To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, Interim City Manager
Submitted by: Eric Angstadt, Director, Planning and Development
Subject: 800 University, Berkeley - Review of Planning Commission Approval of Tentative Tract Map 8183

INTRODUCTION
Pursuant to BMC Section 21.16.060, “the City Council may certify and review any action taken by the Planning Commission on a tentative subdivision map or exceptions requested. Such certification by the Council shall be taken not later than twenty one days from the date on which the Planning Commission action occurred.”

CURRENT SITUATION AND ITS EFFECTS
None.

BACKGROUND
On December 16, 2015 the Planning Commission approved Tentative Tract Map 8183 for a fifty-nine (59) unit project consisting of fifty-eight (58) residential units, and one (1) commercial unit in a newly constructed 5-story building, at 800 University Avenue.

POSSIBLE FUTURE ACTION
Section 21.16.060 of the Berkeley Municipal Code states that the City Council may certify and review any action taken by the Planning Commission on a tentative subdivision map or exceptions requested. Such certification by the Council shall be taken not later than twenty one days from the date on which the Planning Commission action occurred. The Planning Commission took action on Tentative Tract Map 8183 on December 16, 2015; therefore, the 21-day deadline for Council action expires on February 9, 2016 (timeline subject to tolling).

ENVIRONMENTAL SUSTAINABILITY
The project will be subject to the provisions of the 2013 California Building Code, including Title 24 energy efficiency requirements, and other sustainability requirements.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
N/A
CONTACT PERSONS
Carol Johnson, Land Use Planning Manager, (510) 981-7411
Greg Powell, Principal Planner, (510) 981-7414

Attachments:
1. Tentative Tract Map 8183
2. Staff Report to Planning Commission, December 16, 2015 (without attachments)
800 UNIVERSITY AVENUE

Tentative Map #8183 to allow condominium ownership in a fifty-nine (59) unit project with fifty-eight (58) residential units and one (1) commercial unit under construction at 800 University Avenue.

I. Application Basics

A. Chronology of Subdivision Application:

- January 5, 2014: Map Application submitted.
- May 15, 2015: Map Application considered complete.
- July 5, 2015: Subdivision Map Act deadline (50 days from complete).
- December 16, 2015: Planning Commission hearing (both applicant and staff agreed to extend the deadline).

B. CEQA Determination:

Construction of the project is categorically exempt pursuant to Section 15332, of the CEQA Guidelines (“In-fill Development Projects”). Approval of the Tentative Map is also categorically exempt pursuant to Section 15331, of the CEQA Guidelines, which involves the operations and permitting of existing facilities involving no expansion of use beyond prior approvals.

C. Parties Involved:

- Applicant: R&S Fifth St. Apartments, 2025 Fourth Street, Berkeley, CA 94710
- Property Owner: R&S Fifth St. Apartments, 2025 Fourth Street, Berkeley, CA 94710
II. Project Description

A. Background:

On October 10, 2013, the Zoning Adjustments Board (ZAB) granted Use Permit #13-10000022, to allow the development of mixed-use development consisting of 58 residential units and one commercial unit at the subject site. On June 11, 2015, the ZAB approved Modification ZP#2015-0125, to substitute up to 10 percent of the parking required for the commercial and residential uses (six spaces) with additional bicycle and motorcycle parking, and that furthermore the six spaces affected can be designated for use by occupants of 824 University (The Aquatic, Phase II). Also, on June 11, 2015, the ZAB approved a use permit to establish a veterinary clinic in the commercial space at 800 University.

B. Description:

The applicant proposes to allow condominium ownership of the 58 residential units, as well as the single commercial unit of this project, now known as The Aquatic, Phase I. The project was designed to straddle the boundary of the C-W and MU-R Districts, with a unified structure having an articulated rooﬁline that respects the applicable use and height requirements of both districts and the surrounding area. The northern portion of the project in the C-W District would have ﬁve stories with both residential and ground ﬂoor commercial space, while the southern portion in the MU-R District would have four stories and would be exclusively residential. Parking would be provided on the ground ﬂoor within a garage and in an open lot to the rear of the building. The project was designed to qualify for a density bonus of 18 percent by providing four units for Very Low Income residents.

The project is nearing completion and the applicant’s intent is to lease all of the residential units as apartments, as well as the commercial unit (veterinary clinic). Approval of the condominium map would allow the owner to retain the option of selling the units as condominiums in the future. In the event the Owner chooses to sell the units, the City and the Owner shall enter into a new regulatory agreement that implements the provisions of BMC Chapter 23C that are applicable to condominium projects.

III. Analysis

A. Tentative Map Ordinance (Berkeley Municipal Code Chapter 21.16) Consistency:

The Planning Commission may approve, conditionally approve, or deny the tentative map in accordance with Berkeley Municipal Code (BMC) Section 21.16.047.

According to this section of the Code, the Planning Commission shall deny approval of the tentative map if it can make any of the following ﬁndings from BMC Section 21.16.047.A through 21.06.047.G. Staff analysis relating to whether the ﬁndings can be made are included.

A: That the proposed map is not consistent with the applicable general and speciﬁc plans.
B. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

C. The site is not physically suitable for the proposed density of development.

Staff Analysis: The subject property and proposed improvements were evaluated and found to be consistent with the General Plan and Zoning Ordinance, and the density was found to be physically appropriate for the site and consistent with applicable zoning regulations, in conjunction with the Zoning Permits issued by the Zoning Adjustments Board on December 10, 2013 (and subsequent modifications). Staff does not believe that either Findings A, B or C can be made.

D. That the design of the subdivision or the type of the improvements is likely to cause environmental damage or substantially and avoidably injure fish, or wildlife, or their habitat.

E. That the design of the subdivision or the type improvements is likely to cause serious public health problems.

Staff Analysis: The potential for substantial environmental damage, or harm to fish and wildlife, or their habitat, or the likelihood of public health problems was evaluated when the Use Permits for the project were approved by the ZAB in order to determine whether any of the exceptions to the CEQA Exemption for in-fill development were present. No potential environmental or public health impacts were found. Staff does not believe that either Findings D or E can be made.

F. That conflicts with existing public access easements, in accordance with Section 6674(g), of the Subdivision Map Act, which states: “That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.”

Staff Analysis: The City of Berkeley Public Works department has verified that the proposed Subdivision will not conflict with any easements of record, or with any easements established by judgment of court.

G. That the design of the subdivision does not provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.
**Staff Analysis:** Subdivision of the project into condominiums will not alter passive or natural heating or cooling opportunities since it is limited to the subdivision of existing multiple family residences. Staff does not believe that Finding G can be made.

**B. Density Bonus:**

Government Code Section 65915 requires cities to grant a density bonus, and incentives, to housing projects that meet certain affordability levels. Based on the City’s application of Density Bonus law, staff determined that the base project for this development site would have 49 units. To qualify for a bonus, such a project would need to provide at least three Very Low Income units, or five percent of the base project. In this case, the project would provide four Very Low Income units, or 8.1 percent of the base project.

To allow for construction of the nine density bonus units the applicant requested, and was granted, the following waivers and modifications apply:

1) Waiver/modification of height/story limit to allow five stories & 55-feet: Section 23E.64.070.B limits building height in the C-W District to four stories & 50-feet. The project includes a fifth story to accommodate the density bonus units; and

2) Waiver/modification of story limit to allow four stories & 45-feet: Section 23E.84.070.B limits building height in the MU-R District to three stories & 35-feet. The project includes a fourth story to accommodate the density bonus units.

**C. Affordable Housing Mitigation Fee:**

The Berkeley Municipal Code (BMC) Chapter 22.20.065 requires an affordable housing impact fee on new market-rate rental units to mitigate the impacts of those new units on the need for affordable housing. The City Council adopted Resolution No. 65,920—N.S. to set the Affordable Housing Impact Fee at $28,000 per unit, and then adopted Resolution No. 66,015—N.S. to provide an $8,000 discount per unit for certain projects. The formula for the Affordable Housing Mitigation Fee (BMC 22.20.065.D) is:

\[
[(A-B) \times \text{Fee}] - [(B/((A-B) \times 10\%)) \times (A-B) \times \text{Fee}]
\]

Where \( A = \) Total number of units in the project and \( B = \) Number of Very Low-Income Units provided in the project.

With a total of 58 units, four Very Low Income units, and a Fee of $20,000 per unit, the total Affordable Housing Mitigation Fee paid to the City for this project as a rental was $280,000.

**D. General Plan Consistency:**

**General Plan Policy Analysis:** The 2002 General Plan contains several policies applicable to the project, including the following:
1. **Policy LU-3—Infill Development**: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.

   **Staff Analysis**: The proposed project is an infill development project that adds 58 units of housing in a location that is planned for mixed-use development. The site straddles the boundary of two zoning districts, and has been designed to respect the zoning requirements of each.

2. **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.

   **Staff Analysis**: The project is consistent with the applicable zoning standards for the C-W and MU-R Districts, respectively, and will further goals of revitalizing West Berkeley.

3. **Policy UD-24—Area Character**: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

   **Staff Analysis**: With five (5) stories along University Avenue stepping down to four (4) stories along Fifth Street, the project reinforces the City’s plans for redeveloping underutilized sites in a way that would increase the quality of the built environment and provide new housing and commercial opportunities.

4. **Policy UD-32—Shadows**: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

   **Staff Analysis**: The project will not cast shadows on any nearby residential structures in the winter months, and will only shadow the walls of one residence in the late afternoon hours of the summer season.

5. **Policy H-19—Regional Housing Needs**: Encourage housing production adequate to meet the housing production goals established by ABAG’s Regional Housing Needs Determination for Berkeley.

6. **Staff Analysis**: By adding 58 housing units, the project helps Berkeley meet its regional housing need.

7. **Policy H-1—Low and Moderate Income Housing**: Increase the number of housing units affordable to low and moderate-income Berkeley residents.

   **Staff Analysis**: The project provides four units affordable by Very Low Income residents.

8. **Policy EM-5—“Green” Buildings**: Promote and encourage compliance with “green” building standards.
9. **Policy UD-33–Sustainable Design:** Promote environmentally sensitive and sustainable design in new buildings.

**Staff Analysis:** The project will meet the City’s Green Building requirements.

**E. Subdivision Map Act Consistency:**

The Public Works Department has reviewed the form and content of the Tentative Tract Map, and has verified that it contains the content required by the Subdivision Map Act, including the subdivision number, the legal address of the legal owner or subdivider, sufficient legal description to define the boundary of the proposed subdivision, the location, pavement and right of way width, grade and name of existing streets or highways, the widths, location, and identity of all existing easements. The Public Works Department has determined that the Tentative Tract Map is suitable for review by the Planning Commission.

**IV. Public Notice**

A Public Hearing Notice:

- appeared in the Berkeley Voice on Friday, December 4, 2015;
- was posted at the subject property on Thursday, December 3, 2015;
- was mailed to the applicant and owner of the subject property, and to owners and occupants of properties abutting upon or confronting 800 University Avenue, on Friday, December 4, 2015.

At the time of the writing of this report, there have been no responses.

**V. Recommendation**

Because of the project’s consistency with Berkeley’s Tentative Map Ordinance, its Condominium Conversion Ordinance, and General Plan, and because it presents minimal impact on surrounding properties, Staff recommends that the Planning Commission:

**APPROVE** Tentative Map #8183 pursuant to BMC Section 21.16.047 and subject to the attached Findings and Conditions (see Attachment 1).

**Attachments:**

1. Findings and Conditions
2. Tentative Tract Map #8183
3. Condominium Plans for Tentative Map #8183
4. Project Statistics
5. Notice of Public Hearing

**Staff Planner:** Annelise Dohrer, adohrer@ci.berkeley.ca.us. (510) 981-7414; Doug Donaldson, Consulting Planner, 510-528-3684.
January 5, 2016

R&S Fifth St. Apartments,
2025 Fourth Street
Berkeley, CA 94710

RE: Notice of Decision: Tentative Tract Map 8183 – Fifty-nine (59) unit condominium project at 800 University Avenue.

Dear Applicant,

The Planning Commission of the City of Berkeley, after conducting a public hearing, approved Tentative Tract Map 8183 for a fifty-nine (59) unit condominium project consisting of fifty-eight (58) residential units, and one (1) commercial unit in an existing 5-story building, on December 16, 2015, subject to the attached findings, conditions, and plan.

The Commission decision is subject to appeal to the City Council. It may be appealed by the subdivider or other persons aggrieved by the decision for a period of ten (10) days from the date of the Commission’s action. Such appeal must be filed in writing with the City Clerk. The Commission’s action may also be certified or reviewed by the City Council for a period of twenty-one (21) days from the date of the Commission’s action. City Council is currently on winter recess. They will return January 19th at which time the twenty-one (21) day period will begin.

The approval of the Tentative Tract Map will expire twenty-four (24) months from the date of the Planning Commission’s approval of the map subject to the conditions described in Section 66452.6 of the State Subdivision Map Act. An extension to the expiration date may be approved as provided in Section 21.16.080 of the Subdivision Ordinance.

Commission Vote:
Ayes: Stephen Murphy (Chair), Deborah Matthews (Vice Chair),
Benjamen Bartlett, Gene Poschman, Harry Pollack, Zachary Trevino, Karen Chapple, Tracy Davis.

Noes: None.
Abstain: None.
Absent: Jim Novosel
Recused: None.
cc: Building and Safety Division  
City Clerk  
Main Library – Reference Desk  
Public Works Department – Vincent Chen

Attachments

1. Findings and Conditions  
2. Tract Map  
3. Condominium Plans

Staff Planner: Annelise Dohrer, adohrer@ci.berkeley.ca.us, (510) 981-7417.
ATTACHMENT 1

FINDINGS AND CONDITIONS
DECEMBER 16, 2015

CEQA FINDINGS

1. Construction of the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”) and the approval of the Tentative Map is also categorically exempt pursuant to Section 15331 of the CEQA Guidelines which involves the operations and permitting of existing facilities involving no expansion of use beyond prior approvals. 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.

TENTATIVE MAP FINDINGS

2. Pursuant to Berkeley Municipal Code Section 21.16.047, the Planning Commission cannot make any of the seven findings for denial of the tentative map for the following reasons:

   A. The proposed Tentative Map is consistent with the applicable general plan policies because:

       1. The project is consistent with Policy H-19 because by adding 58 housing units, the project helps Berkeley meet its regional housing need.
       2. The project is consistent with Policy H-1 because it will provide four (4) units affordable by Very Low Income residents.

   B. The design and development of the project proposed to be subdivided is consistent with the City of Berkeley’s General Plan because:

       1. The project is consistent with Policy LU-3 in that it is an infill development project that adds 58 units of housing in a location that is planned for mixed-use development. The site straddles the boundary of two zoning districts, and has been designed to respect the zoning requirements of each.
       2. The project is consistent with Policy LU-7 because it conforms to the applicable zoning standards for the C-W and MU-R Districts, respectively, and will further goals of revitalizing West Berkeley.
       3. The project is consistent with Policy UD-24 in that the project reinforces the City’s plans for redeveloping underutilized sites in a way that would increase the quality of the built environment and provide new housing and commercial opportunities.
       4. The project is consistent with Policy UD-32 in that it will not cast shadows on any nearby residential structures in the winter months, and will only shadow the walls of one residence in the late afternoon hours of the summer season.
       5. The project is consistent with Policies EM-5 and UD-33 because it will meet the City’s Green Building requirements.
C. The project site and proposed improvements were evaluated and found to be consistent with the General Plan and Zoning Ordinance, and the density was found to be physically suitable for the site and consistent with applicable zoning regulations, in conjunction with the Zoning Permits issued by the Zoning Adjustments Board on December 10, 2013 (and subsequent modifications).

D. The project will not have negative environmental effects or substantially and avoidably injure fish or wildlife in their habitat since it is limited to the subdivision of a mixed-use building that was evaluated to determine whether any of the exceptions to the CEQA Exemption for in-fill development relating to environmental damage or harm to fish and wildlife or their habitat, and none were found.

E. The project is not likely to have serious public health problems since it involves the subdivision of a newly constructed mixed-use building that is built to current building code standards on a site that was evaluated under CEQA to determine whether any significant public health problems were present, and none were found.

F. The project will not conflict with any public access easements, as determined pursuant to a review by the Berkeley Public Works Department.

G. The project will not alter passive or natural heating or cooling opportunities because it was designed to minimize impacts on solar access and minimize detrimental shadows, in that the new building is set back approximately 60 feet from the rear yard fences of the three abutting single-family lots, and the height steps down in the south and eastern sides of the project, such that the sun shadow impacts on the abutting residences will be minimized.

STANDARD CONDITIONS

1. The Final Map shall be submitted for certification and shall be recorded in compliance with the Berkeley Municipal Code, Title 21, and with the Subdivision Map Act of the State of California.

2. Prior to approval of the Final Tract Map, an Affordable Housing Agreement shall be entered into with the City’s Housing Department that specifies the number, location, and pricing of units that will be affordable in accordance with Condition 68 of City Council Resolution No. 62,833 –N.S.

3. A copy of the Conditions, Covenants, and Restrictions shall be filed with the Planning and Development Department prior to approval of the Final Map.

4. The Standard conditions of approval for all subdivisions, new condominiums and commercial condominium conversions within the City of Berkeley, dated January 1994, applies and shall be satisfied prior to approval of the Final Map.
EXHIBIT "A"

NOTES AND DEFINITIONS:
1. THIS PROJECT IS LOCATED IN LOT 1 OF TRACT MAP NO. 8183 IN THE CITY OF BERKELEY, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AS PER MAP FILED IN BOOK , PAGE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER. THIS PROJECT IS COMPOSED OF A COMMON AREA AND 58 UNITS.

2. THE CONDOMINIUM DELINATED HEREIN IS SUBJECT TO THE PROVISIONS OF THE DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT, TITLE 6 PART 4, DIVISION SECOND OF THE CIVIL CODE.


4. THIS PLAN AND THE DIMENSIONS SHOWN HEREIN ARE TO CONFORM TO CIVIL CODE 4285, WHICH REQUIRES A THREE DIMENSIONAL DESCRIPTION OF THE PROJECT IN SUFICIENT DETAIL TO IDENTIFY THE COMMON AREAS AND EACH SEPARATE INTEREST. THE DIMENSIONS SHOWN HEREIN ARE NOT INTENDED TO BE SUFICIENTLY ACCURATE TO USE FOR THE COMPUTATION OF FLOOR AREA OR AIR SPACE VOLUME IN ANY OR ALL OF THE UNITS.

5. THE DIAGRAMMATIC PLANS INTENTIONALLY OMIT DETAILED INFORMATION OF INTERNAL PARTITIONING WITHIN INDIVIDUAL UNITS. LIKEWISE, SUCH DETAILS AS PROTRUSIONS OF VENTS, BEAMS, COLUMNS, WINDOW CASINGS, AND OTHER SUCH FEATURES ARE NOT INTENDED TO BE REFLECTED ON THIS PLAN.

6. THE COMMON AREA IS ALL OF THE LAND AND REAL PROPERTY INCLUDED WITHIN THE BOUNDARY LINES OF SAID LOT 1, EXCEPT THOSE PORTIONS SHOWN AND DEFINED HEREIN AS CONDOMINIUM UNITS.

7. FOR ALL OTHER DEFINITIONS REFER TO THE "DECLARATIONS OF THE COVENANTS, CONDITIONS AND RESTRICTIONS OF THE 800 UNIVERSITY AVENUE CONDOMINIUMS".

8. IF THERE ARE ANY MATTERS OF CONFLICT OR INCONSISTENCIES BETWEEN THIS CONDOMINIUM PLAN AND THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, THEN THE PROVISIONS OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS SHALL PREVAIL.

SURVEYOR'S STATEMENT:
I HEREBY STATE THAT I AM A LICENSED PROFESSIONAL LAND SURVEYOR OF THE STATE OF CALIFORNIA; THAT THIS CONDOMINIUM PLAN, CONSISTING OF SEVEN (7) SHEETS, CORRECTLY REPRESENTS A TRUE AND COMPLETE DESCRIPTION OF THE PROJECT MADE FROM PLANS IN NOVEMBER 2013 AND THE PLAN REFERS TO OR SHOWS MONUMENTATION ON THE GROUND AND A THREE DIMENSIONAL DESCRIPTION OF A CONDOMINIUM PROJECT IN SUFICIENT DETAIL TO IDENTIFY THE COMMON AREA AND EACH SEPARATE INTEREST PURSUANT TO THE REQUIREMENTS OF CALIFORNIA CIVIL CODE, SUBSECTION 4285.

MICHAEL J. FOSTER, L.S. 7170
EXPIRATION DATE: DECEMBER 31, 2015

CONDOMINIUM PLANS FOR THE 800 UNIVERSITY AVENUE CONDOMINIUMS
LOTS 19 & 20 AND A PORTION OF LOTS 1, 2, 3, 7 AND 18, BLOCK 95, MAP OF THE SISTERN A TRACT, (7 M. 43)
BERKELEY, COUNTY OF ALAMEDA, STATE OF CALIFORNIA
MARCH, 2014

OWNER/SUBdivider:
R&S 5TH AVENUE APARTMENTS, LLC
2025 4TH STREET
BERKELEY, CA 94710

SURVEYOR:
BAY AREA LAND SURVEYING INC
951 MITCHELL WAY
EL SOBRANTE, CA 94803

APN'S 056-1961-002-08, 005 & 002-09 SH T. 1 OF 7 UNIVERSITY1997 JOB NO. 11-1997
6TH. STREET (60' WIDE)

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BENCHMARK:
CITY OF BERKELEY WELL
MONUMENT PIN AT THE
INTERSECTION OF ADDISON
AND 4TH STREET. EL. = 13.88
BASED UPON CITY OF
BERKELEY DATUM.

GRAPHIC SCALE
1 inch = 30 ft.

5TH. STREET (60' WIDE)

AREA = 28,302± SQ. FT.

800 UNIVERSITY AVENUE

APN'S 056-1961-002-08, 005 & 002-09  SHT. 2 OF 7  UNIVERSITY-97  JOB NO. 11-1997