

ATTACHMENT 1

FINDINGS AND CONDITIONS

DECEMBER 14, 2017

1050 Parker Street

Use Permit #ZP2016-0170 to construct a 60,670 square-foot, three-story building with 20,370 square-foot medical office and 40,300 square-foot research and development uses on the second and third floors, and a 750 square-foot quick service restaurant on the ground floor, with 117 automobile parking spaces and 46 bicycle parking spaces.

PERMITS REQUIRED

- Use Permit under BMC Section 23E.64.030 to establish a medical office use with more than 5,000 square feet in the C-W District;
- Use Permit under BMC Section 23E.64.050.B.1 to construct more than 5,000 square feet of new floor area in the C-W District;
- Administrative Use Permit under BMC Sections 23E.64.080.J and 23E.80.080.E to allow for the substitution of bicycle or motorcycle parking spaces in place of up to 10% of the required automobile parking spaces;
- Administrative Use Permit under BMC Section 23E.80.030 to establish a research and development use with more than 20,000 square feet in the MU-LI District;
- Use Permit under BMC Section 23E.80.050.D to construct more than 20,000 square feet of new floor area in the MU-LI District;
- Administrative Use Permit under BMC Section 23E.04.040.A to install fences greater than six feet in height;
- Administrative Use Permit under BMC Section 23E.04.020.C to construct two mechanical penthouses and one elevator penthouse that would exceed the C-W and the MU-LI District height limit; and
- Administrative Use Permit under BMC Section 23E.28.080.B to locate ground level parking space within 20 feet of a street frontage.
- Zoning Certificate under BMC Section 23E.64.030 to establish a quick service restaurant of less than 1,500 square feet in C-W District;

I. CEQA FINDINGS

1. The Notice of Intent (NOI) to adopt a CEQA Mitigated Negative Declaration and Initial Study (IS-MND) were published on October 12, 2017, and the public review period ended at 5:00 P.M. on November 13, 2017. The Draft IS-MND was with the Alameda County Clerk and was submitted to the State Clearinghouse (SCH #2017102038) for distribution to interested state and regional agencies.

The Zoning Adjustments Board has considered has considered the proposed Mitigated Negative Declaration together with any comments received during the public review process, and finds, on the basis of the whole record before it, that: (1) no potentially

significant effects were identified that could not be addressed by implementation of the mitigation measures and the City's standard conditions of approval which will avoid or reduce the effects to a point where no significant effects will occur, (2) there is no substantial evidence the project will have a significant effect on the environment, and (3) the mitigated negative declaration reflects the lead agency's independent judgment and analysis. The record of proceedings upon which this decision is based is located at the Permit Service Center, 1947 Center Street, 2nd Floor, Berkeley, California 94704.

II. FINDINGS FOR APPROVAL

1. As required by Section 23B.32.040.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - The proposed project is an infill development project that will add 60,670 square feet of medical office and research and development use in a location that is planned for commercial development. The project will replace a vacant commercial site and increase the employee population, bringing more activity to the street and sidewalk along San Pablo Avenue. Furthermore, the project is designed to conform with the applicable zoning requirements and development standards that apply to the project site;
 - The project is consistent with, and supports implementation of, relevant policies set out in the adopted West Berkeley Plan in that it will, a) further enhance the San Pablo Avenue commercial corridor with intensification and mixed-use development, b) visually improve the San Pablo Avenue by replacing a vacant property with a new commercial office building with three stories along the San Pablo Avenue frontage, strengthening the "streetwall" of buildings along the corridor, c) enhance the pedestrian experience and commercial activity in the area by creating approximately 750 square feet of quick-service restaurant space on the ground floor, d) add employment and medical care services to the San Pablo Avenue corridor, adjacent to public transit services and, thereby, contributing to the further implementation of the West Berkeley Plan;
 - The project will not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply. The parking survey and traffic impact analysis prepared for the project complies with the City of Berkeley Guidelines for Development of Traffic Impact Report and the Caltrans Guide for the Preparation of Traffic Impact Studies. The traffic report estimated that the proposed project would generate 103 AM peak hour vehicle trips and 103 PM peak hour trips. Based on this study, and the City's threshold of significance, this level of additional traffic would significantly impact nearby intersections. This impact will be reduced to a less than significant level with the implementation of mitigation measures as determined by the Initial Study-Mitigated Negative Declaration. The project is required to provide 117 vehicle and 46 bicycle parking spaces;

- The shadow studies submitted as part of the application illustrate studies the proposed three-story 44-foot building will increase shadows on adjacent properties when compared to a lack of shadows cast by the vacant lot. The abutting commercial building with three residential units to the north (2600 San Pablo Avenue [Missouri Lounge]) and to the building to the west (2600 Tenth Street [Fantasy Studios]) will experience shading specifically from this project. Fantasy Studios will encounter shading from the project year round. However, the area of shading will be limited to the east facing façade of the building and will only occur in the morning. Missouri Lounge will experience shading primarily in the winter. However, the area of shading will be limited to the south facing façade of the building and will primarily occur in the evening. Such shading impacts are to be expected in an urbanized area along a major corridor and are not considered significant;
 - The immediate surrounding neighborhood includes properties zoned for C-W to the east, northeast, and southeast, and properties zoned for MU-LI to the north and west. Businesses in the immediate vicinity include research and development labs, offices and media studios, a bank, restaurants and commercial retail, place of worship, and light industrial and automobile services. The project site has General Plan designations of Manufacturing and Avenue Commercial, and is one block south of the Dwight and San Pablo development node in the West Berkeley Plan. This area of Berkeley is characterized by retail, commercial, and mixed use activity along San Pablo Avenue, easily accessible for employees, customers, and residents by mass transit or automobile. Appropriate uses for these areas include: a balance of both smaller and larger commercial retail and food service, larger spaces for medium sized and larger light manufacturers, offices, and laboratory development. The project's proposed land use, therefore, will be consistent with surrounding development and contribute to the continued evolution of the corridor;
 - The project is subject to the City's standard conditions of approval regarding construction noise and biological resources, cultural resources, air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
2. Pursuant to Berkeley Municipal Code Section 23E.64.090.B.1, the Zoning Adjustments Board finds that the project will be compatible with the purposes of the C-W West Berkeley Zoning District. The project would create space for medical offices that would largely serve the surrounding neighborhood.
- The project is consistent with Purpose B of the C-W Zoning District because it will replace a vacant lot with new medical office business space and a neighborhood serving quick service café on Pablo Avenue, bringing more activity to the street and sidewalk along this node corridor; and

- The project is consistent with Purpose H of the C-W Zoning District, which calls for appropriately intense development in underutilized portions of commercial streets, in that it will replace a vacant lot with a 3-story medical office and research and development building, including 750 square feet of quick-service restaurant space.
3. Pursuant to Berkeley Municipal Code Section 23E.64.090.B.1, the Zoning Adjustments Board finds that the project will be compatible with the purposes of the MU-LI Zoning District. The project would create space for research and development businesses that would bring employment to the surrounding neighborhood.
 - The project is consistent with Purpose F and G of the MU-LI Zoning District because it will replace a vacant lot with new research and development office and laboratory space which will not unduly interfere with light manufacturing uses and/or building stock and is compatible with the surrounding area businesses; and
 - The project is consistent with Purpose I of the MU-LI Zoning District because the proposed quick service restaurant/retail space will provide for convenient commercial services for nearby employees and residents which contribute toward maintaining or enhancing the economic viability of the businesses in the district.
 4. Pursuant to Berkeley Municipal Code Section 23E.64.090.B.2, the City finds that the project is compatible with surrounding uses and buildings, because the project will not conflict with the operations in adjoining commercial buildings, and will provide potential customers for some of these uses and for other commercial operation in the area. In addition, the project has been designed to minimize potential conflicts with the adjoining businesses.
 5. Pursuant to Berkeley Municipal Code Section 23E.64.090.B.3, the City finds that the project is consistent with the adopted West Berkeley Plan because it will enhance the San Pablo Avenue commercial corridor by providing commercial storefronts along San Pablo Avenue. Furthermore, with intensification through medical office and research and development growth, the project is responsive to the West Berkeley Plan's creation of a more intensive corridor. The project will also visually improve this stretch of San Pablo Avenue by developing a vacant lot and surface parking area with a new three-story building along the San Pablo Avenue frontage, strengthening the "streetwall" of buildings along the corridor.
 6. Pursuant to Berkeley Municipal Code Section 23E.64.090.B.4, the City finds that the project will be supportive of an increase in the continuity of service facilities at the ground level because the project will provide storefront space for a quick-service café, replacing a vacant lot, thereby enhancing the existing and evolving urban fabric of San Pablo Avenue.
 7. Pursuant to Berkeley Municipal Code Section 23E.64.090.B.5, the City finds that the project will be of an intensity of development that does not underutilize the property. The project meets the development standards allowed by the C-W zoning regulations.
 8. Pursuant to Berkeley Municipal Code Section 23E.64.090.B.6, the City finds that the project will meet applicable performance standards for off-site impacts related to stormwater runoff, construction noise and vibration, and traffic, with the implementation of required mitigation measures found to be necessary through the Initial Study-Mitigated Negative Declaration. The project will meet applicable performance standards during operation in that its use will

not generate significant levels of noise, glare, dust, vibration, hazardous materials, etc. because, as a medical office and research and development project, it will not involve any manufacturing or industrial activities with the potential to generate off-site impacts typically involving regulation through performance standards. Potential construction period impacts, including noise and dust control, are subject to standard conditions of approval as set forth below.

9. Pursuant to Berkeley Municipal Code Section 23E.64.090.B.7, and based on the Traffic Impact Analysis submitted as part of the application, the City finds that a Reimbursement Agreement shall need to be established between the applicant and the City in order to facilitate necessary traffic improvements. The Reimbursement Agreement shall specify the improvements to be accomplished as set forth below, the timing of the improvements, the proportionate share of improvement costs, the timing of the reimbursement payments, and a mutual commitment to use best efforts to coordinate and expedite the installation of the improvements with the goal of providing them before the project receives its first certificate of occupancy. Upon completion of the traffic improvements, the City shall then reimburse the applicant the City's pro-rata share of the traffic improvements over a multi-year period as shall be more specifically described in the Reimbursement Agreement. To ensure driveway safety, the applicant shall provide 10 feet of red curb on either side of the project driveways on Tenth and Parker Streets to improve sight distance between vehicles exiting the project driveways and motorists and bicyclists on Tenth and Parker Streets. With the implementation of the required mitigation measures, project impacts will be reduced to less than significant levels. Parking is further discussed in Finding IV below.
10. Pursuant to Berkeley Municipal Code Section 23E.64.090.C, the City finds that the proposed project will support the development of a strong neighborhood serving medical office and pedestrian oriented environment at this location. The new employees and visitors will provide customers for other nearby commercial businesses.

III. REQUIRED FINDINGS FOR ROOF-TOP PROJECTIONS

Pursuant to BMC Section 23E.04.020.C, the Zoning Adjustments Board finds that the two mechanical penthouses will be 14 feet above the roof level, and the elevator penthouse will be 18 feet above the roof level, which would exceed the maximum district height limit (45 feet) by approximately 9 and 13 feet, respectively. The rooftop features would be setback a minimum of 28 feet from edge of the building, resulting in a minimal line-of-sight impact; therefore the rooftop projections may be allowed with an Administrative Use Permit, because:

1. The parapet will not provide floor area and is thus not subject to the 15 percent of habitable space limit.
 2. The mechanical penthouses and elevator penthouse will only provide uninhabitable space and access to the roof for maintenance requirements. The average floor area of all of the building's floors is 26,306 square feet, and 15 percent of this total is 3,946 square feet. The total area of the elevator room/stair access is roughly 3,812 square feet, which is less than the 15 percent maximum (or 3,946) square feet.
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IV. REQUIRED FINDINGS FOR PARKING REDUCTION

Pursuant to BMC 23E.64.080.J and 23E.80.080.E, the Zoning Adjustments Board finds reduction of required automobile parking would not lead to an undue shortage of auto parking spaces and that it can be reasonably expected that there will be demand for the bicycle/motorcycle parking spaces because:

1. There are a number of AC Transit bus stops within 0.25 mile of the project site, with the closest one approximately 150 feet from the project site at the corner of Parker Street and San Pablo Avenue (serving the 72, 72M, and 802 lines). The Dwight and San Pablo development node is approximately 750 feet (one block) north of the project site, and contains three AC Transit bus stops. There are three BART stations within two miles of the project site: North Berkeley (1.5 miles northeast), Ashby (1.7 miles southeast), and Downtown Berkeley (1.9 miles east).
 2. The proposed mixed-use project includes a neighborhood-serving use (a Food Service Establishment).
 3. The 10 percent reduction in automobile parking would result in 117 required parking spaces, which the project would provide. The 10 percent addition to bicycle parking would result in 45 required spaces. The project would contain a total of 46 bicycle parking spaces, which would exceed the bicycle parking requirement by one space.
 4. In addition, the parking requirement modification will meet the purposes of the district related to improvement and support for alternative transportation, pedestrian improvements and activity, or similar policies, in that the project would include transportation demand management strategies including providing transit passes, bicycle parking spaces, and a car share parking space.
 5. The ease of bicycling in the neighborhood, the availability of goods and services nearby, and the proximity of transit, combined with the inherent high cost of car ownership, will reduce auto use and parking demand.
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V. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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

- 1. Conditions and Mitigation Monitoring and Reporting Program Shall be Printed on Plans**
The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.
- 2. Applicant Responsible for Compliance with Conditions**
The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.
- 3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)**
 - A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
 - B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.
- 4. Modification of Permits (Section 23B.56.020)**
No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.
- 5. Plans and Representations Become Conditions (Section 23B.56.030)**
Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.
- 6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)**
The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.
- 7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**
Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

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. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

VI. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

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

Project Liaison _____
Name Phone #

11. Compliance with Conditions and Environmental Mitigations. All building permits for this project are subject to verification of compliance to the adopted Mitigation Monitoring and Reporting Program for this project (Attachment 1), applicable Mitigations required for the IS-MND, and all Conditions of Approval contained herein. The applicant shall deposit \$10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with the adopted Mitigation Monitoring and Reporting Program for this project, applicable Mitigations required for the IS-MND, and all Conditions of Approval. Should compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses upon the request of the Zoning Officer; any unused deposit will be refunded to the applicant.
12. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.
13. Parcel Merger. The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
14. Percent for Art: Consistent with BMC §23C.23, prior to issuance of a building permit the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
15. Affordable Housing Mitigation Fee: Consistent with BMC §22.20.065, the applicant provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the AHMF if applicable.
16. Encroachment Permit: To apply, a completed Encroachment Permit application, the adopted environmental document, and five (5) sets of plans clearly indicating State ROW must be submitted to: Office of Permits, California DOT, District 4, P.O. Box 23660, Oakland, CA 94623-0660. Traffic related measures, such as the Transportation Management Plan, should be incorporated into the construction plans prior to the encroachment permit process. See the website link below for more information.
<http://www.dot.ca.gov/hq/traffops/developserv/permits/>
17. Construction Noise Management - Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, (5) commitment to notify neighbors at least four days in advance of authorized extended work hours and the reason for extended hours, and (6) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

18. Construction Noise Reduction Program. The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. In addition the requirements detailed in Mitigation Measures NOI-1 and NOI-1, 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.

- 19. Damage Due to Construction Vibration.** The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall take into account project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means and methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake an existing conditions study (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage. The study will establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls. The study shall include written descriptions and photographs. The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair. The applicant's Geotechnical Investigation shall be peer reviewed by a qualified professional.
- 20. Construction Phases.** The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.
- 21. Fee Deferrals. **Prior to issuance of any building permit,**** all zoning project application fees that were deferred at the time of application submittal shall be paid in full.
- 22. Affordable Housing.** As required by Resolution No. 66,617-N.S., adopted June 3, 2014, Owner shall offset the estimated impacts of the project on affordable housing according to the following formulas:

USE	AFFORDABLE UNITS per SQ.FT.	FEE
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Office, Research + Development, Restaurant/Retail, Hotel	1 unit per 52,859 gross square feet	\$4.50 per gross square foot
Industrial/Manufacturing, Warehouse/Storage (except self-storage)	1 unit per 105,719 gross square feet	\$2.25 per gross square foot
Self-Storage	1 unit per 54,432 gross square feet	\$4.37 per gross square foot

The requirement may be satisfied by:

In-Lieu Fee - Owner shall pay an equivalent in-lieu impact fee in the amounts and according to the schedule listed below

Prior to Building Permit	\$91,005
Prior to Occupancy Permit	\$91,005
1 Year from Occupancy Permit	\$91,005

The final payment shall be appropriately secured by the City, e.g., by a letter of credit, bond, Promissory Note, Deed of Trust or another appropriate form of security. Some payments carry interest from the date they would normally be due. Applicants may request reductions to these fee amounts, under the provisions of BMC Sections 22.20.070 or 22.20.080 relating to lower levels of impact, infeasibility, or overriding benefit to the City.

23. **Child Care.** As required by Resolution No. 66,618-N.S., adopted June 3, 2014, Owner shall offset the estimated impacts of the project on affordable child care according to the following formulas:

USE	FEE
Office, Restaurant/Retail	\$1.25 per gross square foot
Industrial/Manufacturing	\$0.75 per gross square foot
Hotel/lodging	\$1.50 per gross square foot
Warehouse/Storage	\$0.62 per gross square foot
Research & Development	\$0.80 per gross square foot

In-Lieu Fee. Owner shall pay a fee into the City's Child Care Operating Subsidy account in the amounts and according to the schedule listed below.

Prior to Building Permit	\$19,234
Prior to Occupancy Permit	\$19,234
1 Year from Occupancy Permit	\$19,234.50

The final payment shall be appropriately secured by the City, e.g., by a letter of credit, bond, Promissory Note, Deed of Trust or another appropriate form of security. Some payments carry interest from the date they would normally be due. Applicants may request reductions to these fee amounts, under the provisions of BMC Sections 22.20.070 or 22.20.080 relating to lower levels of impact, infeasibility, or overriding benefit to the City.

- 24. Green Building Certification.** The applicant shall submit documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation shall include proof of payment of the registration/application fee to the organization administering the green building certification system (e.g. USGBC/GBCI for LEED, Build It Green for GreenPoint Rated, etc.), a copy of the updated green building checklist that reflects anticipated points, and a statement from the appropriate project team professional (e.g. LEED Accredited Professional, GreenPoint Rater, etc.) verifying that the project is on track for certification at the required level or above. The submitted green building checklist must be a type that is appropriate for the project and a version that is being accepted by the organization granting the green building certification at the time of building permit application. Whenever applicable, measures from the green building checklist shall be incorporated and noted on site plans.
- 25. Savings By Design.** The applicant shall submit documentation to the project planner verifying that an application to the [Savings By Design](#) program (either the [Whole Building form](#) or the [Systems Approach form](#)) was submitted to PG&E. This documentation shall include a copy of follow-up documentation between PG&E and the applicant, including a Savings By Design Energy Efficiency Form with a completed Preliminary Savings Estimate.
- 26. Electric Vehicle (EV) Charging.** At least 10% of the project parking spaces for residential parking and 3% of the parking spaces for non-residential parking shall be pre-wired to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation, as specified by the Office of Energy and Sustainable Development. Any Level 2 EV charging systems installed at parking spaces will be counted toward the applicable pre-wiring requirement. Pre-wiring for EV charging and EV charging station installations shall be noted on site plans.
- 27. Recycling and Organics Collection.** Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
- 28. Water Efficient Landscaping.** Applicant shall provide an updated Bay-Friendly Basics Landscape Checklist that includes detailed notes of any measures that will not be fully met at the project. Landscape improvements shall be consistent with the current versions of the State's Water Efficient Landscape Ordinance (WELO) and the East Bay Municipal Utility District's Section 31: Water Efficiency Requirements.
- 29. Construction and Demolition.** Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.
- 30. Public Works ADA.** Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
- 31. Parking for Disabled Persons.** Per BMC Section 23E.28.040.D of the Zoning Ordinance, "Notwithstanding any reduction in off-street parking spaces that may be granted for mixed-use projects in non-residential districts listed in Sub-title 23E, the requirement for off-street

parking spaces for disabled persons in the project shall be calculated as if there had been no reduction in total parking spaces.”

32. First Source Agreement. The applicant and/or end user(s) shall enter into a First Source Agreement with the City of Berkeley. First Source promotes the hiring of local residents on local projects. The agreement requires contractors/employers to engage in good faith efforts to hire locally, including utilizing graduates of local job training programs. Please call (510) 981-4970 for further information, or visit the City’s Employment Programs office at 2180 Milvia, 1st Floor.

33. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:

A. Environmental Site Assessments:

1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old*) shall be submitted to TMD for developments for:

- All new commercial, industrial and mixed use developments and all large improvement projects.
- All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
- EMA is available online at:
- [http://www.cityofberkeley.info/uploadedFiles/IT/Level_3 - General/ema.pdf](http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf)

2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.

3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

B. Soil and Groundwater Management Plan:

1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.

2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the

name and phone number for the person responding to community questions and complaints.

- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
- 4) The applicant's Geotechnical Investigation shall be peer reviewed by a qualified professional.

C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

Prior to Construction:

34. Construction Meeting. The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

35. Air Quality - Diesel Particulate Matter Controls during Construction. All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with **one** of the following measures:

1. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not

exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

2. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications. In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:
 - A. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
 - B. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract.

The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

During Construction:

36. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
 - A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
 - C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light

of factors such as the uniqueness of the find, project design, costs, and other considerations.

D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.

E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

37. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist or paleontologist to assess the significance of the find.
38. Halt Work/Unanticipated Discovery of Tribal Cultural Resources (Ongoing throughout demolition, grading, and/or construction). In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required
39. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
40. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction). In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate

Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

41. Avoid Disturbance of Nesting Birds (Ongoing throughout demolition, grading, and/or construction). Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.
42. Construction Hours. Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
43. Construction Hours- Exceptions. It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.
44. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
 - Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere In the public ROW;

- Provision of exclusive contractor parking on-street; or
- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

45. Project Construction Website. The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:
- Contact information (i.e. "hotline" phone number, and email address) for the project construction manager
 - Calendar and schedule of daily/weekly/monthly construction activities
 - The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.
46. Extreme Construction Noise. Construction activities that may generate extreme noise (noise greater than 90 dBA) at nearby sensitive receptors must be limited to the hours between 8 a.m. and 5 p.m., Monday through Friday. Any work that may generate extreme noise at nearby sensitive receptors outside of these hours, or that needs to occur on a Saturday, must first go through the approval and notification process described in SCA-36. Additionally, if complaints regarding noise are received from occupants of buildings potentially exposed to extreme noise during project construction, the noise liaison shall implement noise monitoring, if appropriate and feasible, to determine and document whether the measures instituted to correct the problem are effective. The results of any noise monitoring conducted, as well as a description of the noise reduction measures implemented, shall be provided to the Zoning Officer for review.
47. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.

- B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
- C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
- D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
- E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
- F. All on-site storm drain inlets/catch basins **must** be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
- G. All private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).
- H. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
- I. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

- J. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
- K. Restaurants, where deemed appropriate, must be designed with a contained area for cleaning mats, equipment and containers. This contained wash area shall be covered or designed to prevent run-on or run-off from the area. The area shall not discharge to the storm drains; wash waters should drain to the sanitary sewer, or collected for ultimate disposal to the sanitary sewer. Employees shall be instructed and signs posted indicating that all washing activities shall be conducted in this area. Sanitary connections are subject to the review, approval and conditions of the waste water treatment plant receiving the discharge.
- L. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- M. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 48. Public Works - Construction.** Construction activities that involve one or more acres of land disturbance must comply with the State-wide general permit requiring owner to (1) notify the State; (2) prepare and implement a Stormwater Pollution Prevention Plan (SWPPP); and (3) monitor the effectiveness of the plan. Additional information may be found online at <http://www.swrcb.ca.gov>. As part of the permit submittal, the Public Works Department will need a) a copy of the “Notice of Intent” filed with the State Water Resources Control Board (SWRCB)/Division of Water Quality; b) the Waste Discharger Identification (WDID) number issued by the SWRCB for the project; c) a copy of the SWWPP prepared for each phase of the project; and d) the name of the individual who will be responsible for monitoring the site for compliance to the approved SWPPP.
- 49. Public Works - Implement BAAQMD-Recommended Measures during Construction.** For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

50. 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.

51. 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.

52. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

53. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

54. 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.

55. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

56. Compliance with Conditions and Environmental Mitigation Measures. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout

the implementation of this Use Permit. Occupancy is subject to verification of compliance to these Conditions of Approval as well as the Mitigation Monitoring and Reporting Program.

57. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated June 29, 2017, except as modified by conditions of approval.
58. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff
59. Green Building Certification. The applicant shall submit updated documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation expected at this stage includes proof of submission of the final application materials and payment of the certification fee. If this submission has not yet occurred, a detailed explanation and timeline indicating when it will happen must be submitted to the Zoning Officer for review and approval. Once awarded by the organization administering the green building certification system, the applicant shall forward a copy of the certification award to the Zoning Officer.
60. Savings By Design. The applicant shall provide the project planner with an updated Savings By Design Energy Efficiency Form that includes a completed Final Savings for the project. If the applicant has requested that PG&E complete this form and PG&E is unable to do so prior to occupancy permit or final inspection approval, the applicant may satisfy this condition by submitting documentation that PG&E intends to submit the form to the project planner with the expected date.

At All Times:

61. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
62. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
63. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review and Landmarks Preservation Commission approval.
64. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

- 65. Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.
- 66. Loading.** All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 A.M. to 10:00 P.M. daily.
- 67. Bike Parking.** Secure and on-site bike parking for 46 bicycles shall be provided for the life of the building.
- 68. Transportation Demand Management.** A Transportation Demand Management compliance report shall be submitted to the Transportation Division Manager, 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 and the following:
- A. **Transportation Information Display.** The building permit plans shall incorporate a transportation information display in the residential lobby (and lounges, break rooms and other common areas, if applicable) to provide all residential building occupants with information regarding: 1) Albany, Berkeley, Oakland and Emeryville biking and walking maps; 2) directions to BART & AMTRAK; 3) AC Transit and West Berkeley Shuttle route maps, schedules and fares; and 4) NextBus, 511 and car-share contact information. Building management will ensure that all information regarding transit and alternative transportation is kept current, and that this information is provided to all residents, commercial tenants and employees, on an annual basis.
- B. **West Berkeley Shuttle.** Applicant shall fully participate in either (i) the Berkeley Gateway Transportation Management Association (GTMA), or (ii) another private, non-profit agency responsible for administering a West Berkeley Shuttle to North Berkeley and Ashby BART Stations serving West Berkeley and the members participating in the West Berkeley transportation Management Association (WBTMA). Full participation in either the GTMA or the WBTMA requires (i) a one-time start-up payment to either the GTMA or the WBTMA to establish shuttle services with amounts to be decided by all participants; (ii) annual payments to provide project's fair share of service estimated for initial operating years to be decided by all participants; and (iii) participation in the governance of the non-profit on a pro-bono basis.
- Prior to the issuance of certificate of occupancy, Applicant shall provide evidence to the Zoning Officer that it has executed a Membership Agreement with either the GTMA or the WBTMA in accordance with the policies, rules and regulations of the organization, and the above.
- Applicant, its successors and assignees, shall remain a member of the GTMA or WBTMA, or equivalent, for as long as the GTMA or WBTMA or its successor or assignee operates a shuttle from West Berkeley to BART, or its successors.
- C. **CarShare Required.** Car share application fees, membership fees, and monthly dues shall be paid in full for all participating employees.
- D. **Bike Parking.** Secure and on-site bike parking for at least 46 bicycles shall be provided for the building.

- E. Alameda County Guaranteed Ride Home program. Encourage enrollment by all qualifying employees in the Alameda County Guaranteed Ride Home program and submit an annual statement indicating number of participating employees.
- F. Pre-Loaded Clipper Cards. Provide annual transit pass subsidies in the form of pre-loaded Clipper Cards (or other acceptable substitute) for each residential unit until such time that applicant's fair share contribution to the West Berkeley Shuttle program is made, and service commences and if and when the West Berkeley Shuttle is not in operation.
- G. Transit Subsidy Condition. The applicant shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area as per BMC Chapter 9.88.
- H. Food Service Operation. The food service operation, if qualifying for participation in the Alameda County Guaranteed Ride Home program (or successor program), shall participate in the "Guaranteed Ride Home" program to reduce employee single occupant vehicle trips by providing alternate means of leaving work in an emergency. Enrollment shall be encouraged by providing Guarantee Ride Home information to all employees. An affidavit/statement indicating number of participating employees shall be provided annually to the Transportation Division Manager.

FOOD SERVICE CONDITIONS

(These requirements are in addition to any other requirements under the City's Building, Health or Fire Codes or by agencies such as the Alcoholic Beverage Control Department of the State of California. The applicant is responsible for contacting these and other departments and agencies to identify and secure all applicable permits and licenses).

- 69. Changes in the nature of the operation including, but not limited to, the addition of seating, changes in hours (except decreased hours in compliance with applicable ABC regulations), and the addition of live entertainment, shall require modification of this permit subject to approval by the Zoning Adjustments Board.
- 70. The approved floor plan, including the number of seats, shall be followed and the operation shall be conducted as presented to the Board. The maximum occupancy shall be as specified in the application unless otherwise required by applicable regulations.
- 71. Changes to the building's facade, including doors or windows, site plans, landscaping, signage, and awnings are subject to Design Review and approval prior to issuance of a building permit.
- 72. The hours of operation of the restaurant portion of the business shall be limited to the District hours. Hours of operation refer to arrival of the first patron and departure of the last patron. Any change in the hours of operation (except decreased hours in compliance with applicable ABC regulations) shall be approved by the Zoning Adjustments Board. Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.

73. Cooking odors, noise, exterior lighting and operation of any parking area shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.
 74. Smoke and odor control equipment approved by the City Environmental Health Division and providing adequate protection to residential uses near the restaurant shall be installed (or prior installation verified) prior to issuance of an Occupancy Permit.
 75. Garbage and trash containers that are suitably enclosed and screened from view shall be provided subject to approval of the Zoning Officer, the Health Department and, where applicable, the Design Review Planner. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall provide separate bins or cans for the placement of such cans or bottles to ensure recycling of such containers.
 76. Containers used for the dispensing of prepared food shall identify the establishment. Polystyrene foam food packing is prohibited by Section 11.60.030 of the Berkeley Municipal Code.
 77. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers. The operator of the restaurant shall place a waste receptacle near the entry way and shall insure that garbage on the sidewalk in front of the establishment and within 50 feet thereof will be picked up periodically during each day, so that the sidewalk remains clean.
 78. Posting Requirements. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
 79. Subject to Review. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
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Mitigation Monitoring and Reporting Program

This Mitigation Monitoring and Reporting Program (MMRP) was formulated based upon the findings of the Initial Study-Mitigated Negative Declaration (IS-MND) prepared for the 1050 Parker Street Project. The MMRP, which is provided in the following table, lists mitigation measures required and recommended in the IS-MND for the proposed project and identifies mitigation monitoring requirements. The Final MMRP must be adopted when the City makes a final decision on the project.

This MMRP has been prepared to comply with the requirements of State law (Public Resources Code Section 21081.6). State law requires the adoption of an MMRP when mitigation measures are required to avoid significant impacts. The MMRP is intended to ensure compliance during implementation of the project.

The MMRP is organized in a matrix format. The first column identifies mitigation measures that were identified in the Final IS-MND. The second column, entitled "Action Required," refers to the monitoring action that must be taken to ensure the mitigation measure's implementation. The third column, entitled "Monitoring Timing," refers to when the monitoring will occur to ensure that the mitigation action is complete. The fourth column, "Responsible Agency," refers to the agency responsible for oversight or ensuring that the mitigation measure is implemented. The "Compliance Verification" column is where the Responsible Agency verifies that the measures have been implemented. These mitigation measures include any minor revisions made as a result of the Response to Comments Document.

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Responsible Agency	Compliance Verification		
				Initial	Date	Comments
HYDROLOGY AND WATER QUALITY						
HYD-1: Design-level Drainage Analysis and Minimization of Runoff						
The applicant shall conduct a design-level drainage analysis. The analysis shall be submitted to and approved by the City of Berkeley Department of Planning and Development prior to issuance of required project permits. The drainage analysis shall identify existing drainage patterns across the project site and existing off-site stormwater discharge locations. The drainage analysis shall quantify the existing and predicted post-construction peak runoff rates and amounts both on-site and off-site immediately downgradient of the project site. The drainage analysis shall identify any changes to the location of down-gradient discharge of stormwater runoff and any potential impacts on off-site property that would result from those changes.	Conduct a design-level drainage analysis	Prior to the issuance of required project permits	City of Berkeley Department of Planning and Development			
HYD-2: Stormwater Control Measures						
Stormwater control measures shall be developed to maximize on-site infiltration of stormwater and minimize off-site stormwater discharge and to not exceed pre-project flow rates during construction. These stormwater control measures shall be designed such that post-development, off-site peak flow discharge from the project site for discharge rates and durations from 10 percent of the pre-project 2-year peak flow up to the pre-project 10-year peak flow would not be greater than pre-development peak flow discharge. The stormwater control measures may include, as necessary, above-ground retention and/or detention basins, stormwater collection tanks, subsurface infiltration devices such as cisterns with permeable bottoms or perforated pipes, permeable pavement, and vegetated swales. The stormwater control measures required by this mitigation may be used, in whole or in part, to satisfy the erosion and runoff control standards of the NPDES-required SWPPP. In addition, the Project will be subject to standard conditions of the City's Toxics Management Division (TMD) requiring that a Soil and Groundwater Management Plan (SGMP) be submitted to the TMD with the Project's building permit application and be approved by TMD prior to the issuance of the building permits. The stormwater control measures identified as necessary to maintain pre-project discharge rates as described above shall be installed during construction to ensure discharge during and at post-construction	Develop and install stormwater control measures	During construction activities	City of Berkeley Department of Planning and Development			
	Verify installation of all stormwater control measures	Prior to occupancy clearance	City of Berkeley Department of Planning and Development			

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Responsible Agency	Compliance Verification		
				Initial	Date	Comments
do not exceed pre-project peak flow rates and to ensure compliance with the identified discharge thresholds. All post-construction stormwater control measures shall be in place prior to issuance of occupancy permits.						
NOISE						
NOI-1: Construction Vibration Reduction Measures						
<p>Prior to issuance of grading permits, the applicant shall incorporate the following actions into a construction management plan subject to review and approval by the City:</p> <ul style="list-style-type: none"> ▪ The applicant or contractor shall ensure that construction activities involving vibratory rollers, large bulldozers, or loaded trucks do not occur during posted services times at the Covenant Worship Center (2622 San Pablo Avenue), currently listed as Sundays at 10:30 AM and 6:00 PM and Wednesdays at 7:00 PM. ▪ The applicant or contractor shall, to the extent technically and economically feasible, limit the use of vibratory rollers, large bulldozers, or loaded trucks within 75 feet of the nearest wall of the Covenant Worship Center or Fantasy Studios (2600 Tenth Street) to no more than 30 vibration events per day. ▪ The applicant or contractor shall, to the extent technically and economically feasible, limit the use of jackhammers within 25 feet of the nearest wall of the Covenant Worship Center or Fantasy Studios to no more than 70 vibration events per day. ▪ The applicant or contractor shall provide tenants of the three multi-family residential units atop the Missouri Lounge, the Covenant Worship Center and Fantasy Studios with a notification 24 hours prior to vibration-generating construction activities. 	Create a construction management plan subject to review and approval by the City	Prior to the issuance of grading permits	City of Berkeley Department of Planning and Development			
NOI-2: Construction Noise Abatement						
<p>Prior to issuance of grading permits, the applicant shall incorporate the following actions into a construction management plan subject to review and approval by the City:</p> <ul style="list-style-type: none"> ▪ The applicant or contractor shall equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment. 	Create a construction management plan subject to review and approval by the City	Prior to the issuance of grading permits	City of Berkeley Department of Planning and Development			

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Responsible Agency	Compliance Verification		
				Initial	Date	Comments
<ul style="list-style-type: none"> ▪ The applicant or contractor shall use quiet models of air compressors and other stationary noise sources where technology exists. ▪ The applicant or contractor shall locate stationary noise-generating equipment as far as feasible from the nearest noise-sensitive receptors. ▪ The applicant or contractor shall prohibit unnecessary idling of internal combustion engines. ▪ The applicant or contractor shall construct solid plywood fences around the construction site adjacent to operational businesses, including the Covenant Worship Center (2622 San Pablo Avenue). ▪ The applicant or contractor shall avoid construction activities during posted services at the Covenant Worship Center (2622 San Pablo Avenue), currently listed as Sundays at 10:30 AM and 6:00 PM and Wednesday at 7:00 PM. ▪ The applicant or contractor shall ensure that supporting construction activities, including the loading and unloading of materials and truck movements are limited to the hours of 7:00 A.M. to 6:00 P.M. on weekdays and between the hours of 9:00 A.M. and 4:00 P.M. on Saturdays, or as stipulated in the conditions of approval. No construction-related activity shall occur on Sunday or any Federal Holiday. ▪ The applicant or contractor shall notify adjacent businesses, the Covenant Worship Center, and residents within a 500-foot radius of the project site of the construction schedule in writing. The applicant or contractor also shall designate a “construction liaison” responsible for responding to any local complaints about construction noise. The liaison shall determine the cause of noise complaints (e.g., starting too early, bad muffler) and institute reasonable measures to correct the problem. The applicant or contractor shall conspicuously post a telephone number for the liaison onsite. 						

TRANSPORTATION

T-1: Reimbursement Agreement to Facilitate Traffic Improvements

A Reimbursement Agreement shall be established between the applicant and the City prior to the issuance of required project permits. The Reimbursement Agreement shall specify the improvements to be accomplished as set forth below, the timing	Create a construction management plan subject to review and approval by the City	Prior to the issuance of grading permits	City of Berkeley Department of Public Works, Transportation Division
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Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Responsible Agency	Compliance Verification		
				Initial	Date	Comments
<p>of the improvements, the proportionate share of improvement costs, the timing of the reimbursement payments, and a mutual commitment to use best efforts to coordinate and expedite the installation of the improvements with the goal of providing them before the project receives its first certificate of occupancy. Upon completion of the traffic improvements, the City shall then reimburse the applicant the City's pro-rata share of the traffic improvements over a multi-year period as shall be more specifically described in the Reimbursement Agreement.</p> <p>a. Intersection Improvements. Dedicated westbound and eastbound left-turn lanes at the San Pablo Avenue/Dwight Way intersection.</p> <p>b. Signal Installation. Signalization of the San Pablo Avenue/Parker Street intersection and coordinated signal timing with the adjacent intersections on San Pablo Avenue.</p>						
T-2: Driveway Safety						
<p>The applicant shall provide 10 feet of red curb on either side of the project driveways on Tenth and Parker Streets to improve sight distance between vehicles exiting the project driveways and motorists and bicyclists on Tenth and Parker Streets. Improvements shall occur prior to certificate of occupancy.</p>	<p>Provide 10 feet of red curb on either side of the project driveways on Tenth and Parker Streets</p>	<p>Prior to occupancy clearance</p>	<p>City of Berkeley Department of Public Works, Transportation Division</p>			