

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
SEPTEMBER 30, 2015

2211 Harold Way Mixed-Use Project

Action on Use Permit #13-1000010 for a mixed-use development, up to 18 stories in height, containing 302 dwelling units, approximately 10,877 square feet of ground-floor commercial space, a ten-theater cinema complex (approximately 641 seats), and 177 underground parking spaces, located in Downtown Berkeley. The project includes removal of the 1926 addition and portions of the 1913 addition to the landmarked Shattuck Hotel.

I. Application Basics

A. Land Use Designations:

- General Plan: Downtown (DT); Downtown Area Plan “Core Area”
- Zoning: Downtown Mixed Use District (C-DMU), Core Area

B. Zoning Permits Required:

- Use Permit to demolish a main building used for non-residential purposes, under BMC Section 23C.08.050.A
- Use Permit to construct a Mixed Use Development, under BMC Section 23E.68.030.A
- Use Permit to construct over 10,000 square feet of new floor area, under BMC Section 23E.68.050
- Use Permit to allow building height of over 120 feet but not more than 180 feet, under BMC Section 23E.68.070.B.2
- Use Permit for the portion of development on Harold Way exceeding 120 feet in diagonal width, under BMC Section 23E.68.070.C
- Modification to Use Permit A1116 to revise the floor plans and replace the Conditions of Approval
- Modification to Use Permit #08-10000116 and #MODUP2014-0008 to revise the service area for alcohol service within the theater use and replace the Conditions of Approval
- Administrative Use Permit to allow over 2,000 square feet of Full Service Restaurant space, under BMC Section 23E.68.030.A
- Administrative Use Permit to allow service of beer and wine incidental to food service, under BMC Section 23E.68.030.A
- Administrative Use Permit to allow amplified live entertainment incidental to food service, under BMC Section 23E.68.030.A
- Administrative Use Permit to allow mechanical penthouse, elevator equipment and other projections to exceed maximum building height, under BMC Section 23E.04.020.C

C. Other Permits Required:

- Design Review and Structural Alteration Permit to allow alteration and construction on a designated landmark site, under BMC Sections 23E.10.020 and 3.24.200

D. CEQA Determination:

The ZAB certified the Final Environmental Impact Report (EIR) prepared to evaluate the potentially significant environmental impacts of the proposed project, pursuant to the California Environmental Quality Act, at their June 25, 2015 meeting.

E. Parties Involved:

- Applicant Rhoades Planning Group
505 17th St., 2nd Floor
Oakland, CA 94612
- Property Owner HSR Berkeley Investments, LLC
11100 Santa Monica Blvd., Suite 880
Los Angeles, CA 90025
- Architect MVEI
3 MacArthur Place, Suite 850
Santa Ana, CA 92707
- Historical Consultant architecture + history, LLC
San Francisco, CA
- Urban Design Consultant Taecker Planning and Design, LLC
Berkeley, CA

Figure 1: Vicinity Map



Figure 2: Zoning



Figure 4: Proposed Mezzanine Floor Plan



Figure 5: Proposed Level 2 Floor Plan



Figure 6: Proposed Level 3 Floor Plan

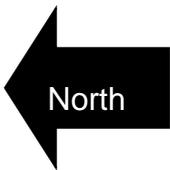


Figure 7: Proposed Level 6 Floor Plan

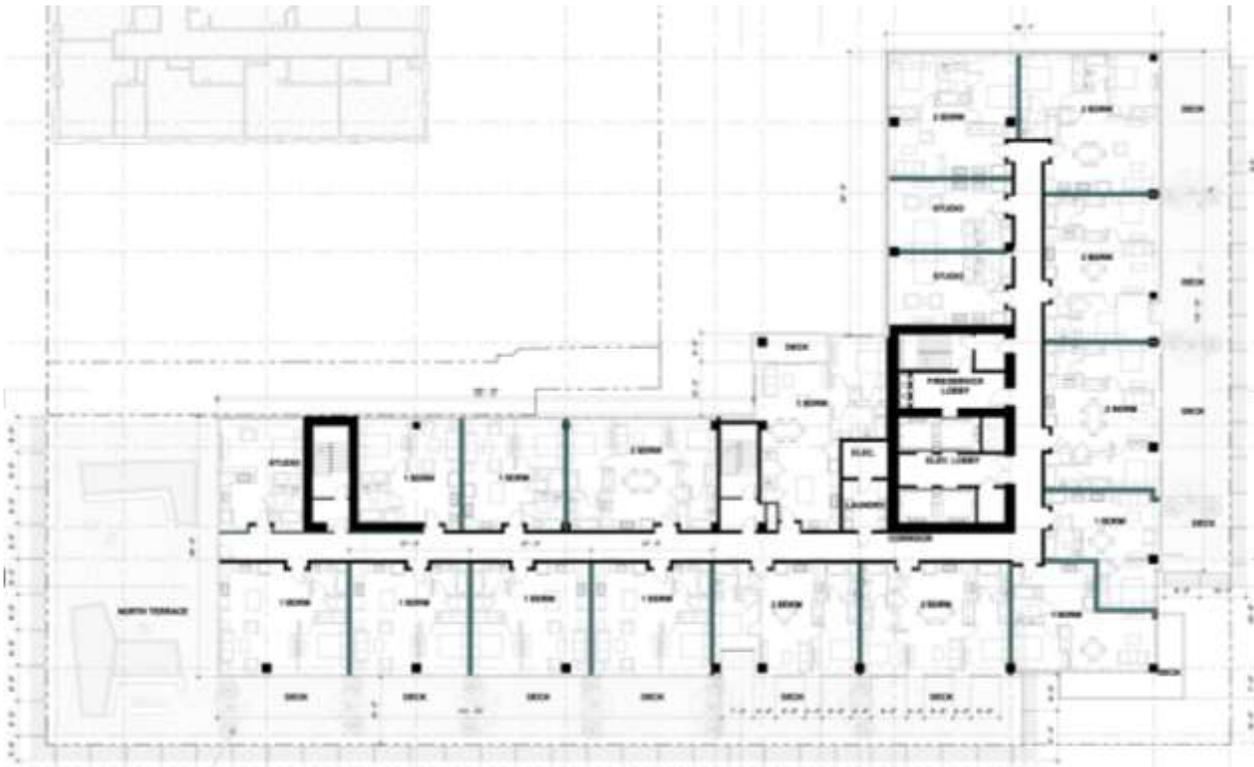


Figure 8 Proposed Level 14 Floor Plan

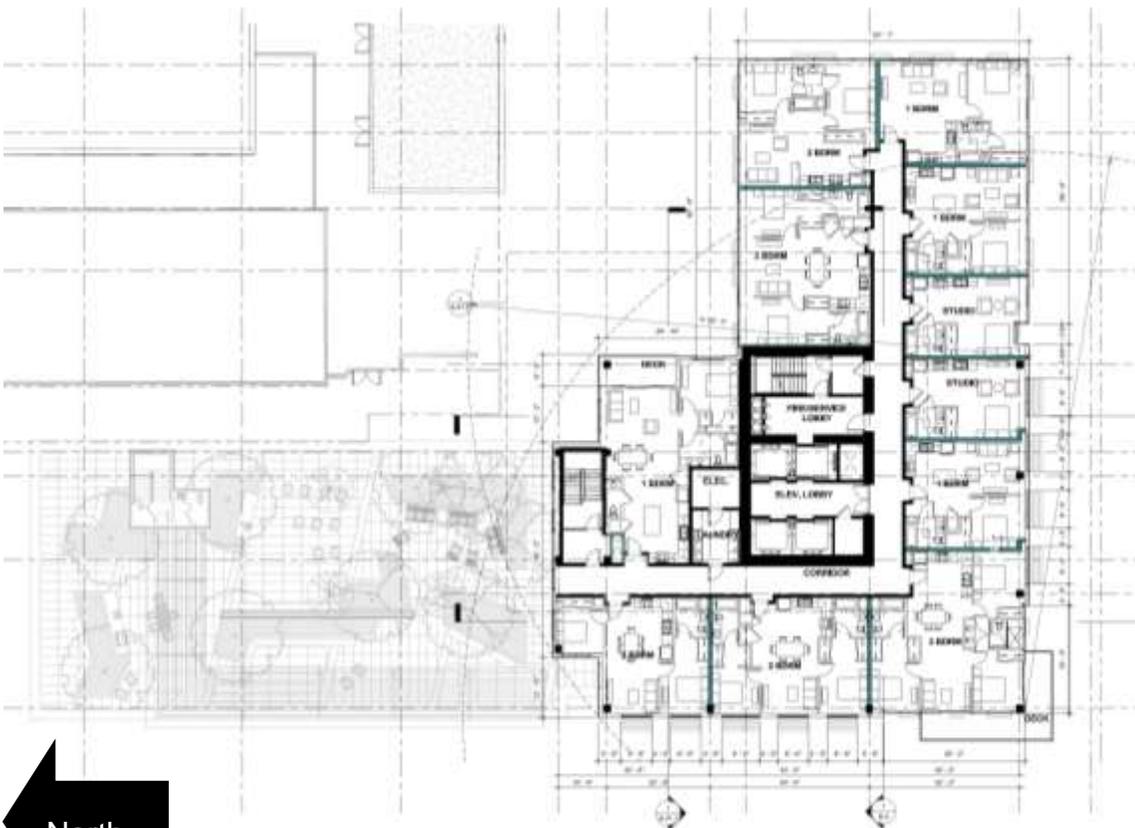


Figure 9: Proposed Harold Way Elevation (East)



Figure 10: Proposed Street Strip on Allston Way (North)



Figure 11: Proposed Kittredge Street Elevation (South)



Figure 12: Proposed Street Strip on Shattuck Avenue (East)



Figure 13: Harold Way Demolition Section



Table 1: Land Use Information

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

Table 2: Special Characteristics

| Characteristic | Applies to Project? | Explanation |
|--|---------------------|---|
| Affordable Housing/Childcare Mitigation Fees | Y | The project is subject to the City’s Affordable Housing Mitigation Fee (AHMF) Ordinance (BMC Section 22.20.065), which requires that the applicant either (1) pay an AHMF of \$6,040,000 (\$20,000 per market-rate unit); (2) provide 28 below-market-rate (BMR) units in lieu of the AHMF; or (3) pay a reduced AHMF in combination with a reduced number of BMR units |

| | | |
|--------------------------------|---|--|
| Alcohol Sales/Service | Y | Incidental service of distilled spirits, beer, and wine (ABC Type 47) is proposed within a quick or full service restaurant. |
| Arts District | N | The Downtown Arts District Overlay is two blocks north of the site. |
| Creeks | N | No protected creeks or culverts within 30 feet of subject property. |
| Density Bonus | N | None requested. |
| Green Building Score | Y | The Project is designed to achieve a LEED Gold (or equivalent) rating, as required under BMC Section 23E.68.085.A. |
| Historic Resources | Y | The project would involve removal of the 1926 addition and portions of the 1913 addition to the landmarked Shattuck Hotel. The project would involve demolition of the 1959 Hink's Building, which is not a historic resource. |
| Oak Trees | N | None on subject property. |
| Seismic Hazards | N | Site is not within area mapped for liquefaction, landslide, or fault rupture zone. The site is on the Inventory of Potentially Hazardous Buildings due to an onsite unreinforced masonry building. |
| Soil/Groundwater Contamination | N | The project site is not listed on the Cortese List, Govt. Code Section 65962.5 (an annually updated list of hazardous materials release sites). |
| Significant Community Benefits | Y | Projects involving the construction of buildings over 75 feet in height are required to provide significant community benefits. |

Table 3: Project Chronology

| Date | Task/Event |
|---------------------------------------|---|
| December 21, 2012 | Application for consideration submitted |
| January 9, 2013 | Pre-Application Submitted |
| February 21, 2013 | DRC Preview |
| February 27, 2013 | UP and SAP Applications Submitted |
| March 7, 2013 | LPC Preview |
| March 14, 2013 | ZAB Preview |
| November 2013 | LPC/DRC SF Walking Tour |
| May 19, 2014 | Notice of Preparation (NOP) released |
| June 5, 2014 | LPC Scoping Session |
| June 12, 2014 | ZAB Scoping Session |
| October 6, 2014 | Publication of Draft EIR |
| March, April, May, July, October 2014 | LPC and DRC Subcommittees |
| November 4, 2014 | DRC DEIR Comment Session |
| November 6, 2014 | LPC DEIR Comment Session |
| November 13, 2014 | ZAB DEIR Comment Session |
| December 1, 2014 ¹ | Close of Draft EIR comment period |
| December 11, 2014 | ZAB hearing on Community Benefits |
| November 20 and December 18, 2014 | DRC Preliminary Design Comment |
| January 8, 2015 | ZAB Hearing on Significant Community Benefits |
| February 26, 2015 | LPC Preliminary Design Comment |
| March 19, 2015 | DRC Preliminary Design Comment |

| | |
|-----------------------------|--|
| March 30, 2015 ² | Publication of Response to EIR Comments |
| April 16, 2015 | DRC Preliminary Design Recommendation |
| April 23, 2015 | ZAB Hearing on Final EIR Certification |
| May 7, 2015; June 4, 2015 | LPC Preliminary Design Review |
| May 14, 2015 | ZAB Hearing on Final EIR Certification Continued |
| June 15, 2015 | Addition to Final EIR: Alternative Published |
| June 25, 2015 | Council Discussion on Community Benefits |
| June 25, 2015 | ZAB Final EIR Certification |
| July 9, 2015 | LPC Structural Alteration Permit (SAP) Continued |
| July 14, 2015 | City Council Adopts Resolution on Significant Community Benefits |
| August 13, 2015 | LPC SAP Approved |
| August 27, 2015 | ZAB Study Session – Proposed Project |
| September 10, 2015 | ZAB Study Session- Community Benefits |
| September 30, 2015 | ZAB Hearing |

1. The Draft EIR comment period was originally scheduled to end on November 19, but was extended until December 1, 2014 (for a total review period of 56 days)
2. The RTC Document was published 24 days before the ZAB hearing on Certification.
3. Prior to passing a resolution on July 14, 2015, the City Council discussed systems for new downtown projects over 75 feet in height to provide significant community benefits on April 7, May 26, and June 25, 2015.

Table 4: Development Standards

| Standard BMC Sections 23E.68.070-080 | | Proposed Total | Permitted/Required C-DMU Core Area ¹ | |
|--|--------------------|--------------------------------|---|----------------|
| Site Area (sq. ft.) | | 38,400 square feet (0.88-acre) | No standard | |
| Gross Floor Area (sq. ft.) | | 393,679 | More than 10,000 requires Use Permit | |
| Floor Area Ratio | | 10.25 | No standard | |
| Dwelling Units | Total | 302 | No standard | |
| | Affordable | NA | Proposing to Pay AHMF | |
| Building Height | Maximum (ft.) | 180 | Minimum: 50' Maximum: 60' (75' with use permit) ¹ | |
| | Stories | 18 | No standard | |
| Building Setbacks (ft.) | Front ¹ | Zero to 20 feet | 0' | 0' min, 5' max |
| | | 21 feet to 75 feet | 15' | 0' min |
| | | 76 feet to 120 feet | 15' | 15' min |
| | | Over 120 feet | 15' | 15' min |
| | Side | Zero to 20 feet | 0' | 0' min |
| | | 21 feet to 75 feet | 15' (Kittredge) and 38' (Allston) | 5' min |
| | | 76 feet to 120 feet | 15' Kittredge) and 38' (Allston) | 5' min |
| | | Over 120 feet | 15' (Kittredge) and 159' (Allston) | 15' min |

¹ Within the Core, up to three buildings over 120 feet but not more than 180 feet

| | | | | |
|-----------------------------|--------------------------|---------------------|--------|--|
| | Rear | Zero to 20 feet | N/A | 0' min |
| | | 21 feet to 75 feet | N/A | 5' min |
| | | 76 feet to 120 feet | N/A | 15' min |
| | | Over 120 feet | N/A | 15' min |
| Usable Open Space (sq. ft.) | Public open space | | 713 | Public Open Space: 790 Private Open Space: 24,160 |
| | Private roof deck space | | 16,406 | |
| | Private deck space | | 9,762 | |
| | Total private open space | | 26,168 | |
| Parking | Auto | | 177 | Residential: 101 Non-Residential: 58 |
| | Bicycle | | 74 | 15 |

1. Front is defined as Harold Way.

II. Project Setting

A. Neighborhood/Area Description: The project site is located in Downtown Berkeley, on a block bounded by and fronting Shattuck Avenue to the east, Kittredge Street to the south, Harold Way to the west, and Allston Way to the north. The project site is located within the Downtown Mixed Use District (C-DMU), Core Area, as identified in the City's Downtown Area Plan (DAP). Directly adjacent to the project site and on the same block is the Shattuck Hotel, a City of Berkeley Landmark, whose main lobby and entrance are on Allston Way but which also occupies the airspace above the ground floor retail along the entire block's frontage on Shattuck Avenue. Below the hotel rooms along Shattuck Avenue is a row of commercial storefronts that are part of the project site, as well as the entrance to the Shattuck Cinemas, a 10-screen movie theater. The hotel currently has 199 guest rooms, a restaurant, a bar and meeting rooms.

Commercial uses are located along Shattuck Avenue north of and across from the project site. One block north, around the intersection of Center Street and Shattuck Avenue, are several AC Transit and UC Berkeley Shuttle bus stops serving a number of bus lines, as well as the Downtown Berkeley BART Station on Shattuck Avenue between Allston Way and Addison Street. South of the project site on Shattuck Avenue and across Kittredge Street is the Berkeley Central Library, a City of Berkeley and National historic landmark. West of the project site across Harold Way are the Dharma College and the Mangalam Center, both City of Berkeley Landmarks. Commercial land uses and a public parking structure are located north of the project site across Allston Way.

Building heights in the vicinity range from two to three-stories (portions of the Dharma College complex on Harold Way and U.S. Post Office along Kittredge Street) to the 12-story 2140–2144 Shattuck Avenue Chamber of Commerce Building (173 feet) and 14-story 2150 Shattuck Avenue First Savings/Great Western Building (180 feet). The adjacent Shattuck Hotel is five stories in height, not including the basement. Most buildings around the project site are in the two- to five-story range.

B. Site Conditions: The project site is a portion of the fully urbanized city block discussed above, which is generally level, sloping slightly downward towards the west and south. The project site – the area where existing buildings would be altered or demolished and new buildings constructed – is currently occupied by two additions to the original Shattuck Hotel. The first addition, which is technically a stand-alone building, known variously as the Postal

Annex building and the 1959 Hink's building, is an office building with an area of US Post Office boxes and offices, on the corner of Allston Way and Harold Way, and was constructed in the 1950s. The second addition, known as the 1913 Hink's Addition, was the large scale hotel and Hink's Department Store addition south to Kittredge Street. In 1926, Hink's expanded along Kittredge Street to Harold Way, at the rear of the 1913 addition. This addition has frontage on Kittredge Street and Harold Way, and houses the Shattuck Cinema's movie theaters, part of the Habitot Children's Museum, and office space. Both additions are two stories in height with a partial third story and a basement level (although the theater rooms occupy the equivalent of two stories of vertical space in what is essentially one level of useable space).

III. Project Description

The proposed project is an 18-story mixed-use development located in Downtown Berkeley. The main project components include:

- 302 dwelling units
- A 10-theater cinema
- Approximately 10,877 square feet of ground-floor commercial (retail and restaurant) space, and
- A 177-space 3-level underground parking garage with 74 bicycle parking spaces.

The project includes demolition of the existing 1959 Hink's Building, located at the corner of Harold and Allston Ways, and removal of a portion of the Shattuck Hotel building (primarily the 1926 Walter Ratcliff addition fronting on Harold Way and Kittredge Street, and a portion of the 1913 addition extending west of the hotel along Kittredge Street). Some alteration/excavation of the area beneath the retail stores along Shattuck Avenue would occur in order to create additional space for new cinemas (Figure 13). The project would also include seismically retrofitting the shops on Shattuck Avenue, below the Shattuck Hotel, which would be an overall improvement in the hotel's seismic safety.

The project's primary street frontage would be along Harold Way (Figure 9), and would extend east approximately 70 feet on Allston Way (Figure 10) and 156 feet on Kittredge Street (Figure 11). The project would have components of various heights, the tallest roof reaching 180 feet in 18 stories.² Building step backs would occur primarily just above the fifth, 12th and 16th floors. The sixth-floor step back at Allston Way would be 38 feet deep; and the 13th floor level would step back 159 feet. The eighth floor setbacks at Harold and Kittredge Ways would be 15 deep. On Shattuck Street, the 17th floor would step back approximately 64 feet. Materials proposed would include a glass curtain wall system in addition to brick veneer panels, pre-cast concrete panels, and glass spandrels. The curtain wall system would wrap around the east side of the building's northern and southern "shoulders."

The 302 residential units would comprise 77 studio units, 139 one-bedroom units, 80 two-bedroom units, and six three-bedroom units with an average unit size of 731 square feet. The

² The application includes an AUP to allow mechanical penthouse, elevator equipment and other projections to exceed maximum building height.

project would provide 16,406 square feet of common residential open space on shared rooftop terraces and 9,762 square feet of private balconies and decks.

Commercial uses include a 10-cinema theater complex containing 641 seats and a new 10,877-square foot retail/restaurant space with a 341-square foot outdoor patio dining area. The theater would occupy three levels of the structure. A basement level would house 18,371 square feet of the theater, including seven cinemas, a concession area, and a bar. The ground floor and mezzanine (Figures 3 and 4) would house an additional 9,898 square feet of theater, including three cinemas, lobby, and concessions. New retail on the ground floor would include five retail storefronts, a café, and a residential lobby fronting Harold Way, and a restaurant with outdoor dining on the corner of Harold Way and Kittredge Street (Figure 3). As proposed, the restaurant would have incidental service of beer and wine, and live entertainment.

At the corner of the site at Harold Way and Kittredge Street, a 713 square-foot exterior plaza area would create a public space. The plaza would include public seating, and would also allow access to the retail/restaurant space at the corner of Harold and Kittredge that would use a large window wall system that could open completely to the street. Colored and textured paving would differentiate this space, lined by a colorized concrete band marking the corner and the historic building footprint.

Access and Parking. Vehicular access to the project's proposed parking garage would be provided via a two-way driveway (each lane approximately 14 feet in width) from Kittredge Street down to a proposed three-level subterranean parking garage accommodating 177 parking spaces (101 spaces are required for the residential use and 58 required for the commercial uses). Of these, 29 would be "small car" spaces and six would be car-sharing spaces. The residential parking spaces would be leased separately from the residential units, and AC Transit passes would be provided, consistent with Section 23E.68.080 of the Berkeley Municipal Code. Of the 177 parking spaces, 11 would be electric vehicle charging stations. Also, 74 secure bicycle parking spaces would be provided. The project may make up to 18 parking spaces available to the public and/or the Shattuck Hotel.

Pedestrian access would be incorporated from three street frontages. The main entrance to the proposed movie theater would be from Shattuck Avenue; the primary residential access would be through the lobby on Harold Way; and retail access would be to each storefront along Harold Way and Kittredge Street. The existing private alley from Allston Way would remain as a service entrance for the hotel and the proposed project.

Sustainability Features. The proposed project is designed to achieve a LEED Gold (or equivalent) rating, as required under Section 23E.68.085.A of the Berkeley Municipal Code, and will be in compliance with Title 24 of California's Building Standards Code. The project's sustainability features include:

- Solar shading/solar voltaic fins on south and west elevations for residential units
- Rooftop solar panels for hot water and electric power generation
- Roof gardens with flow-through planters to reduce heat island effect and capture water
- Reuse of captured rainwater for landscape irrigation

- Installation of drought-tolerant plants and materials

Transportation Demand Management features include unbundled parking (parking that is leased separately from dwelling units), two AC Transit passes for each residential household and every commercial employee, six car share and 11 dedicated electric vehicle charging spaces equipped with chargers, and secure bicycle parking.

Construction. As noted above, the existing 1959 Hink's Building would be demolished, and a portion of the Shattuck Hotel (primarily the 1926 addition and interior portions of the 1913 addition) building would be removed or altered to prepare the site for construction of the proposed project, including some alteration of the underground areas. Approximately 36,000 cubic yards of grading would be required for site preparation and excavation for the subterranean parking garage. The maximum depth to the bottom of the lowest proposed foundation would be approximately 34 feet below the existing street-level grade. Pile driving would not be required; rather, a mat foundation (a type of continuous thick-slab foundation supporting the entire structure) varying from approximately three to six feet in thickness is proposed. Demolition and construction would take approximately 18-24 months.

Proposed changes to the retail strip and basement under the Shattuck Hotel (which is not owned by the project proponent) include the creation of a new cinema lobby on the ground floor and adding two theaters in the basement. There would be three major components to the associated structural work:

- Frame out a new 20' by 20' opening in the ground floor to create a two story lobby. This would require new steel beams and girders.
- Lower the basement floor by six feet to create the head-room necessary for the two new theaters. This would require the removal of the basement slab, soil excavation, and construction of new footings, retaining walls, and floor in the areas where the new theaters will be located.
- Seismically strengthen the area affected by the new construction and the retail strip under the Shattuck Hotel. This would require the addition of four concrete shear walls that would extend from the basement to the underside of the second floor. This work would not seismically strengthen the entire building, but only the area directly affected by the new construction. This structural work would not be visible from the exterior of the building. It should be noted that the proposed new building's foundation system would be integrated with and would complement the existing Shattuck Hotel foundation system where it may come in contact.

No other changes are proposed to the Shattuck Hotel building.

The project team includes Telmaon Engineering (Civil Engineer), Olmm Consulting Engineers (Structural Engineer), and Tipping Structural Engineers, as well as Andrew Ball of Suffolk Construction, who have consulted on and reviewed project plans and preliminary structural and geotechnical investigations to ensure construction feasibility and construction technique.

Offsite Public Realm Improvements. Sidewalk features would include benches, bicycle racks, street lights and street trees on the project's frontages on Harold Way, Kittredge Street and

Allston Way. The design of the street-level landscape elements incorporates the City's Streets and Open Space Improvement Plan requirements. Sidewalk improvements include bike racks, pedestrian-scaled light poles, benches, and street trees in regularly spaced wells.

Proposed Significant Community Benefits. The applicant proposes the following significant community benefits:

- Project Labor Agreement (PLA): \$6 Million. Total project construction is estimated to cost \$120 million, and the cost of the full PLA is estimated to be between 5% (\$6 million) and 10% (\$12 million) of project construction. The City Council resolution states that a PLA shall entitle the applicant to a credit of 5% of the construction cost, and as such the PLA could count as \$6 million of the community benefit fee.
- Movie Theater Complex: \$17.85 Million. Construction of the ten movie theater complex, an arts and culture benefit, is estimated to cost \$16.5 million. In addition, an estimated rent subsidy of \$1.35 million is required; this number captures the rent subsidy for the first 20 years of operation, but would be necessary in perpetuity.
- Additional Cash Payment: \$350,000. The project will provide an additional \$350,000 cash payment as part of the significant community benefit package. The applicant recommends that \$250,000 of this be provided to Habitot Children's Museum which is relocating as a result of the proposed Project.

The Applicant's memorandum on Proposed Significant Community Benefits Pursuant to City Council Guidance, dated September 3, 2015, was circulated with the Staff Report for the ZAB September 10, 2015, Study Session, and can be viewed on-line at:
http://www.ci.berkeley.ca.us/Planning_and_Development/Zoning_Adjustment_Board/2211_Harold.aspx

IV. Community Discussion

- A. Neighbor/Community Outreach:** Prior to submitting the application to the City, the applicant erected a yellow pre-application poster at the site. Table 3, Project Chronology, includes meetings and hearings where neighbors were notified and/or hearing notices were posted on-site, and there was an opportunity for public comment, including the following:
- Project previews were brought before the DRC, LPC and ZAB in February and March, 2013;
 - Scoping sessions were held before the LPC and ZAB in June, 2014;
 - Comments on the Draft EIR were received before the DRC, LPC and ZAB in November 2014;
 - Significant Community Benefits were discussed before the ZAB on December 11, 2014, January 8, 2015 and March 12, 2015;
 - Significant Community Benefits were discussed before the City Council on April 7, May 26, June 25, and July 14, 2015;
 - Preliminary Design was discussed before the DRC on November 20 and December 18, 2014, and March 19 and April 16, 2015;
 - Preliminary Design was discussed before the LPC on February 26, May 7, and June 4, 2015;
 - The Final EIR was discussed before ZAB on April 23, May 14, and June 25, 2015;
 - The Structural Alteration Permit was discussed before the LPC on July 9 and August 13, 2015; and

- Study Sessions on the Proposed Project and Significant Community Benefits were held on August 27 and September 10, 2015.

Public meeting notices for DRC meetings were posted on the project site, the agendas and staff reports were posted on the City's website. Public hearing notices for the LPC hearings and ZAB hearings were mailed to property owners and occupants within 300 feet and posted on and around the site; agendas and staff reports were posted on the City's website. On September 16, 2015 the City posted notices on and around the site; and mailed approximately 675 notices for this hearing. In addition, via email, staff noticed interested parties. Recently received project comment letters are attached to this report and available online. Previously submitted comments are attached to previous staff reports and/or included as supplemental communications for those meetings/hearings.

In addition, Land Use Planning staff met directly with the Berkeley Unified School District's Executive Director of Facilities and Berkeley High School's Facility & Operations Manager in July to discuss the EIR mitigation measures and to develop additional conditions of approval. The concerns of BUSD are discussed in greater detail below, in Section VII. Of this staff report.

- B. Landmarks Preservation Commission Approvals:** Pursuant to BMC Section 23C.08.050.C and BMC Sections 3.24.200 – 3.24.250, the project requires approval of a Structural Alterations Permit because it includes demolition and new construction on the Landmark Shattuck Hotel site. The project proposes demolition of the existing 1959 Hink's Building, and removal of the 1926 addition together with a portion of the 1913 addition to the Hotel; as well as seismic retrofit and alteration of the retail stores below the Hotel, in order to allow for the new construction on the site.

The LPC previewed the project on March 7, 2013. The project was discussed at six subsequent meetings in 2014 and 2015. On July 9, 2015, the LPC opened a public hearing; considered the merits of the structural alteration permit (SAP) application and required BMC findings; and provided comments thereon. The LPC then continued the public hearing to August 13, 2015, and voted, having considered the EIR to Approve the Structural Alteration Permit with findings and conditions (6-3-0-0; OPPOSED: Hall, Linvill, Olson).

Consistent with the CEQA findings and overriding considerations, the LPC found the project would not adversely affect the architectural features of the Landmark in that: the Mission Revival style hotel would be retained; the separation, the materials and scale of the base would be compatible with the adjacent historical resource; and the modulated tower elements would be similar to established heights in the Downtown. Final Design Review conditions were included to address mitigation measures (CR-2a through CR-2c) to increase compatibility of the project with the hotel. The LPC also found, that while involving removal of additions to the Landmark Shattuck Hotel, the project is consistent with the LPO taking into consideration the particular circumstances of this case for which the EIR identifies mitigation measures to lessen, and evaluates the feasibility of alternatives to avoid, these significant impacts. The LPC Findings and Conditions are included as Attachment 3, and include the Findings required for the Downtown Design Guidelines, Secretary of the Interior's Standards Findings, and Landmarks Preservation Ordinance Findings.

C. Design Review Committee: Beginning in February 2013, the Design Review Committee (DRC) previewed the project and provided advisory comments on the design. At a later meeting in Spring, they designated three members for a subcommittee to meet concurrently with a subcommittee from the Landmark Preservation Commission (LPC). The DRC and LPC subcommittees met from March through July, 2014. The DRC met again on November 4, 2014 for a DEIR Comment Session and continued to provide design recommendations over four subsequent meetings. The applicant design team continually responded to the Committee's direction throughout the design review process, ultimately resulting in the DRC Recommended Design Alternative, which was then submitted as the proposed Project. Preliminary Design Review received a favorable recommendation to the LPC with conditions and recommendations on April 16, 2015 (MOTION (Williams, Goring)) VOTE (6-1-0-0 (Hall – no)). The summary from the April, 2015 meeting is attached (See Attachment 4).

V. Final Environmental Impact Report

An Environmental Impact Report (EIR) was prepared in accordance with the California Environmental Quality Act. The ZAB certified the Final EIR on June 25, 2015 with a vote of 5-3-0-1 (No: O'Keefe, Tregub, Selawsky; Absent: Williams).

The Final EIR identifies significant environmental impacts that would result from implementation of the project and, where feasible, recommends mitigation measures to reduce impacts to a less-than-significant level. Impacts determined to be less than significant or less than significant with the implementation of City of Berkeley Standard Conditions of Approval and/or recommended mitigation measures were identified for the following topics: Aesthetics³, Agricultural and Forest Resources, Air Quality, Biological Resources, Cultural Resources (excluding historic resources), Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, Utilities and Service Systems.

Potential transportation and traffic impacts and impacts to historic resources were analyzed in the Draft EIR. While the proposed project would increase existing traffic levels on local roadways, potential impacts were either found to be less than significant or would be reduced to less-than-significant levels with mitigation.

The proposed project would obscure a fraction of the views of the Golden Gate and Alcatraz Island from the base of the UC Berkeley Campanile and Campanile Way; however, this impact was found to be less than significant. The proposed project would include alteration of the setting of the adjacent landmarks; however, this impact was found to be less than significant with mitigation. The proposed project would include removal of the 1926 addition to the Shattuck Hotel and partial removal of the 1913 addition; the associated impacts were found to be significant and unavoidable, as the mitigation measures identified in the EIR would not reduce the impacts to a less-than-significant level.

³ Pursuant to Senate Bill 743, 2013, aesthetic impacts of a mixed-use residential/commercial project (to the extent they are not also historic resource impacts) on an infill site within a transit priority area, such as the proposed project, may not be considered significant impacts on the environment.

The CEQA Findings and Statement of Overriding Consideration and Mitigation Monitoring and Reporting Program were circulated with the Staff Report for the ZAB August 27, 2015, Study Session, and can be viewed on-line at:
http://www.ci.berkeley.ca.us/Planning_and_Development/Zoning_Adjustment_Board/2211_Harold.aspx

VI. General Plan and Zoning Ordinance Conformance

A. Demolition of Existing Building: The proposed Project includes demolition of the 1959 Hink's addition building at the corner of Allston Way and Harold Way.⁴ BMC Section 23C.08.050.A allows the ZAB to approve a Use Permit for demolition of a main building used for non-residential purposes if the Board makes certain findings, including a finding that the demolition would not be materially detrimental to the commercial needs and public interest of any affected neighborhood of the City and a finding that the demolition is required to allow a proposed new building or new use.

Staff Analysis: Staff believes that the ZAB can find that the demolition of the 1959 Hink's addition building would not be materially detrimental to the commercial needs of the neighborhood or the City because the proposed project would provide replacement floor area with commercial uses within a mixed-use building that is designed to provide services to residents and workers in the vicinity. The 1959 Hink's addition includes approximately 12,166 square feet of office use and 7,056 square feet of institutional uses. The total project site includes the following uses: approximately 41,170 square feet of office use; 7,056 square feet of institutional use; and, a 23,474 square foot cinema. The total uses would be replaced by approximately 10,877 square feet of commercial space (retail and restaurants) and a 28,249 square foot cinema, as well as 302 residential units. The demolition is required in order to allow the proposed new mixed-use project to be built. The building that is proposed for demolition is two stories in height with a basement level, and can be considered to be underutilized, as the Downtown Area Plan identifies two-story buildings near BART as Potential Development Opportunity Sites.

Analysis by staff concludes that the Board may make the necessary Use Permit findings of non-detriment for demolition of the existing structure under BMC Section 23C.08.050.D. The proposed conditions of approval require that demolition of the existing buildings may not occur until complete construction plans are submitted to the City for the replacement building.

While the project would preserve the c.1910-1913 Shattuck Hotel Landmark structure, it also includes removal of the 1926 addition and portions of the 1913 addition. As described above in Section IV.B., on August 14, 2015, the LPC approved the Structural Alteration Permit with findings and conditions.

B. Mixed-Use Project: BMC Section 23E.68.030.A allows mixed-use development in the C-DMU District subject to the approval of a Use Permit and the Board making a finding of Non-Detriment listed in Section 23B.32.040, and the findings listed in Section 23E.68.090.B of the Zoning Ordinance. Uses are subject to the use limitations in 23E.68.060. The Board may rely on these findings to consider the building as a whole (specific features of this project are

⁴ The 1959 Hink's Addition is not a historic resource, it is structurally and aesthetically separate from the original Shattuck Hotel building and its early additions. Please see Draft EIR Section 4.1 Cultural Resources.

addressed later in this report). In order to approve these Use Permits, the Board must find that a proposed use or structure must:

1. Be compatible with the purposes of the District; and
2. Be compatible with the surrounding uses and buildings.

The required findings are evaluated as follows:

BMC §23E.68.090.B.1 requires that the project be compatible with the purposes of the District.

Staff Analysis: The project would include 302 housing units, 10,877 square feet of ground floor commercial uses and a theater complex in Downtown Berkeley and within walking distance of the University of California. It is located in an area that is well served by transit; the Downtown Berkeley BART station is within one block of the site, and multiple AC Transit lines run on Shattuck Avenue and University Avenue. The Project is within the C-DMU Downtown Mixed Use District, and as per Provisions of the BMC, the purpose of this district is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development.

- **Environmental Sustainability and Access:** Consistent with DAP Goals ES-3, UL-1, and AC-1 the Project is a higher-density development in proximity to regional transit, shops and amenities, and it will improve options to increase access to Downtown on foot, by bicycle and via transit. Consistent with DAP Goal AC-4, the Project will promote transit as an efficient and attractive choice through its location and through its TDM Plan and other associated Conditions of Approval.
- **Land Use:** Consistent with DAP Goal LU-1 (including Policies LU-1.1 and LU-1.3), the Project will include residential, commercial and cinema uses that allow people who live, work and learn in Downtown to meet daily needs on foot. Consistent with Policy LU-1.2, the Project will include cinemas, a unique cultural and entertainment use that services the city and region.
- **Historic Preservation and Urban Design:** On July 9 and August 13, 2015, the LPC considered the design of the Project in relation to its urban context, focusing on the application of the Downtown Design Guidelines, which implement the objectives and policies of the Historic Preservation and Urban Design chapter of the DAP. The LPC made the findings necessary to approved the Structural Alteration Permit, in that the Project allows for the preservation of and is kept visually and physically separate from the landmark Shattuck Hotel; the base is compatible in scale and materials with nearby historic resources; and the modulated tower with varying levels of height and scale is similar to the varying heights established in the Downtown. Additional design mitigation measures are included as a condition of Final Design Review to bring the project further into compliance with the Historic Preservation and Urban Design Goals of the DAP (Attachment 3).
- **Streets and Open Space:** Consistent DAP Goal OS-1, the Project will enhance public open spaces and streets to benefit pedestrians, improve Downtown's livability, and foster an exceptional sense of place.

- Housing and Community Health and Services: Consistent with DAP Goals HC-1 and HC-3, the Project will encourage Downtown as a thriving, livable, diverse residential neighborhood with a mix of supportive uses, and play a significant role in meeting Berkeley's continuing need for additional housing. Consistent with HC-2, as supported by the CEQA documentation and the Conditions of Approval, the Project will maintain a good quality of life for residents of all ages during the day and night in Downtown.
- Economic Development: Consistent DAP Goal ED-1, the Project will serve the needs of the neighborhood and the City, make Downtown a more attractive regional destination, by building on Downtown's unique blend of cultural, historic, entertainment, art, educational and community institutions – and by promoting successful retail businesses and other attractions, with daytime and night-time populations to support them.

The Project would further General Plan Policy H-19—Regional Housing Needs by including housing to help the City attain the fair share housing goal established by ABAG's Regional Housing Needs Determination for Berkeley. The project would advance the objectives and policies of the City's Housing Element, including Objective 1, that Berkeley residents should have access to quality housing at a range of prices and rents, and Objective 3, that new housing should be developed to expand housing opportunities in Berkeley to meet the needs of all groups. The Project would also be subject to the City's Affordable Housing Mitigation Fee.

The DAP does not include a specific policy related to the preservation of significant views; however, General Plan Policy UD-31 states: Construction should avoid blocking significant views, especially ones toward the Bay, the hills, and significant landmarks such as the Campanile, Golden Gate Bridge, and Alcatraz Island. Whenever possible, new buildings should enhance a vista or punctuate or clarify the urban patterns. The proposed project would partially obscure a fraction of the view of the Golden Gate and Alcatraz Island from the base of the UC Berkeley Campanile and Campanile Way.

For the reasons outlined above, staff believes that the project is consistent with the findings in Section 23E.68.090.B.1.

BMC §23E.68.090.B.2 requires that the project be compatible with the surrounding uses and buildings.

Staff Analysis: The project site currently includes office, cinema and museum uses. The proposed project would change uses on the site to ground floor commercial (retail and restaurant), cinema and residential uses. Uses on the surrounding properties include retail, public parking, office, library, hotel, and residential. The Project would not introduce new land uses that do not already exist in the Downtown, and as described above, would further the vision and goals of the DAP. For these reasons, staff believes that the project is consistent with Findings noted in Section 23E.68.090.B.2.

The Project would be surrounded on three sides by historically and architecturally significant buildings. The Project would be a mixed use building with components of various heights, the highest tallest roof portion reaching 180 feet in 18 stories. Building step backs would occur primarily just above the fifth, 12th and 16th floors. The sixth-floor step back at Allston Way

would be 23 feet deep. Materials proposed would include a glass curtain wall system in addition to brick veneer panels, pre-cast concrete panels, and glass spandrels (See Figures 3 through 12). The curtain wall system would wrap around the east side of the building's northern and southern "shoulders." The project has been designed to be distinct from but compatible with its surrounding buildings. As noted above, the DRC forwarded a positive recommendation on Project design, and LPC found that the Project allows for the preservation of and is kept visually and physically separate from the landmark Shattuck Hotel; the base is compatible in scale and materials with nearby historic resources; and the modulated tower with varying levels of height and scale is similar to the varying heights established in the Downtown. For these reasons, staff determines that the project is consistent with Findings noted in Section 23E.68.090.B.2.

C. Construction of Over 10,000 Square Feet of New Floor Area: In order for any Use Permit to be granted under Section 23E.68.050 for new floor area, the Board must find that the project meets the findings noted in Section 23E.68.090.D of the Zoning Ordinance, which requires that:

1. The addition or new building is compatible with the visual character and form of the District; and
2. 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 addition.

Staff analysis: The project site is near the center of a dense downtown with buildings at varying heights including two of roughly similar height within two blocks. Construction of buildings in Downtown Berkeley has been ongoing for over one hundred years, with changes, modernizations and rehabilitations of older buildings and development of newer buildings at various points in time. The proposed Project is within the permitted heights for the zoning classification and the DAP. New construction is part of an evolving downtown. As noted above, the DRC forwarded a positive recommendation on Project design, and LPC found that the Project allows for the preservation of and is kept visually and physically separate from the landmark Shattuck Hotel; the base is compatible in scale and materials with nearby historic resources; and the modulated tower with varying levels of height and scale is similar to the varying heights established in the Downtown.

Therefore, staff concludes that the Board may find that the project is compatible with the visual character and form of the District and that no designated landmark in the vicinity would be adversely affected.

D. Exceedance of Building Height Limit of 120 Feet: In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070.B, the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City (BMC Section 23E.68.90.E). These may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities. The applicable public benefit requirements must be included as conditions of approval, and the owner shall enter into a written agreement that would be binding on all successors in interest.

Staff analysis: As a result of immediate access to BART, multiple bus lines, and walk-to conveniences, provisions for the C-DMU District in the DAP’s Core Area allow three buildings up to 180 feet in height. The proposed project is the first application submitted for one of the three potential buildings over 120 feet (but not more than 180 feet) allowed to be approved in the Core area. As shown in Table 3, Project Chronology, and described in Section IV. A. Neighbor/ Community Outreach, both the ZAB and City Council have held multiple hearings on significant community benefits. On July 14, 2015, City Council provided direction for determining significant community benefits as contained in Resolution NO. 67,172- N.S. On September 10, 2015, ZAB held a Study Session on this topic. On September 22, 2015, EPS, an economic consultant to the City submitted an Economic Review of 2211 Harold Way Community Benefits Proposal (Attachment 5). Based on the September 10th discussion, staff has developed the tables below for consideration. Table 4 outlines approaches discussed to date to calculate the Significant Community Benefit payment. Tables 5, 6, and 7 outline possible approaches to the valuation of each of the proposed benefits. Table 8 provides multiple options for distribution of the benefits, assuming a payment of \$13,524,500, and using approaches listed in earlier tables.

Table 4: Calculation of Significant Community Benefit Payment

| Payment | Approach |
|----------------|--|
| \$13,524,500 | <p>Council Resolution: Part C.2., Significant Community Benefit Options, Projects Already in the Permitting Process (page 3) of the Council Resolution states: For projects that have been in the permitting process for more than two years prior to June 25, 2015, significant community benefits shall consist of the following:</p> <ul style="list-style-type: none"> • Payment of \$100 per square foot for all rentable residential square footage between 75 and 120 feet, and • Payment of \$150 per square foot for all rentable residential square footage between 121 and 180 feet. <p>As part of the Council’s consideration of Significant Community Benefits, AECOM was retained to estimate the approximate rental premium that could be achieved in high rise buildings above 75 feet (Attachment 6). The AECOM analysis concluded that for buildings between 75 and 120 feet, the additional value per square foot averages \$50 per square foot and for buildings between 75 and 180 feet, the additional value per square foot averages \$120 per square foot; this is less than the payments include in the Council Resolution.</p> |
| Not Applicable | <p><i>Pro forma:</i> The Council Resolution, Part B, Application (page 2), states that the application shall include a <i>pro forma</i> showing pre-development, soft and hard cost estimates, as well as the projected rate of return the applicant expects the project to generate, based on revenues (sales price or rental income stream) anticipated once the project is complete... The analysis shall cover two scenarios... determining the dollar range of benefits the City could reasonably request.</p> |
| \$27,770,000 | <p>The applicant’s Proposed Significant Benefits Pursuant to City Council Guidance, dated September 3, 2015, describes a community benefit package valued at \$27,770,000.</p> |

Table 5: Project Labor Agreement (PLA)

| Payment | Approach |
|---------------------|---|
| \$10 - \$12 million | Applicant Placed Value |
| \$6 million | Council Resolution Value (5% of estimated \$120 million construction cost). (EPS concluded that the \$120 million cost figure is a reasonable estimate for the Project.) |
| \$6 million | EPS Estimated Value: Tower projects that use steel frame or concrete construction typically require highly-skilled and relative expensive labor. Credit for the PLA should only capture the cost of union labor where it might otherwise not be used. It is appropriate to attribute 5% of construction cost to this increment. |
| \$1,800,000 | Refinement A: Assuming the PLA has a 30% local hire and apprentice provision, similar to the City of Berkeley Community Workforce Agreement, 30% of \$6 million. |
| \$670,000 | Refinement B: What percentage of labor is from Berkeley or Alameda County - Assuming labor comes from within the nine county bay area, 1/9 of \$6 million. |

Table 6: Movie Theater Complex

| Payment | Approach |
|---|--|
| \$15,183,575 ^a | Applicant Placed Value |
| \$4.2 - \$10.4 million; midpoint of \$6.3 million | EPS Estimated Value, using an income capitalization base estimate and present value dollars, which includes construction costs, rental revenue and operating expenses. |
| \$6.76 million Or \$4.095 million Or \$2.73 million | Refinement A: Subsurface theaters include: 1, 2, 3, 5, and 7, as well as parts of 4 and 6; other subsurface uses include a lobby, storage, and restrooms. This is approximately 18,371 square feet (65%) of the total theater use. Theaters wholly on the ground floor and upper level include 8, 9 and 10; other uses include a ground floor and upper lobby, storage and office. This is approximately 9,878 square feet (35%) of the total theater use. Only the subsurface theater area should be considered as a community benefit, beyond what otherwise might be required. 65% of \$10.4 million = \$6.76 million 65% of \$6.3 million = \$4.095 million 65% of \$4.2 million = \$2.73 million |
| \$0 | Refinement B: At least one member of ZAB expressed that in order to make findings of non-detriment, a movie theater of some size would need to be included in the proposed project. |

a. This is from Suffolk Detailed Break-Out Pricing for Cost of the Cinema, dated 09/18/2015, and included in Attachment 7. The applicant's September 3, 2015 memorandum placed a \$17,420,000 value on the cinema complex.

Table 7: Habitot Children’s Museum

| Payment | Approach |
|--|---|
| \$250,000 | The applicant proposes a cash payment \$350,000, of which \$250,000 could be directed to Habitot to offset their <i>moving expenses</i> . |
| \$2.7 million | Refinement A: As per the September 9, 2015 letter from Habitot Children's Museum, relocation, replacement and improvements to Habitot has an estimated capital cost of \$2.7 million. |
| \$0 as a Significant Community Benefit \$250,000 as a Condition of Approval | Refinement B: Some ZAB members interpreted the Council Resolution A.3., General Principals: Project developer should address the detriment created by the project on non-profits which service the Berkeley community, to mean that the remedy to the detriment caused to Habitot should not be considered a Significant Community Benefit. |

Table 8: Range of Distribution Options

| | Option 1 | Option 2 | Option 3 | Option 4 |
|---------------------------------------|---------------------|---------------------|---------------------|---------------------|
| PLA | \$6,000,000 | \$1,800,000 | \$1,800,000 | \$670,000 |
| Theater | \$6,300,000 | \$4,095,000 | \$2,730,000 | \$0 |
| Habitot | \$250,000 | \$0 | \$250,000 | \$2,700,000 |
| Affordable Housing^a | \$974,500 | \$7,629,500 | \$8,744,500 | \$10,154,500 |
| TOTAL | \$13,524,500 | \$13,524,500 | \$13,524,500 | \$13,524,500 |

a. The Affordable Housing benefit is the balance left after distribution to the PLA, Theater and/or habitot.

Staff concludes that the Board could make the finding that the project will provide significant community benefits, beyond what would otherwise be required by the City. Staff looks to the Board to confirm the required payment and determine the appropriate distribution. The proposed conditions of approval require that the Significant Community Benefits will be conditions of approval and will be recorded in a Notice of Limitations on the property.

- E. Exceedance of Building Width:** The project requires a Use Permit under BMC Section 23E.68.070.C for the portion of development on Harold Way exceeding 120 feet in width (see Figure 8, Proposed Harold Way Elevation). By code, the portion of a building over 120 feet in height must be less than 120 feet in width when measured at the widest point on the diagonal in plain view, unless approved with a Use Permit, subject to the Board making a finding noted in Section 23E.68.090.F of the Zoning Ordinance, which states that modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.

Staff analysis: Staff has determined that the ZAB could find that the project would comply with Section 23E.68.090.F. Shadow modeling diagrams included in the EIR for the project show that the new building would not unreasonably limit solar access. In addition, the Wind and Comfort Impact Analysis prepared as part of the EIR determined that the project would not substantially increase ground-level winds.

F. Full Service Restaurant Over 2,000 Square Feet: BMC Section 23E.68.030 limits the floor area of full service restaurants to 2,000 square feet, although these limits may be exceeded with an Administrative Use Permit. In order to allow these limitations to be exceeded, the Zoning Officer may issue an AUP only upon finding that “the establishment...will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood...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,” as noted in Section 23B.28.050.

Staff Analysis: The project could potentially include up to 2,385 square feet (2,060 square feet of indoor space and 323 square feet of patio dining) of full service restaurant (related permits for incidental beer and wine, distilled spirits, and amplified live entertainment are analyzed below).

Staff determines that this project component would not be detrimental to those residing and working in the neighborhood. The full-service restaurant space is designed so that 2,060 square feet is indoors, and an area less than 2,000 square feet could be approved with a Zoning Certificate. The additional 60 feet of indoor area and 325 square feet of outdoor area triggers the need for an AUP. The Downtown Area Plan encourages outdoor dining, as stated in policies *HD-4.1 Pedestrian-Oriented Design*, *OS-4.1 Safe Environments*, and *ED-2.1 Activity & Safety*. In addition, the outdoor patio would be located on private property and would not remove public right of way reserved for pedestrian activity.

The restaurant would be compatible with the purposes of the District and with the surrounding uses and buildings. The full service restaurant would help to activate a pedestrian presence at the base of the building and help to create a mix of uses on the block. Furthermore, the project would further General Plan policies *LU-1.3 Complementary & Active Businesses*, and *ED-1.3, Retail, Restaurants & Cultural Uses*, which encourage restaurant development as a catalyst for a thriving and diverse retail environment.

G. Theaters, Including Motion Pictures. On November 24, 1986 the Board approved Use Permit #A1116 to convert 16,000 square feet of retail space from the former Hinks’s Department Store Building to establish a theater complex. In 1998 the Board approved additional auditoriums resulting in a ten screen complex. Modification to this Use Permit is necessary for the continuation but relocation of the theater use. It will remain on the project site, but will be more centrally located on the site; it will not include space towards the southwest corner of Harold Way and Kittredge Street. The theater element of the Project is described in Section III. of this staff report and detailed in the July 22, 2015 plan set. General Findings of Non Detriment for the Project are included in Attachment 1. Conditions of Approval from earlier use permits for the theater are superseded and replaced by this permit.

H. Incidental Alcohol Beverage Service and Consumption in Theater. In March, 2009, Use Permit #08-10000116 established a full service restaurant with alcohol service; to allow consumption of food and alcoholic beverages in two theatre auditoriums; and to allow occasional special events in two theater auditoriums, with food and alcohol service. In 2014, this permit was modified (#MODUP2014-0008) to expand alcohol consumption to all theaters. Modification to this Use Permit is necessary for the continuation but relocation of alcohol service in the theater use. It will remain on the project site, but will be more centrally located on the site; it will not include space towards the southwest corner of Harold Way and

Kittredge Street. The theater element of the Project is described in Section III. of this staff report and detailed in the July 22, 2015 plan set. General Findings of Non Detriment for the Project are included in Attachment 1. Conditions of Approval from earlier use permits for the theater are superseded and replaced by this permit

- I. Beer and Wine Incidental to Food Service:** BMC Section 23E.68.030.A allows service of beer and wine incidental to quick and full service restaurants with an AUP.

Staff Analysis: As discussed above, staff believes that Board may find that this service would not generally detrimental because such service does not generally create the same detrimental impacts as bars and off-sale retail alcohol stores.

Because onsite service of beer and wine is an incidental use to the main use, food service, no findings of public convenience or necessity are required. In addition, the granting of the permit would meet Downtown Area Plan Policy LU-1.1 *Downtown Uses*, Policy LU-1.3 *Complementary & Active Businesses*, and Policy ED-1.3 *Retail, Restaurants & Cultural Uses* that encourage the development of a thriving and diverse retail environment.

The proposed conditions of approval would help ensure that the incidental service of beer and wine does not cause detriment.

- J. Amplified Live Entertainment Incidental to Food Service:** BMC Section 23E.68.030.A allows amplified live entertainment with approval of an AUP.

Staff Analysis: The applicant is proposing live entertainment in the form of a two or three piece band with amplified acoustic instruments and low volume drums once a week with decibel levels of 50 db, which would not be audible outside of the establishment. Live entertainment would meet Downtown Area Plan *Policy ED-1.7: Entertainment & Culture*, which encourages strengthening downtown as a prime regional destination. As discussed above, the Downtown Core area is appropriate for live entertainment. In addition, proposed conditions of approval would ensure that live entertainment does not cause detriment. As such, staff believes that Board may find that the proposed live entertainment would not be detrimental.

- K. Exceedance of Maximum Building Height for Mechanical Penthouse, Elevator Equipment and Architectural Elements.** Projections exceeding the height limits of the district may be allowed with an AUP, under BMC Section 23E.04.020.C.

Staff analysis: The applicant is proposing an approximately 1,235 square foot area to accommodate the mechanical penthouse, elevator and elevator lobby, stairs, and storage for window washing and other equipment, as well as an approximately 4,354 square foot roof deck. Other roof-top items would include trellises with solar panels. The projections would not exceed 10'8", are relatively small in nature, and would not change the overall massing and character of the building. The 1,235 square foot area is approximately 20% of the roof area, but is approximately 5% of the ground floor area. In addition, at a height of 180 feet, the mechanical penthouse located centrally on the roof would not be visible from the street level.

Staff believes that because the rooftop projections would not be habitable and because the combined floor area of the projections represents a fraction of the average floor area of the building the Board may grant this Use Permit under 23E.04.020.C.

VII. Other Key Issues

Berkeley High School. The City received a number of public comments on the Draft EIR expressing concerns about potential construction and operational project impacts to Berkeley High School (BHS), which is 400 feet west of the site beyond several intervening buildings. Most of the comments were related to construction emissions (air quality), construction noise, construction traffic and staging, and operational traffic. The Final EIR included responses to these comments, referring to sections of the project EIR and DAP EIR where these issues are discussed in detail, and to the DAP mitigation measures and standard conditions of approval that would apply to the project to address these impacts. These impacts and mitigation measures are discussed in detail in Appendix A to the Draft and Final EIR. In summary:

- Construction air quality impacts would be less than significant, based on CalEEMod results using conservative model inputs (e.g. not accounting for the fact that the project site is downwind from the High School) and maximum (“worst-case”) construction scenario. Mitigation includes over a dozen specific dust- and construction emissions control requirements.
- Temporary construction noise would be less than significant and/or within the impacts identified in the DAP EIR for construction in the downtown area, based on noise modeling. Specifically, the distance and intervening buildings would attenuate construction noise. In addition, over 10 specific noise control mitigation measures/standard conditions would apply to further reduce construction noise.
- Construction traffic and staging would be controlled by a project-specific construction staging and traffic management plan that would identify construction truck routes and staging to minimize impacts to sensitive uses such as BHS including pedestrian flow around the site
- Operational traffic analysis included existing BHS uses/facilities; impacts would be less than significant.

In addition, at its hearing of May 14, 2015, staff provided the ZAB with a detailed presentation on the potential impacts related to BHS and how the impacts of concern would be addressed through the project’s construction impacts mitigation program.

On June 25, 2015, the Berkeley Unified School District (BUSD) submitted a letter to the City reiterating the concerns generally expressed by others during the Draft EIR comment period. At the ZAB hearing that evening the ZAB certified the Final EIR but also directed staff to work with BHS representatives directly to discuss the mitigation program and develop additional conditions of approval if necessary to address BHS’s specific concerns.

On July 17, 2015, staff met with Timothy White, Executive Director of Facilities for the BUSD, and Dave Kirwin, Facility and Operations Manager for Berkeley High School. This meeting and its follow-up consisted of an exchange of information about the mitigation program and BHS’s concerns, scheduling and other special considerations.

On July 29, 2015, staff met again with Mr. Kirwin, bringing together the results of the previous discussions and subsequent sharing of information to craft specific conditions of approval to address BHS concerns. Mr. Kirwin followed up with a memorandum to City staff dated July 29, 2015, detailing the issues and potential conditions discussed. These have been incorporated into Conditions of Approval 12, 13, 14, 35, 37, 38 and 39 and include the following:

- Construction traffic plan that restricts project construction-related truck and equipment traffic and staging from using segments of Milvia Street, Allston Way, Martin Luther King Jr. Way, and Channing Way that are adjacent to Berkeley High School.
- Applicant to obtain a list of “Quiet Days” from Berkeley High School’s Facility & Operations Manager, and either suspend construction during these testing dates or present a noise control plan that would reduce construction noise to 65 dBA or lower at the exterior wall of the closest building of BHS to the project site where tests are held.
- Applicant to provide flag persons at the intersection of Allston Way with Harold Way and the intersection of Kittredge Street with Harold Way on school days 1) in the mornings between start of construction traffic and start of Berkeley High School first period; 2) during Berkeley High School’s main lunch period; and 3) for one hour in the afternoon starting at the main school dismissal time.
- Applicant to establish a project construction website with contact information for construction complaints; a calendar and schedule of daily/weekly/monthly construction activities; and information on construction traffic routes and noise and air quality mitigation measures/reduction strategies
- BHS representative to be invited to attend scheduled on-site construction meetings between project and City staff concerning compliance with noise, construction traffic and staging, and air quality mitigation measures or conditions of approval.

Based on the process and discussions described above, staff believes that these conditions, in conjunction with the EIR analysis and already-required project mitigation measures and standard regulatory requirements, comprehensively address BHS’s concerns.

VIII. 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 UP#13-10000010 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

- 1) Findings and Conditions
- 2) *Draft Notice of Limitations – to be provided in Supplemental Materials*
- 3) LCP Structural Alteration Permit Findings and Conditions, August 13, 2015
- 4) DRC Summary, April 16, 2015
- 5) EPS September 22, 2015, letter to the City of Berkeley, Subject: Economic Review of 2211 Harold Way Community Benefits Proposal
- 6) AECOM July 14, 2015, letter to the City of Berkeley regarding Evaluation of Multifamily Residential rent Premiums for High Rise buildings in Downtown Berkeley
- 7) Rhoades Planning Group September 23, 2015, Responses to Zoning Adjustments Board Discussion on September 10, 2015

- 8) Notice of Public Hearing
- 9) Correspondence Received

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