

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

MARCH 14, 2013

### 2024 Durant/2025 Channing

**Use Permit #12-1000017 to demolish a church and construct a six-story, 78-unit, apartment building with a mix of one, two, and three bedroom units and basement level parking with 34 parking spaces.**

#### CEQA FINDINGS

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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 15332 of the CEQA Guidelines (“In-Fill Development Projects”). The project meets all of the requirements of this exemption, as follows:
  - A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations, with the exception of waivers/modifications and concessions pursuant to State density bonus law.
  - B. The project occurs within the Berkeley city limits on a project site of no more than five acres, and is surrounded by urban uses.
  - C. The parcels within the project site have already been developed with commercial/institutional uses, have been paved and have no value as habitat for endangered, rare or threatened species.
  - D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. Regarding traffic, the project will not exceed significance criteria for any intersections or residential streets. The traffic engineer has reviewed the project’s traffic study and concurs with its finding that there will be no significant traffic impacts.
  - E. The site is already served by required utilities and public services, which will also adequately serve the project.

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 adversely affect any historical resources. It should also be noted that the project will be subject to all applicable mitigation measures of the Downtown Area Plan EIR.

## GENERAL NON-DETRIMENT FINDING

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2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the City finds that the proposed project, 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, for the following reasons:
- A. The proposed project is located in the buffer area of the newly implemented Downtown Mixed-Use District with the R-3 Multi-Family Residential District to the west and the Downtown Mixed Use Corridor Area and Shattuck Commercial district to the east. As such, the proposed project represents a transition between the lower massing of the R-3 District (35-foot height limit) and the 75-foot height limit of the Downtown Corridor. At six stories and 60-feet, the project is compatible with the scale of the surrounding one- to six-story buildings, and will be proportionate with the new development opportunities in the C-DMU.
  - B. To reduce impacts on the Stuart Pratt senior housing development, the project is designed with an average of 21.3 feet west side setback instead of expanding the footprint to the maximum allowable setback (5 feet). Useable open space (an outdoor patio) is located adjacent to the Stuart Pratt, thereby providing ample spacing between the two buildings. Additionally, both driveway access and trash bin storage are located on the commercial (northeast) side of the building, while placing the lobby entrance and landscaping next to the senior housing complex. To further limit impacts on the adjacent residences, all proposed balconies on “The Durant” are restricted to the front corners of the building and to areas that are above the neighboring buildings.
  - C. To mitigate potential noise impacts from the useable open space, the project has been designed so that the Channing rooftop garden is primarily a visual landscaped backdrop from the windows in the workout room and is now considered a “passive” landscape area not designed for outdoor gathering. The Durant rooftop garden has been redesigned to provide more intimate gathering patio areas. Each of these patios has been pulled away from the building’s west edge, away from the senior housing project, to help reduce noise impacts on the neighboring property and screening elements (green screens, planters, etc.) have been incorporated into the design to provide windbreaks and additional buffering of the ambient noise. The ground level patio area has been redesigned to absorb and reduce noise away from the neighboring property by incorporating such features as natural fencing, a 45% slanted screen on the west fence to deflect noise back into The Durant, and outdoor drapery material to absorb and soften the sound, and a water feature as mechanism for masking ambient noise.

- D. The shadow studies submitted with the application illustrate that the properties immediately to the west of the subject project (the six-story senior housing complex at 2020 Durant and the three-story multi-unit residence at 2023 Channing) will experience shading during the morning hours throughout the year, with all shading impacts over by 11:00 a.m., even during the winter months. Similarly, the properties immediately to the east of the project (the five-story multi-family housing complex at 2029 Channing and the Staples parking lot at 2352 Shattuck Avenue) will experience shading during the afternoon hours throughout the year. At no time of year would the proposed project cause adjacent properties to lose access to direct sunlight for more than a couple of hours per day. Such shading impacts are to be expected in the Berkeley downtown urbanized area. Shadow impacts are, therefore, found to be non-detrimental.
- E. The project exceeds the C-DMU parking requirement by eight spaces. Pursuant to Section 23E.68.080.I, the project will make one space available to car sharing services such as City Carshare or Zipcar. In addition, residents will not be eligible for Residential Preferential Parking (RPP) permits, and the nearest non-RPP area is several blocks away. These factors will help reduce car ownership in the project and discourage use of on-street parking by residents who do not park on site.
- F. Pursuant to Section 23E.68.070.D, the project provides private open space for project residents. The Design Review Committee (DRC) has reviewed and approved the landscaping plan for this area and the other open spaces on the site, subject to further details to be worked out during final design review. Furthermore, the project will be subject to any fee adopted by the Council to implement the Streets and Open Space Improvement Plan (SOSIP), in an amount not to exceed \$2.23 per square foot of net new residential floor area and \$1.68 per square foot of net new commercial gross floor area.
- G. The project would provide seventy-eight housing units, which would help the City to meet its housing goals.
- H. The project would promote environmental sustainability by achieving a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC), or by attaining building performance equivalent to this rating
- I. The project helps encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, jobs, basic goods and services, and the UC campus, and by providing car share spaces and transit benefits.

### DEMOLITION OF EXISTING BUILDINGS

- 3. Pursuant to Berkeley Municipal Code Section 23C.08.050.D, the City finds that the proposed demolition of the existing church building will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City,

because the building is not architecturally or historically significant and does not provide any substantial benefits to the neighborhood or the City that would equal the benefits of the proposed project. Furthermore, on September 6, 2012, the Landmarks Preservation Commission (LPC) considered information regarding the history of the buildings and took no action to initiate it as a landmark or structure of merit. The City also finds that this demolition is necessary to allow construction of the proposed multi-family building.

#### OTHER REQUIRED FINDINGS

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4. Pursuant to Berkeley Municipal Code Section 23E.68.090.B, the City finds that the proposed project is consistent with the purpose of the C-DMU District, because it is consistent with the goals and policies of the Downtown Area Plan as discussed in the project staff report dated March 14, 2013. The City also finds that the project is compatible with the surrounding uses and buildings, as discussed in Findings 2.A, 2.B and 2.C above.
5. Pursuant to Berkeley Municipal Code Section 23E.68.090.D, the City finds that the new building is compatible with the visual character and form of the District, as the project received a favorable recommendation from the DRC. The City also finds that no designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed project.
6. Pursuant to Berkeley Municipal Code Section 23E.68.090.F, the City finds that the modified setback along the west property line of the site will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk, because the area of the modification is not located immediately adjacent to any residential windows or open space. See discussion in Finding 2.D. above. The modified increased setbacks along both frontages will result in less solar and wind impacts on the sidewalks as the building will have greater than standard setback from the public right-of-way.
7. Pursuant to Berkeley Municipal Code Section 23E.04.050.E, the City finds that the reduction in the front yard setback of that portion of the Channing frontage that confronts residentially zoned property from 15' down to 13' is permissible in that it allows a continuous setback for the subject building which confronts both residential and commercially zoned properties. The continuous 13' setback provides, on average, a greater overall building setback than if built 15' at the residential portion and with no setback along the commercial portion as required. The reduction in setback, therefore, provides overall greater privacy to the lot in the residential District.

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## STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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### **1. Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the first sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. The second sheet may also be used if the first 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 approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

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.56.020.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. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided that such variation does not increase a structure's height, reduce the minimum distance to any property line, and/or conflict with any special objective sought by the Board.

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

Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether

oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.

**6. Subject to all City and Other Regulations (Section 23B.56.040)**

The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

**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.

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

A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.

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.

C. 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.

**9.** 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.

**CONDITIONS BY PROJECT TYPE**

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**Prior to Issuance of Any Building Permit**

**10.** Parcel Merger – Prior to issuance of a building permit, the applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.

11. Affordable Housing Mitigation Fee: Consistent with BMC §22.20.065, the applicant shall pay the affordable housing impact fee prior to issuance of a certificate of occupancy, consistent with a schedule approved by the City Manager or her designee.
12. SOSIP Impact Fee: As required by BMC Section 23E.68.075, the project shall pay an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP), as adopted by the City Council. The City shall deposit this payment into the Downtown Streets and Open Space Improvement Fund (SOSIF), or its equivalent, to help pay for the design and construction of the SOSIP Major Projects. In no case shall the required fee exceed \$2.23 per square foot of the project's net new residential gross floor area. "Gross Floor Area" shall be as defined in BMC Section 23F.04.010. The fee shall be calculated and assessed consistent with the policies of the *Downtown Area Plan Streets and Open Space Improvement Fee Nexus Study*, (Draft July 2011,) or subsequent iterations as adopted by the City Council. At the City's discretion, the City Manager or her designee may reduce the required SOSIP Impact Fee, on a \$1 to \$1 ratio, as a credit for constructing all or a portion of a major SOSIP Improvement Project. The fee shall be paid according to a schedule established by the City Manager or her designee.
13. Address Assignment. Prior to applying for a building permit, the applicant shall file an "Address Assignment Request Application" with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new addresses shall be assigned and entered into the City's database prior to issuance of the building permit.
14. Green Building. This project shall attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer. The applicant shall review the Draft LEED NC Checklist and submit any changes that affect the project's score, along with comments on revised measures, to the project planner.
15. Building Height. Project plans submitted for a building permit shall include both a North South section that labels the height of each floor, including top of roof, as well as a detailed section of the roof area. The section should clearly demonstrate that the building is a maximum of sixty feet (60') in height as measured to the top of the roof membrane (average height of roof membrane if not horizontal) and the parapet shall not exceed sixty-five feet (65').
16. Noise Management. Prior to issuance of a building permit, the applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit this record to the project planner upon request.

□ Noise Management Individual \_\_\_\_\_  
Name Phone #

17. Transportation Management Permit. The applicant and all persons associated with the project are hereby notified that a Transportation Management Permit (TMP) would be required under any of the following circumstances:

- Alterations, closures, or blockages to sidewalks or pedestrian paths
- Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
- Storage of building materials, dumpsters, debris anywhere in the public ROW
- Provision of exclusive contractor parking on-street
- Significant truck activity.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Public Works Traffic Engineering (981-6400) reviews all submitted TMP requests.

The TMP may include designation of a specific truck haul route. Meter heads (if in the construction area) shall be removed only by City staff. Contact the site inspector 72 hours in advance of required removal so arrangements can be made.

18. Final Design Review. The Project requires approval of a Final Design Review application by the Design Review Committee. Final plans shall address the following conditions:

- South elevation of the Durant side of the project requires more windows and articulation.
- Address reflective roof surface on the Channing side of the project and reduce its visual impact as much as possible.
- Now that the units will be open to families, not just students, reconsider the proposed horizontal railings for a safer design and present at Final Design Review.

19. Interior Noise. As required by the International Building Code, Section 1207.12, prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic professional certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard. Mechanical ventilation meeting Building Code requirements shall be provided in dwelling units that cannot meet the applicable noise standard with windows opened.

20. **DAP MM NOI-5:** Prior to the issuance of building permits, the applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to



reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction indicated in Condition 33 of this Use Permit, as well as technically and economically feasible controls to meet the requirements of the Berkeley Municipal Code. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical.

- Construction equipment should be well maintained and used judiciously to be as quiet as practical.
- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
- Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
- Prohibit unnecessary idling of internal combustion engines.
- If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
- Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
- Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- Route construction related traffic along major roadways and away from sensitive receptors where feasible.
- Businesses, residences or other noise-sensitive land uses within 500 feet of construction sites should be notified of the construction schedule in writing prior to the beginning of construction. Designate a “construction liaison” that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the liaison at the construction site.

**21. Storm Water Requirements.** The applicant shall demonstrate compliance with the requirements of the City’s National Pollution Discharge Elimination System (NPDES) permit as described in Berkeley Municipal Code Section 17.20. The following conditions apply:

- A. The project plans shall identify and show site-specific BMP's 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 storm water 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 storm water 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 storm water 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. Beginning August 15, 2006, 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 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.

- 22. Soil and Groundwater Management Plan.** A Soil and Groundwater Management Plan (SGMP) shall be required for all non-residential projects, and residential and mixed-use projects with four or more units, that: (1) are located in the Environmental Management Area (EMA), as shown on the most recent City of Berkeley EMA map, and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be submitted to the Toxics Management Division (TMD) with the project’s building permit application and shall be approved by TMD prior to issuance of the building permit. The EMA map is available online at:  
[http://www.ci.berkeley.ca.us/Planning\\_and\\_Development/Toxics\\_Management/Environmental\\_Management\\_Area.aspx](http://www.ci.berkeley.ca.us/Planning_and_Development/Toxics_Management/Environmental_Management_Area.aspx)

The SGMP shall identify procedures for soil and groundwater management including identification of pollutants and disposal methods, and shall comply with the hazardous materials and waste management standards required by Berkeley Municipal Code Section [15.12.100](#), the San Francisco Bay Regional Water Quality Control Board’s Order No. R2-2009-0074 C3 and C6, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) Section 66360, et. seq.), and the East Bay Municipal Utility District’s Ordinance 311.

The SGMP shall also include:

- A requirement that TMD be notified within 24 hours of the discovery of any previously undiscovered contamination;
- Procedures to manage odors, dust and other potential nuisance conditions expected during development;
- A requirement that the name and phone number of the individual responsible for implementing the SGMP and responding to community questions and complaints be posted at the construction site on the same notice required under Condition 19 for noise management.

TMD shall review the SGMP and may require additional information or impose additional conditions as deemed necessary to protect human health and the environment. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

- 23. Demolitions.** Prior to approving any permit for partial or complete demolition activities, a hazardous 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, PCB containing equipment, treated wood and mercury containing devices. The survey shall include hazardous materials removal and disposal procedures to be implemented that fully comply with hazardous waste generator requirements (Title 22

California Code of Regulations (CCR) Section 66360 et seq). If the survey identifies hazardous materials, the removal and disposal procedures included in the survey shall become conditions 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.

**During Construction:**

24. The control measures of the Noise Reduction Program required under Condition 23 shall be implemented throughout construction of the project. Pile driving shall be prohibited. The use of vibratory rollers or tampers capable of generating substantial vibrations within adjacent structures shall be avoided.
25. The height and location of the proposed structure, property lines and spot elevations shall be verified by a licensed surveyor or engineer on site after foundation forms are placed, but before pouring concrete or placing construction material in its permanent position. This verification shall be to the satisfaction of the Zoning Officer.
26. **DAP MM CUL-3:** If archaeological resources are uncovered during construction activities, all work within 50 feet of the discovery shall be redirected until a qualified archaeologist can be contacted to evaluate the situation, determine if the deposit qualifies as an archaeological resource, and provide recommendations. If the deposit does not qualify as an archaeological resource, then no further protection or study is necessary. If the deposit does qualify as an archaeological resource, then the impacts to the deposit shall be avoided by project activities. If the deposit cannot be avoided, adverse impacts to the deposit must be mitigated. Mitigation may include, but is not limited to, archaeological data recovery. Upon completion of the archaeologist's assessment, a report should be prepared documenting the methods, findings and recommendations. The report should be submitted to the City, the project proponent and the Northwest Information Center (NWIC). The archaeologist shall be selected by the City and the applicant shall pay for all required work by the archaeologist under this mitigation.
27. **DAP MM CUL-4:** Should paleontological resources be encountered during construction or site preparation activities, such works shall be halted in the vicinity of the find. A qualified paleontologist shall be contacted to evaluate the nature of the find and determine if mitigation is necessary. All feasible recommendations of the paleontologist shall be implemented. Mitigation may include, but is not limited to, in-field documentation and recovery of specimen(s), laboratory analysis, the preparation of a report detailing the methods and findings of the investigation, and curation at an appropriate paleontological collection facility. The paleontologist shall be selected by the City and the applicant shall pay for all required work by the paleontologist under this mitigation.
28. **DAP MM CUL-5:** If human remains are encountered during construction activities, all work within 50 feet of the remains should be redirected and the County Coroner

notified immediately. At the same time, an archaeologist shall be contacted to assess the situation. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and any associated grave goods. The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion of the archaeologist's assessment, a report should be prepared documenting methods and results, as well as recommendations regarding the treatment of the human remains and any associated archaeological materials. The report should be submitted to the City, the project proponent and the NWIC.

- 29. DAP MM AIR-3:** The following dust and particulate control measures shall be implemented during construction:

Dust (PM10) Control Measures:

- A. Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times.
- B. Cover all hauling trucks or maintain at least two feet of freeboard.
- C. Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
- D. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
- E. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
- F. Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles.
- G. Limit traffic speeds on any unpaved roads to 15 mph.
- H. Replant vegetation in disturbed areas as quickly as possible.
- I. Suspend construction activities that cause visible dust plumes to extend beyond the construction site.

Diesel Particulate Matter and PM2.5 Control Measures:

- A. Clear signage at all construction sites will be posted indicating that diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite or adjacent to the construction site.
- B. Opacity is an indicator of exhaust particulate emissions from off-road diesel powered equipment. The project shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.

- C. The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g. compressors).
  - D. Properly tune and maintain equipment for low emissions.
- 30.** Construction Hours. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday. It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. The project shall not be allowed more than 15 extended working days. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.
- 31.** Construction Noise. To ensure compliance with the City of Berkeley's Noise Ordinance, the Zoning Officer is authorized to place additional limitations on the hours of operation and/or halt construction until corrective measures are taken
- 32.** 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.
- 33.** 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.
- 34.** 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.
- 35.** 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.
- 36.** Public Works. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
- 37.** Public Works. After construction is complete, all drainage culverts shall be inspected for accumulated sediment. If sediment accumulation has occurred, these drainage structures shall be cleared of debris and sediment.

38. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season (between October 15 and April 15), 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.
39. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season (November through March) 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.
40. Toxics Management, Clean up. Contaminated sites shall be assessed and cleaned up as required by the TMD under authority of BMC 15.12.100 and Title 23, CCR, Chapter 16, Section 2652 et seq. The cleanup shall be risk based and follow California Environmental Protection Agency policies and procedures including State Water Board's Leaking Underground Fuel Tank (LUFT) Manual, Site Cleanup Program (SCP) and other CalEPA guidance.

**Prior to Final Inspection or Issuance of Occupancy Permit:**

41. The project shall conform to the plans and statements in the Use Permit.
42. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 1, 2013.
43. Green Building. Proof of Compliance to LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC), or equivalent.

**At All Times:**

44. The project shall have a live-in building manager.
45. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
46. 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.
47. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.
48. Hazardous Materials Building Plan. A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted to TMD within 30 days if

on-site hazardous materials exceed in aggregate any of the following: 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet of gases at standard temperature and pressure.

### **Transportation/Parking Requirements:**

49. Residential Permit Parking. Consistent with BMC 23E.68.080.F, no Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
50. Parking to be Leased or Sold Separately. Consistent with BMC 23E.68.080.G, all residential parking spaces shall be leased or sold separate from the rental or purchase of dwelling units.
51. Transit Subsidy. Consistent with BMC 23E.68.080.H, and subject to the review and oversight of the Transportation Division Manager, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or GLA resident and a notice describing these transportation benefits shall be posted in a location or locations visible to employees and residents:
  - A. A pass for unlimited local bus transit service; or
  - B. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.
52. Car Sharing Spaces. Consistent with BMC 23E.68.080.I, at least one vehicle sharing space shall be provided on the site as follows:
  - A. At least 90 days prior to issuance of a certificate of occupancy, the property owner shall offer the spaces at no cost to recognized vehicle sharing service providers, or VSSPs (e.g., City CarShare and Zipcar), and shall provide written documentation of such offers to the Zoning Officer and Transportation Division Manager.
  - B. Prior to issuance of a certificate of occupancy, the property owner shall provide to the Zoning Officer and Transportation Division Manager either (1) a signed agreement with a VSSP to provide shared vehicles at the site, or (2) written documentation that no VSSPs have accepted the owner's offer.
  - C. Vehicle sharing spaces shall be available to VSSPs for the life of the building. If no VSSP requests a space, the space may be leased for use by other vehicles, but



must be made available to a VSSP requesting such space within 90 days of such request.

- D. If a VSSP discontinues use of a vehicle sharing space or spaces, the property owner shall offer the space(s) to other VSSPs within 30 days, and provide written documentation of such offers to the Zoning Officer and Transportation Division Manager. Prior to leasing the space(s) to other users, the property owner shall follow the procedure in paragraph B above.
- E. Vehicle sharing spaces at the site shall be accessible to all VSSP members in the same manner and during the same hours as other vehicles offered by the VSSP.

**53.** Parking TDM Plan. Consistent with BMC 23E.68.080.J, a Parking Transportation Demand Management (PTDM) compliance report shall be submitted to the City's Public Works Department, on a form acceptable to the City, prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is in compliance with the applicable requirements of Conditions 52, 53, and 54.