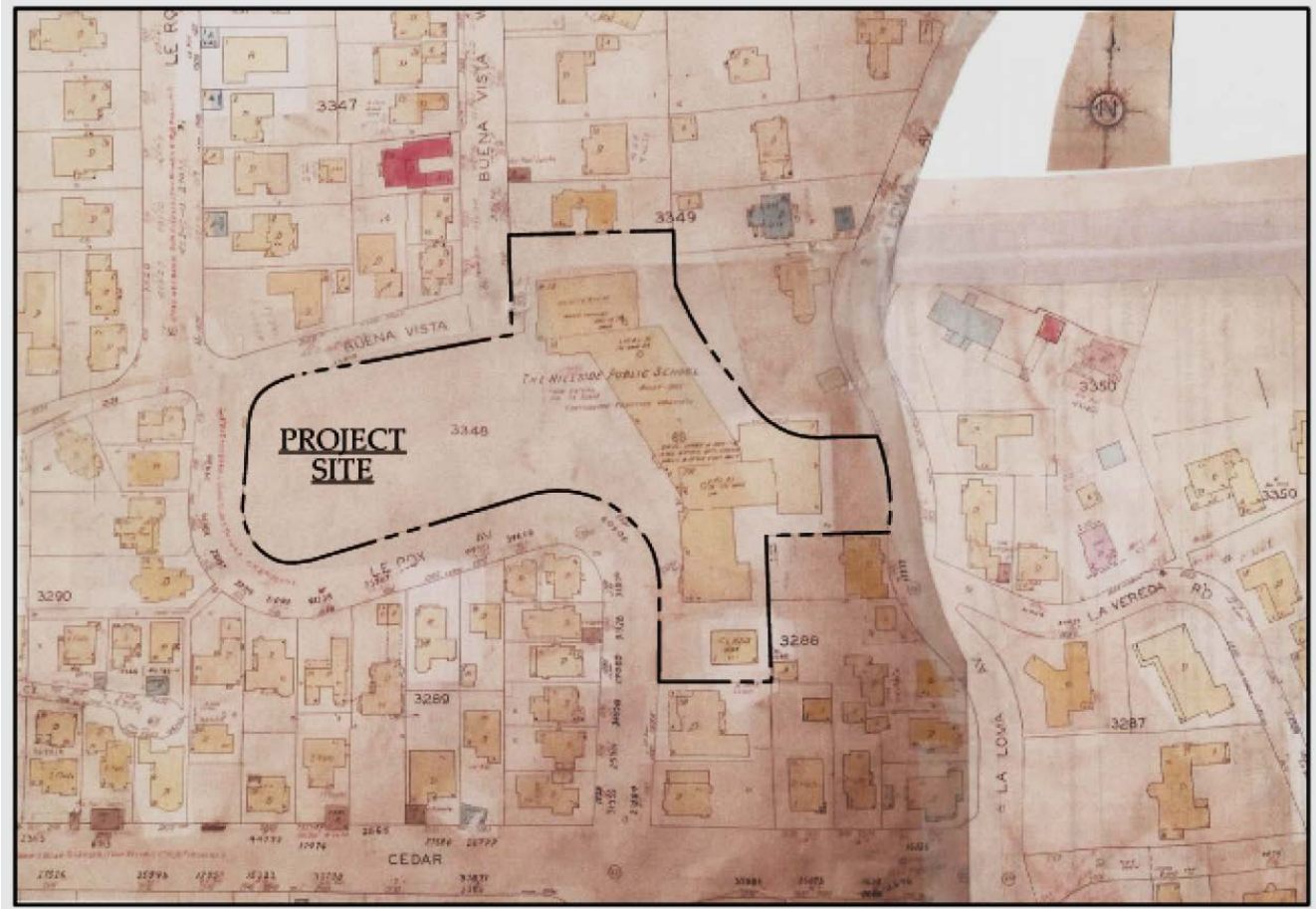


Figure 2: Proposed Site Plan

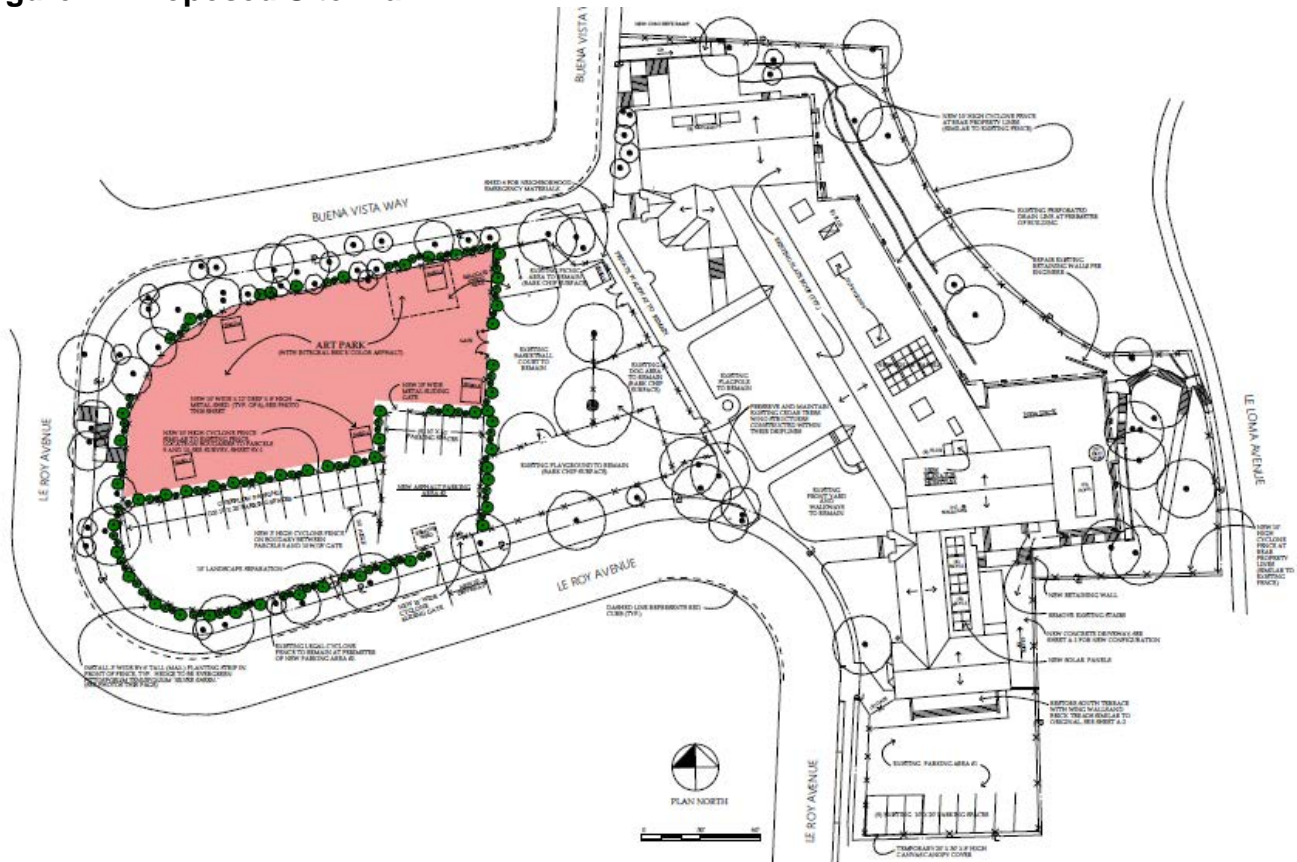


Figure 3 : Partial Aerial photograph of subject building, looking northeast



Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		School	R-1/H	Low Density Residential
Surrounding Properties	North	Single-Family Residences		
	South			
	East			
	West			

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	These ordinances do not apply to this application which for a residential conversion of less than five units.
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)		
Creeks	No	This site is not located within 30 ft. of the center line of an open creek.
Historic Resources	Yes	This property is listed on the National Register of Historic Places, and was designated as a City Landmark in 1982. On August 1, 2019, the Landmarks Preservation Commission approved the Structural Alteration Permit for this conversion request; the approval is subject to appeal and certification by City Council.
Housing Accountability Act Gov't Code Section 65589.5(j)	Yes	Because this proposal conforms to the objective standards of the BMC, it would be subject to the HAA; see Section V of this report.
Oak Trees	Yes	This site features coast live oak trees, and these trees would not be affected by the proposed conversion request.
Residential Preferred Parking (RPP)	Yes	This area is included in the RPP program.
Seismic Hazards (SHMA)	Yes	This site is located in SHMA area of the Berkeley. This proposal, however, is not subject to an investigation because it is not defined as a "project," owing to its limited scope, minimum construction and conversion from a more intense use (e.g.: K-12 school) to a less intense use as a residence.
Soil/Groundwater Contamination	No	This project site is not located in an Environmental Management Area of Berkeley nor does it appear on the lists of hazardous waste sites compiled by the Secretary of Environmental Protection.
Transit Proximity	Yes	This site is located within two blocks of AC Transit Line 65.

Table 3: Project Chronology

Date	Action
April 1, 2019	Application submitted
June 6, 2019	LPC opened and continued the Structural Alteration Permit hearing awaiting staff recommendations for final action.
August 1, 2019	LPC approved the Structural Alteration Permit pursuant to certain Findings & Conditions; see Attachment 1 of this report.
October 9, 2019	Public hearing notices mailed/posted
October 24, 2019	ZAB hearing

Table 4: Development Standards

Standard BMC Sections 23D.16.070-080	Existing School (approximate)	Proposed Residence	Permitted/ Required
Lot Area (sq. ft.)	117,500	No change	5,000 min
Gross Floor Area (sq. ft.)	50,300		Not regulated
Dwelling Units	0	1+ADU	1+ADU max
Building Height	Average	No change	28 max
	Maximum		30 max
	Stories		3 max
Building Setbacks	Front		20 min
	Rear		20 min
	Left Side		min
	Right Side		min
Lot Coverage (%)	22		
Usable Open Space (sq. ft.)	22,000	10,000	800 min
Parking	7	30	1 min

II. Project Setting

A. Neighborhood/Area Description: The project site is located the 1500-block of Le Roy Avenue, in the Berkeley Hills neighborhood. This is a low-density, residential neighborhood that primarily features single-family residences along with schools, churches and City parks. It is characterized by sloping terrain, mature vegetation, winding street patterns, and expansive westward-facing views of the San Francisco Bay.

B. Site Conditions: The subject property is a large, approximately 117,500-sq. ft., through lot parcel that is oriented in the east-west direction, with street frontage on Le Roy Avenue and Buena Vista Way on its western end, and La Loma Street on its eastern end. The parcel is irregularly-shaped, and laterally abuts several interior parcels on the north and south.

The Hillside School, the subject main building, was constructed in 1925 and then substantially rehabilitated between 1934 and 1938. It was designed in the Tudor Revival style by prominent Berkeley architect Walter H. Ratcliff Jr. (1881-1978). The

building ranges from one to three stories in height. In 1963, a modern-era, single-story addition designed by the Ratcliff firm was constructed on the eastern portion. The building is approximately 50,000 sq. ft. in total area and located on the west side of the subject parcel.

The subject building consists of five primary segments:

- Auditorium wing – one story with a basement
- Central classroom wing – two stories
- Southern classroom wing- three stories
- Kindergarten wing – one story
- 1963 building addition – one story

There are landscaped and terraced areas immediately surrounding the building, and a large, approximately 44,000-sq. ft. open area featuring the school playground on the east side of the property, which is partially landscaped but primarily paved with asphalt.

This property is listed on the National Register of Historic Places, and was designated as a City Landmark in 1982.

The building and site operated as a school until 2017, when the last school organization relocated and sold the property after concluding that the structural and seismic rehabilitation program required for an expanded school use at this site would be cost-prohibitive. The current owner is a private individual who purchased the property in 2018.

III. Project Description

The applicant proposes to convert the former elementary school site and building to residential use. In accordance with the Development Standards for maximum residential density in the R-1 district, the proposal requests that the interior of the 50,000-sq. ft., three-story school building be re-purposed and partially remodeled to include a total of two new dwelling units: a single-family residence and an accessory dwelling unit. The proposed dwelling units and vast, interior building space have been designed for private individuals whose lifestyle includes an active and varied art practice.

The primary dwelling unit would be located on the two upper stories of the southern classroom wing, and would feature a total of five bedrooms, three full bathrooms, two half-bathrooms, a living room, a family room, a kitchen and other amenities such as a laundry facilities. A new elevator would serve the primary unit, and a new penthouse would be created on the roof of the central classroom wing. The accessory dwelling unit would be located on the lower story of the central classroom wing, and total 800 sq. ft. in

area. The remaining eight classrooms would be used as artist studio space, for the private use of the property's residential occupants and their guests.

The school's former multi-purpose room, on the lower story of the three-story classroom wing, would be converted to a garage for up to three vehicles. A new vehicle door would be created on the southern elevation of this area of the building, and accessed via a new sloped driveway that would be created on the east side of the kindergarten wing. A new rooftop, outdoor space with a new safety rail, an unenclosed swimming pool and hot tub would be installed in the roof of the 1963 building addition.

The auditorium, existing restrooms and most storage rooms would maintain as such. The auditorium would be used for entertaining and hosting events by the residential occupants for themselves and their guests. Some, smaller rooms and interior spaces would be converted to service use for the proposed improvements and new uses, such as an elevator shaft and pool equipment room.

The applicant anticipates that residential occupants of this site would host a small number guests on a regular basis (as many of five) and, occasionally, would host large, non-commercial events by invitation only. For this reason, the proposal includes the introduction of an on-site, surface parking lot serving up to 18 vehicles, to be located on a portion of the existing blacktop within the former school yard. An existing, 10 ft.-tall chain-link fence that encloses the area would remain, and new trees would be planted to supplement the existing, mature vegetation along the right-of-way interface in order to provide a continuous, organic visual screen for the proposed surface parking lot and outdoor art practice space.

A portion of the open, school yard would be used for outdoor art activities. This area has been delineated on the proposed site plan as an "Art Park," and would feature as many as five, detached storage sheds of not larger than 120 sq. ft. or taller than 10 ft. in average height.

The proposed projects plans are included in Attachment 3 of this report. The applicant's detailed description of the intent and purpose of this conversion project is provided in the Applicant Statement, Attachment 4.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting this Use Permit application on April 1, 2019, the applicant installed two Proposed Development signs at the site: near the Le Roy Avenue entrance, and near the La Loma Avenue street frontage.

The applicant and property owner meet with members of the neighborhood on several occasions before and after submitting this application to discuss the residential conversion proposal and provide information about the intended private art practice. Those meetings occurred on July 10, 30 and August 20, 2019, at the home of the President of the Hillside Association of Berkeley. A meditation session

with SEEDS occurred on September 30, 2019, at the Hillside School site. While some neighbors were supportive of the project and appreciative of the proposed improvements to the property, many others were opposed to the project. The themes of their objections are summarized in Table 5, below, along with a brief staff response. Correspondences received on this matter are provided as Attachment 6 of this report.

On October 9, 2019, City staff mailed and posted notices of tonight’s hearing, in accordance with BMC Section 23B.32.020 (Public Notice Requirements).

B. Landmarks Preservation Commission (LPC) Review: Because the subject property is listed on Berkeley’s register of historically significant properties, this project is subject to prior Structural Alteration Permit approval, in accordance with BMC Section 3.24.200. On June 6 and August 1, 2019, the LPC reviewed the applicant’s proposal for exterior changes to the property and main building, and then approved the project subject to certain Findings and Conditions of Approval; see Attachment 2 of this report. Some Commissioners requested that staff forward the following comments for ZAB’s consideration of this Use Permit application:

- Limit the number of sheds to not more than five in order to control for the proliferation of unsightly structures in the open area, which is prominently located.
- Reduce the number of parking spaces in the new surface parking lot to the minimum needed to accommodate the anticipated guests.

Several members of the public attended the Structural Alteration Permit hearings, and many others wrote letters to the City. All letters received, whether addressed to the LPC or ZAB, are attached for ZAB’s consideration; see Attachment 6. While some neighbors were supportive of the project and appreciative of the proposed improvements to the property, many others who spoke during Public Comment were opposed to the project. The themes of their objections are summarized in Table 5, below, along with a brief staff response.

Table 5 – Summary of Public Comments

General Comment	Staff Response
The proposed change to residential use is exclusively private.	The proposal to convert the former school site to a private residence is permissible under the BMC, and does not warrant concern with respect to Zoning requirements; see Section V.B.
The new property owner may preclude public access to this site, the play area and the private walkway between Buena Vista Way on the north and Le Roy Avenue on the south.	At this time, the City has no interest in pursuing an access easement at this site. The neighbors’ request for such an easement is a civil matter, and City staff would not compel the property owner to enter into such an agreement. See Section V.G.

General Comment	Staff Response
The nature and scale of a private residential art practice at the site is unknown.	The applicant has described all aspects, including the scale, of the proposed residential art practice in her Applicant Statement; see Attachment 4 and staff's discussion in Sections V.C and F of this report.
Future occupants' will have the ability to host large events.	Anticipated events at this site are discussed in Section V.F.

V. Issues and Analysis

A. Housing Accountability Act. The Housing Accountability Act 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 impact¹ 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.

This conversion project where no new construction is proposed, meets the applicable regulatory standards of the BMC related to maximum residential density and minimum usable open space and off-street parking. Therefore, §65589.5(j) **does** apply to this project as currently proposed.

B. Creation of dwelling units on a former school site in R-1 district. The proposal to convert the former school site to residential use and achieve the maximum residential density permitted in the R-1 district is found to be reasonable and generally non-detrimental. This proposal adheres to the R-1 district standards for dwelling unit density, and exceeds the requirements for minimum usable open space and off-street parking; see Table 5, above. Further, the proposal is compatible with the *Purposes* of the district (BMC Section 23D.16.020), which are:

- A. *Recognize and protect the existing pattern of development in the low density, single family residential areas of the City in accordance with the Master Plan;*
- B. *Make available housing for persons who desire detached housing accommodations and a relatively large amount of Usable Open Space;*

¹ As used in the Act, a “specific, adverse impact” means a “significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.”

- C. *Protect adjacent properties from unreasonable obstruction of light and air; and*
- D. *Permit the construction of community facilities such as places for religious assembly, Schools, parks and libraries which are designed to serve the local population when such will not be detrimental to the immediate neighborhood.*

Specifically, this proposal would re-use a vacant school site while introducing minimal changes to the building and its scale and massing, thereby maintaining the existing pattern of development in the immediate area and avoiding sunlight or air obstructions. The proposal would establish a low-density residential use on a site with abundant open space.

The site is located in an environmentally sensitive area (earthquake fault rupture and landside) and previous engineering assessments found that extensive structural and seismic improvements would be required in order to continue and expand its K-12 school use to full capacity. These upgrades proved cost-prohibitive to the most recent K-12 occupant, who then decided to relocate to a more suitable school site and to sell the property. Under these circumstances, staff concludes that it is not likely that a school would occupy this site at this time.

Owing to its alignment with the regulations of the R-1 district and consistency with the district *Purposes*, staff concludes that proposed conversion to residential use is permissible and recommends that the Board take favorable action on this request.

- C. Private, residential art practice.** The proposal to accommodate a private, residential art practice in dwelling units on a converted former-school site is found to be reasonable and generally non-detrimental. As a private residence located in a residential district, this site is not permitted to establish an “*arts/craft studio*” use (BMC Section 23F.04, “Definitions”), generally defined as an *establishment*, which staff interprets to be a commercial or institutional, or otherwise non-residential, land use activity. The analogous but permitted residential activity is defined as follows:

Artist Studio: A detached accessory building used by residents of a main dwelling Unit on the same lot, to create original works of art and craft products, but not for living quarters or sleeping purposes. (BMC Section 23F.04)

In this case, the applicant proposes such a use, though not located in a detached, accessory building and, instead, contained within a large main building and a confined outdoor area. Staff concludes, therefore, that the art activity is permissible on this residential property and, further, that the proposed location within the main building would be reasonable because the approximately 50,000-sq. ft. building could provide adequate space to sufficiently maintain both the dwelling uses and the art practice.

The outdoor art practice, similarly, could be found reasonable and consistent with the use of a residentially zoned property. Outdoor activity in R zones is generally un-

regulated and presumed to align with the primary use of the site. To ensure that the proposed art activities would not result in excessive noise, light glare or other disturbances, staff recommends that the Board consider an approval with specific conditions to limit hours of late-night outdoor activity and require downcast lighting, and adherence to the Community Noise Ordinance (BMC 13.42).

The Board must consider this request and the specific circumstances of this case, which appear to support a finding that the proposed residential art practice at this location would be reasonable, consistent with the BMC provisions for activity in residential districts, and not likely to result in detrimental impacts for the immediate neighborhood.

- D. New surface parking lot within required front yard setback.** The applicant proposes to establish an 18-vehicle parking lot in a portion of the former school's playground area. As a proposed single-family residence, this conversion request would require only one off-street parking space, in accordance with BMC Section 23D.16.080A (*Parking*). However, the applicant proposes a total of 30 spaces: 7 spaces in the existing parking area of the former school that would be maintained, 3 interior spaces in the new garage, and 18 new spaces in a surface lot. The 18-vehicle surface lot is intended to address the anticipated demand for parking that would result from visitors arriving by car for occasional events. The applicant arrived at the number 18 of spaces based on the estimated rate of regular visitors to the site (the equivalent of approximately five vehicles) as well as the anticipated number of visitors for the occasional events.

The BMC does not suggest a formula for this kind of over-flow parking in a residential context. In BMC Section 23D.16.080, the R-1 district sets standards for other uses, such as care facilities and libraries. BMC Section 23D.16.080.B (*Parking*) reads:

Other Uses requiring a Use Permit, including but not limited to Child Care Centers, Clubs, Lodges, and community centers, shall provide the number of Off-Street Parking Spaces determined by the Board, based on the amount of traffic generated by the particular Use and comparable with specified standards for other Uses.

After discussing this Use Permit application with the City Traffic Engineer, staff concluded that the applicant's proposal of 18 spaces is reasonable given the limited frequency of the proposed events. The Traffic Engineer did not formally comment on the applicant's rationale for arriving at 18 over-flow spaces and, instead, suggested that the applicant employ professional to review the proposal and assess the parking demand. Some interested parties, including some members of the LPC, believe 18 is "too many" spaces and requests that the Board consider approving the project with fewer spaces.

If the Board considers approving fewer spaces, then staff recommends that the reduction in space occur in areas of the proposed surface parking lot nearest the front property line in order to maintain an unobstructed front yard setback.

The proposal to maintain the existing chain-link fence and supplement the existing mature vegetation along the right-of-way with select new plantings would provide an effective yet visually penetrable screen. Such a screen would be preferred over a solid fence or other kind of screen, and would ensure continuity of the natural, organic character of the former playground area and the public interface.

For all of these reasons, staff recommends that the Board consider approving the proposed surface parking lot, number of spaces as presented by the applicant, and the locations of some spaces within 20 ft. of the front property line.

E. New building features: rooftop hot tub and elevator penthouse. The proposal to install a hot tub and swimming pool within a new roof deck on the eastern side of the subject building, is subject to Administrative Use Permit approval, in accordance with BMC Section 23D.08.060.C (*Fences and Other Accessory Structures*). This ordinance requires that any pumping equipment be mounted and enclosed so that its sound is not audible beyond the nearest, shared property line. In this case, the nearest abutting residence is located to the east of the subject site, at 1530 La Loma Avenue, approximately 100 ft. to the south of the proposed hot tub location. As a Condition of Approval, the applicant would be required to enclose any such equipment or otherwise ensure compliance with this standard prior to building permit approval for installation of the hot tub.

The proposed elevator penthouse of the north side of the three-story classroom wing would be approximately 28 ft. in height, and would not exceed the R-1 district's maximum height limit of 28 ft., or extend beyond the existing building height of 30 ft. or roofline profile. The proposed size of approximately 36-sq. ft. is modest and would not result in a significant increase in total building area or massing and scale. For these reasons, it is found to be permissible and unlikely to result in any detrimental effects.

F. Visitors and events on site – scale and frequency. In her statement (Attachment 4), the applicant explains that the property owner anticipates hosting up to 25 regular visitors for art activities on a weekly basis for six to nine months of the year. During this time, the owner will also hold invitation-only events that may draw as many as a 100 visitors. These figures represent the greatest number of possible visitors and frequency of events, but the applicant believes the figures would be far lower in reality. Nevertheless, the approximately 2.5-acre site and 50,000-sq ft. building are large enough to accommodate groups of this size. Both the number of visitors and recurrence of events are generally lower and less intense than the historic school use at this site. Therefore, staff believes the applicant's request to use the site in this manner would be unlikely to worsen traffic, congestion and noise conditions for abutting neighbors and the area as a whole.

G. Neighbors' request for an access easement. Multiple neighbors of the site have requested that the property owner enter into a access easement agreement to ensure the public's ability to use the paved pathway that exceeds across the site provide a pedestrian and bicycle link between Buena Vista Way to the north and Le Roy Avenue to the south. This pathway has been unobstructed and used by the public for several past decades.

Since acquiring the property in 2018, the property owner has maintained the pathway unobstructed and indicates (via the Applicant Statement) that he remains open to this informal arrangement indefinitely at this time, and wishes for a cooperative relationship with the neighborhood. However, as a private individual, he also recognizes the responsibility, legal liability and potential intrusion of privacy this arrangement engenders and, therefore, reserves the right to reconsider this arrangement in the future should circumstances require it.

Public Works staff has confirmed that there is no interest in pursuing a public access easement for this site. Public safety staff has also confirmed that this site has not been identified as a possible location for City-sponsored public safety response activities or services, as some members of the public have suggested. So, City staff has taken no action in regard to, nor general interest in, this private property.

Given these circumstances, staff does not believe the Board should consider compelling the property owner to enter into an access easement agreement with the City or other parties.

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

1. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
2. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City's share of regional housing needs.
3. Policy UD-6: Encourage adaptive reuse of historically or architecturally interesting building in cases where the new use would be compatible with the structure itself and the surrounding area.

Staff Analysis: This proposal to establish two, new dwelling units within an existing, vacant school building and on site that may otherwise go under-utilized due to its location in an environmental sensitive area, is expected to result in highest and best use of the site at this time when only this proposal as come forward for consideration. By maintaining, improving and re-purposing this City

Landmark building and site, the proposal would be compatible with the scale, historic character and surrounding uses.

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. APPROVE Use Permit #ZP2019-0061 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Approved Structural Alteration Permit Findings & Conditions (pending appeal and City Council certification)
3. Project Plans, dated October 10, 2019
4. Applicant Statement, dated October 9, 2019
5. Notice of Public Hearing
6. Correspondence Received

Staff Planner: Fatema Crane, Senior Planner LPC Secretary, fcrane@cityofberkeley.info, (510) 981-7413



Department of Fire and Emergency Services
Office of the Fire Chief
David Brannigan, Fire Chief

Land Use Planning
Received
October 23, 2019

To: Land Use Planning Division, 1947 Center Street, Second Floor, Berkeley, CA 94704

From: Dave Brannigan,  Fire Chief, City of Berkeley Fire Department

Subject: Hillside School, 1581 Le Roy Avenue, Berkeley CA 94708, Use Permit # ZP2019-0061

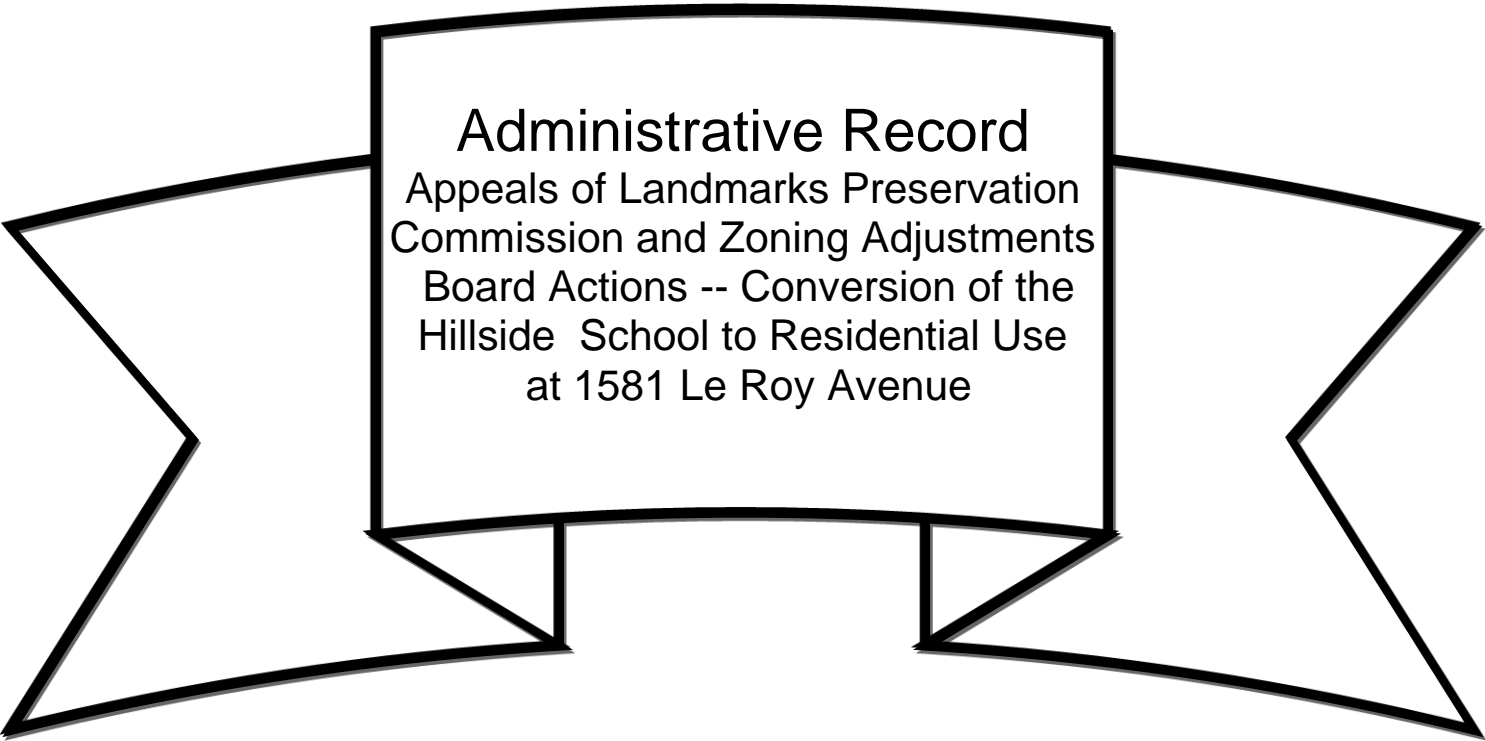
The property at 1581 Le Roy Avenue lies within Berkeley's Fire Zone 2 and as such is subject to applicable codes related to vegetation management, building construction, and inspections. All properties in this area are required to maintain defensible space and comply with building code requirements to harden structures against the threat of wildfire.

The Berkeley Fire Department coordinates city-wide planning, training, and exercises for public evacuation and multi-department response for a wildland urban interface fire. These plans and exercises focus on evacuation through public rights of way in existing transportation networks. The neighborhood surrounding 1581 Le Roy Avenue is representative of the hills with winding, irregular streets and public paths and stairs that connect streets such as the Hill Court Steps. Within one to two blocks west and south of site, the roadway network is a grid. A less typical feature that this neighborhood has are sidewalks on many of the streets.

1581 Le Roy is not public property nor does it contain a public right of way and therefore we do not consider it an official option for evacuation routes or a temporary area of refuge such as our public schools and parks in the area. While the property is well suited to be a temporary area of refuge for firefighters and possibly the public, it is private property, and we do not plan to count on it regardless of the use of the property. The need and availability will be considered in the event of a wildland urban interface fire.

The Fire Department is leading the new Safe Passages program which identifies narrow rights of way and improves access and egress to them through parking restrictions, dedicated fire lanes, and vegetation management throughout Fire Zones 2 and 3. This work will also include public paths and stairs. Limited staff resources mean that areas to be treated will be prioritized by risk and other factors including neighborhood input. Concerns about evacuation in and around this neighborhood will be factored in to prioritize it for assessment and treatment through the Safe Passages program.

The structure itself at 1581 Le Roy is protected by a slate roof which is ideal to resist wildfire. The building also has fire sprinklers which are being reviewed in the permitting process and may need to be upgraded for a residential property. As of October 23, 2019 the property's vegetation is fairly well maintained in regards to defensible space and reduction of ladder fuels that can carry a grass fire into the tree canopy.



Administrative Record
Appeals of Landmarks Preservation
Commission and Zoning Adjustments
Board Actions -- Conversion of the
Hillside School to Residential Use
at 1581 Le Roy Avenue

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

LOCATION: B.U.S.D. BOARD ROOM, 1231 ADDISON STREET

DATE / TIME: TUESDAY, FEBURARY 25, 2020; 6:00 PM

APPEALS OF LANDMARKS PRESERVATION COMMISSION AND ZONING ADJUSTMENTS BOARD DECISIONS TO APPROVE CONVERSION OF THE HILLSIDE SCHOOL TO RESIDENTIAL USE LOCATED AT 1581 LE ROY AVENUE

Notice is hereby given that the City Council of the City of Berkeley will conduct a public hearing to consider appeals of decision by the Landmarks Preservation Commission approve Structural Alteration Permit #LMSAP2019-0004 and the decision by the Zoning Adjustments Board to approve Use Permit #ZP20190061 to convert the Hillside School to residential use.

All persons interested in this matter may attend and be heard. Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, at least five days prior to the hearing in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of February 13, 2020. Information may also be reviewed in person at the office of the City Clerk, 2180 Milvia Street, during normal business hours, which are generally 8 a.m. to 5 p.m., Monday through Friday.

For further information about the project, please contact Fatema Crane, Senior Planner, Land Use Planning Division at 510-981-7413.

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 510-981-6900 or clerk@cityofberkeley.info for further information.

Mark Numainville, City Clerk

Mailed: February 11, 2020

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)) a project, 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 or Landmarks Preservation Commission decision may be filed more than 90 days after the date of the decision of the City Council. 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 or Landmarks Preservation Commission 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 at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.

If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:

- A. That this belief is a basis of your appeal.*
- B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.*
- C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.*

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.



Accessibility Information / ADA Disclaimer:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

1581 Le Roy Avenue – The Hillside School

Use Permit #ZP2019-0061 to convert the vacant, elementary school property to residential use: to establish the approximately 50,000-sq. ft., main building as a single-family residence and accessory dwelling unit, incorporating several former classrooms as private (non-commercial) art studio space; to install an unenclosed swimming pool and hot tub within a new roof deck; to construct an approximately 36-sq. ft., elevator penthouse above the second story (but below the third story roof ridge); to convert a former multi-purpose room to a garage; to create a new, surface parking lot and to locate up to five, new storage sheds within portions of the former playground to be partially re-purposed as an outdoor (non-commercial) art practice space; and to complete landscape improvements along the public interface.

I. Background

A. Land Use Designations:

- General Plan: Low Density Residential
- Zoning: Single-Family Residential/Hillside Overlay (R-1/H)

B. Zoning Permits Required:

- Use Permit, under BMC (Berkeley Municipal Code) Section 23D.16.030, to create a dwelling unit in the R-1 district;
- Administrative Use Permit, under BMC Section 23D.12.080, to locate parking spaces with the required front yard setback of a residential property;
- Administrative Use Permit, under BMC Section 23D.16.030, to install an unenclosed hot tub on a residential property; and
- Administrative Use Permit, under BMC Section 23D.16.070.C, to construct a residential building addition greater than 14 ft. in average height.

C. CEQA Determination: Categorically exempt pursuant to the following Sections of the CEQA Guidelines: Section 15301 for "Existing Facilities," 15303 for "New Construction or Conversion of Small Structures," and 15331 for "Historical Resources Restoration/Restoration."

1581 Le Roy Avenue – Hillside School

Structural Alteration Permit (#LMSAP2019-0004) to make exterior alterations to a City Landmark school building and site in order to convert the property to residential use; changes include installation of a vehicle door, new windows, a rooftop swimming pool and hot tub, a surface parking lot, three storage sheds, perimeter fences and landscape improvements.

I. Application Basics

A. Land Use Designations:

- Zoning: Single Family Residential, Hillside Overlay (R-1H)

B. CEQA Determination: categorially exempt from environmental review pursuant to CEQA Guidelines Section 15331 for Historical Resource Restoration/Rehabilitation.

