



Office of the City Manager

PUBLIC HEARING
September 29, 2022

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jordan Klein, Director, Planning & Development Department
 Subject: ZAB Appeal: 1201-1205 San Pablo Avenue, Use Permit #ZP2021-0070

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units (including five Very-Low-Income units), 1,680 square feet of commercial space, 2,514 square feet of usable open space, and 17 to 28 ground-level parking spaces, and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On April 1, 2021, Isaiah Stackhouse of Trachtenberg Architecture submitted a Preliminary Application pursuant to Government Code 65941.1 to vest rights pursuant to SB 330, the Housing Crisis Act of 2019, for a housing development project.

On May 11, 2021, Isaiah Stackhouse of Trachtenberg Architecture submitted an application for Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units and 1,680 square feet of commercial space.

On December 9, 2021, the ZAB conducted a public preview and provided a preliminary review of the project.

On January 20, 2022, the Design Review Committee (DRC) conducted a Preliminary Design Review (PDR) of the project and continued the discussion to a second meeting. On March 29, 2022, the DRC conducted a second PDR meeting and forwarded a favorable recommendation for the project to the ZAB with conditions and recommendations for Final Design Review (FDR).

On April 28, 2022, the ZAB conducted a public hearing for the use permit application. After hearing public comments and holding discussion, the ZAB approved the use

permit by a vote of 7-0-2-0 (Yes: Duffy, Matthews, Kim, Olson, Sanderson, Gaffney, Tregub; No: None; Abstain: Sheahan, Thompson; Absent: None).

On May 5, 2022, staff issued the ZAB Notice of Decision.

On May 19, 2022, the City Clerk received an appeal filing from Yvette Bozzini, resident at 1110 Harrison Street, and Dan Hayes, resident at 1116 Harrison Street.

On September 15, 2022, staff posted the public hearing notice at the site and three nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal.

BACKGROUND

There was considerable interest in the project from the residents in the surrounding neighborhood. Neighbors attended and spoke at the ZAB Preview, both DRC meetings, and the ZAB hearing. In the weeks leading up to the ZAB hearing in April 2022, neighbors contacted Councilmember Kesarwani's office and met with her on April 18, 2022 to present their questions and concerns, which covered a range of issues in relation to the project, including Senate Bill 330 streamlined permit review, the Housing Accountability Act, density bonus, privacy screening, neighborhood permit parking, traffic, and pedestrian safety. Councilmember Kesarwani's office worked with City staff in several departments and answered the questions via emails to the neighbor group in the days prior to the ZAB hearing.

In response to the concerns about privacy screening, traffic impact and pedestrian safety in the neighborhood, staff recommended several conditions of approval and presented them to the ZAB at the hearing:

12. Screening Trees. The Project Proponent shall consult with the project landscape architect for species recommendations for planting in the 5-foot-wide landscape strip on the eastern property line that closely achieves this objective: a row of large screening trees (24" box minimum) that have an initial height of 10' and full height of 25-30 feet height minimum. The project Landscape Plan shall include the proposed plantings to be reviewed by Land Use staff.
27. Bike Boulevard. The Project Proponent shall be responsible for establishing Kains Avenue, between Harrison Street and Gilman Avenue, as a Class 3 bike boulevard (installing sharrow pavement markings and signage as required), consistent with the bike network improvements stated in the City's Bicycle Plan (May 2017). The Project Proponent shall coordinate with the Public Works (Engineering and Transportation Divisions) to obtain necessary approvals.
28. Traffic Study. The Project Proponent shall retain the project traffic consultant to perform an analysis of the remaining eight traffic signal warrants at San Pablo and

Harrison Avenues for consideration of a traffic signal for the intersection. The traffic study shall include an analysis of Loss of Service (LOS) levels at this intersection for consideration of a left turn prohibition at the intersection. The traffic study shall be submitted to the Transportation Division for review and approval.¹

29. Parking Garage Exit. The Project Proponent shall submit plans showing the installation of a “Left Turn Only” sign and left turn pavement markings at the parking garage exit, to facilitate left turns only onto Harrison Street. The Project Proponent shall also consider modifying the driveway to angle toward the left to facilitate left turns. Sound level specifications for a pedestrian alert system at the garage exit shall be submitted for review and approval by the Land Use staff.

The applicant agreed to the recommended conditions, and they were approved by the ZAB for inclusion in the permit conditions.

For additional project background, please see Attachment 3, the ZAB staff report for this project.

RATIONALE FOR RECOMMENDATION

The issues raised in the appellants’ letter and staff’s responses follow. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the attached appeal letter (Attachment 2) for the full text.

Issue 1: The appellants request that the parking garage driveway for the Project be relocated from Harrison Street to San Pablo Avenue in the design, to help with traffic, pedestrian safety and to reduce garage door noise.

Response 1: Relocation of the parking garage driveway to the San Pablo side of the project would require the applicant to re-design the ground floor plan and apply for a permit from the California Department of Transportation (CalTrans) to locate a driveway on a State Highway, Route 123, San Pablo Avenue. Staff consulted with CalTrans on feasibility of the proposal. CalTrans advised that the agency would require a traffic analysis for the location of the driveway on San Pablo, including a study of a potential turn prohibition at Harrison, and would consider approval of an encroachment permit for the proposal based upon the report. The Transportation Division indicated that it would support the relocation if the traffic study concludes that a driveway on San Pablo would not create any operational or safety and circulation issues.

¹ SB 375 requires the use of Vehicle Miles Traveled (VMT) as criteria for analysis of traffic impacts for CEQA, but LOS can still be used as an informational tool to help assess safety and circulation impacts as part of a project. In this case, LOS results would help determine how a left turn prohibition would increase vehicle delay. The traffic study would also provide information on other factors such as pedestrian circulation and vehicle sight triangles to guide the recommendation.

Staff advises that relocation of the driveway to San Pablo in the project could be a feasible solution to neighbor concerns regarding traffic and pedestrian safety. However, it is not required to address an identified problem; i.e. City staff and consultants have not identified any safety or operational issues with the project as approved by ZAB, which has a driveway located on Harrison Street to access the ground-floor garage with 17 to 28 parking spaces. The street front along San Pablo Avenue is currently planned to have a commercial space on the corner, a residential lobby, and other support space designed to activate the pedestrian experience.

Issue 2: The appellants request that Council require the developer to complete an updated traffic study (including peak commute hour traffic), and for traffic mitigation measures to be included as conditions of approval (COAs) and implemented before the completion of the project.

Response 2: The City's Zoning Project Submittal Requirements list states that projects that do not meet at least one of the screening thresholds listed in the City's Vehicle Miles Traveled (VMT) Criteria and Thresholds (June 29, 2020) must prepare further analysis of potential traffic impacts from the project. A project must meet at least one of the screening criteria – location in a Transit Priority Area or Low VMT Area – to assess whether VMT can be presumed to be less-than-significant. The applicant submitted a Transportation Assessment Memorandum prepared by project transportation consultant, Fehr and Peers, dated July 2, 2021, which concluded that the project meets both criteria. The memo was reviewed by Transportation Division staff, which concurred with the memo's conclusion that traffic impacts from the project could be presumed to be less-than-significant, and that no further traffic analysis is required.

Peak hour trip generation for the project was analyzed in the Transportation Assessment Memorandum, and was reviewed by the Transportation Division. The Division did not indicate any further concerns.

Prior to the ZAB hearing, neighbors expressed concerns over increased traffic and impact to pedestrian safety from the project on Harrison Street, and in the larger neighborhood east of San Pablo. Although the applicants were not required to submit further traffic analysis for the project, in response to neighbor concerns, staff recommended that conditions of approval be added to the permit that would require further traffic analysis for consideration of a traffic signal at the intersection of San Pablo and Harrison Avenues, and other traffic mitigation measures such as the establishment of a bike boulevard on Kains Avenue and signage to direct outgoing traffic from the garage exit on Harrison Street westward, away from the neighborhood streets and toward San Pablo Avenue (see Conditions #27, 28 and 29, in Attachment 1, Exhibit A; see the Background section of this report for discussion). The applicant agreed to the recommended conditions, and ZAB approved the permit with the added conditions. The Finding and Conditions specify that the traffic study condition must be implemented prior to the issuance of any building permit for construction. The applicant would have to

conduct and submit the traffic study to the Transportation Division for approval before a building permit could be issued.

A detailed traffic study, to be approved by the City prior to issuance of the building permit, is already required by condition of approval #28 in the permit approved by the ZAB.

Issue 3: The appellants request that Council require the developer to directly compensate the adjacent neighbor at 1110 Harrison for impacts to their property as a COA, including impacts to loss of light, privacy in the home and yard; potential damage to the house foundation, walls, and driveway from construction; and disruption of the home office.

Response 3: The ZAB determined that the project is compliant with all applicable, objective general plan and zoning standards. The Berkeley Municipal Code (BMC) does not have objective standards for the loss of light or privacy. Though the BMC does require findings of general non-detriment for approval of discretionary projects, non-detriment findings are not objective standards and cannot provide a basis for denial or reduction of the project. An analysis of shadow and privacy impacts is provided in the staff report and those impacts were determined to be within the range of what is normally expected in an urban environment.

To protect neighboring properties against potential damage and disruption from construction activities associated with the project, standard conditions of approval have been included with the permit:

- #14 Project Liaison – requires liaison contact information posted visibly at the construction site and on the construction plans
- #20 Construction Noise Reduction Program – requires preparation of an assessment and program by a noise consultant and implementation of noise mitigations
- #21 Damage Due to Construction Vibration. – requires a vibration screening analysis and/or vibration impact assessment by a noise consultant and further monitoring if necessary
- #23 Construction Noise Management – Public Notice Required. – requires public notice of initiation of construction activities two weeks prior to commencement
- #45 Construction Hours - Exceptions – requires approval by the Zoning Officer and noticing to neighbors of extensions of allowed construction hours, only for special construction activities.
- #46 Project Construction Website – requires availability of a project website with construction manager contact information; schedule of construction activities;

project conditions of approval, and other reports related to construction noise, air quality, and traffic.

Staff advises that potential damage and disruption from project construction activities are addressed by the conditions of approval included in the permit approved by the ZAB.

Issue 4: The appellants request that Council require the developer to directly compensate the neighbor at 1206 Kains Avenue for the loss of ability to generate solar power as a COA.

Response 4: The ZAB determined that the project is compliant with all applicable, objective general plan and zoning standards. The BMC does not have objective standards for the shading of solar panels. Though the BMC does require findings of general non-detriment for approval of discretionary projects, non-detriment findings are not objective standards and cannot provide a basis for denial or reduction of the project. The analysis of shadow impact from the project is provided in the ZAB staff report.

The City does not have solar access provisions in the BMC, but the State has laws that are protective of the benefits gained from having solar equipment – the California Solar Rights Act and the Solar Shade Control Act.

Though the California Solar Rights Act² does not include provisions to protect solar access, per se, it does recognize the possibility of a “solar easement” to be created. A solar easement is an agreement by which a landowner may grant access to the sunlight that transverses their land to a solar energy system owner on an adjacent parcel. California Civil Code Section 801.5 defines a “solar easement” as the “right of receiving sunlight across real property of another for any solar energy system.” A solar easement must be created for the sole purpose of accessing sunlight to create thermal or electric energy using a solar energy system, as defined by Section 801.5. A person merely seeking to access sunlight could not seek protections under Sections 801 and 801.5.³ The property owner of 1206 Kains Avenue could create a solar easement agreement with the property owner of 1201 San Pablo Avenue, outside City involvement to protect solar access for their solar panels. While State law allows for parties to voluntarily enter into solar easement agreements (where a neighbor may grant an easement to a solar system owner), the City cannot require a solar easement without just compensation.

² The Solar Rights Act comprises the following California codes of law: California Civil Code Sections 714 and 714.1, California Civil Code Section 801-801.5 (solar easements), California Government Code Section 65850.5, California Health and Safety Code Section 17959.1, California Government Code Section 66475.3, and California Government Code Section 66473.1.

³ p 20 of California’s Solar Rights Act, A Review of the Statutes and Relevant Cases, by Energy Policy Initiatives Center, University of San Diego School of Law
<http://ohp.parks.ca.gov/pages/1054/files/Solar%20Rights%20Act-A%20Review%20of%20Statutes%20and%20Relevant%20Cases.pdf>

The Solar Shade Control Act protects solar access from shading by plants and trees. However, it does not preclude private development which may cast shadows on solar panels.⁴

Issue 5: The appellants request that the City implement the Residential Preferential Parking (RPP) program in the neighborhood.

Response 5: The neighborhood where the project site is located is not currently included in the City's RPP program. Transportation Division staff advises that any expansion of the RPP Program beyond its current boundaries requires Council approval to fund the requisite parking enforcement staffing and equipment. While there is currently no established timeline for expanding RPP to West Berkeley, Councilmember Taplin submitted an agenda item on November 9, 2021 referring to the fiscal year 2023 budget process "the funding of increased staffing, new enforcement vehicles, and sign installations necessary for the expansion of the [RPP Program] out of its current boundaries into West Berkeley, in zones to be identified..."

The Council-adopted budget for fiscal years 2023 and 2024 do not indicate any funding allocated for the West Berkeley RPP referral. As a result, there is no schedule for RPP expansion to West Berkeley at this time.

Issue 6: The appellants request that Council require the developer to provide the proposed maximum number of parking of 28 spaces.

Response 6: The project is compliant with BMC parking standards, which require a minimum of four and a maximum of 37 parking spaces for the project. The project would include 17 to 28 parking spaces; the final amount is to be determined at the building permit phase, dependent upon financial feasibility, at the option of the developer. There is no requirement in the BMC or in State law for developers to provide the maximum parking allowed on the site. Staff advises that Council may discuss with the applicant the possibility of providing more parking on site.

Issue 7: The appellants request that the box size for trees to be planted at the east property line be 48-inch box, and not 24-inch box.

Response 7: Condition of approval #12 requires that 24-inch box trees be planted at the east property line for privacy screening. At the ZAB hearing, the project landscape architect advised that "less fully mature" trees are more likely to survive and would be healthier in maturity than larger, more mature trees, if they were planted with the new building. Given the narrow width of the planting strip (five feet), the 24-inch box size was recommended by the landscape architect, with the potential for increase to 36-inch box. The species selected (Sweet Shade – *hymenospermum flavum*) would grow

⁴ Government Code, Sections 25980–25986.

significantly in the first year and reach maximum height of 30 feet in height, in a short amount of time. These trees would provide some privacy screening for immediate neighbors. The largest size suggested by the landscape architect was 36-inch box. Staff advises that increasing to 48-inch box size is not recommended.

ENVIRONMENTAL SUSTAINABILITY

The project approved by the ZAB is in compliance with all applicable State and local environmental requirements, would be located in a transit-rich area, and would be built and operated according to current codes for energy conservation, waste reduction, low toxicity, and other factors.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23.410.040(G), the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

Action Deadline:

Pursuant to BMC Section 23.410.040(I), if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS

Jordan Klein, Director, Planning & Development Department, (510) 981-7534
Steven Buckley, Land Use Planning Manager, (510) 981-7411
Sharon Gong, Project Planner, (510) 981-7429

Attachments:

1. Draft Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans, received March 23, 2022
2. Appeal Letter, dated received May 19, 2022
3. April 28, 2022 ZAB Hearing Staff Report
4. Transportation Assessment Memorandum, dated July 2, 2021
5. Index to Administrative Record
6. Administrative Record
7. Public Hearing Notice

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD APPROVAL OF USE PERMIT #ZP2021-0070 TO CONSTRUCT A SIX-STORY, MIXED-USE BUILDING ON A VACANT LOT, WITH 66 UNITS (INCLUDING FIVE VERY LOW-INCOME UNITS), 1,680 SQUARE FEET OF COMMERCIAL SPACE, 2,514 SQUARE FEET OF USABLE OPEN SPACE, AND 17 TO 28 GROUND-LEVEL PARKING SPACES, AND DISMISS THE APPEAL.

WHEREAS, on May 11, 2021, Isaiah Stackhouse of Trachtenberg Architecture (“applicant”), submitted an application for Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units (including five Very Low-Income units), 1,680 square feet of commercial space, 2,514 square feet of usable open space, and 17 to 28 ground-level parking spaces (“project”); and

WHEREAS, on September 22, 2021, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act (“CEQA”) under Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”); and

WHEREAS, on April 13, 2022, staff mailed and posted a Notice of Public Hearing for the project at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area; and

WHEREAS, on April 28, 2022, the Zoning Adjustments Board (ZAB) conducted a public hearing for the Use Permit. After hearing public comments and holding discussion, the ZAB approved the Use Permit by a vote of 7-0-2-0 (Yes: Duffy, Matthews, Kim, Olson, Sanderson, Gaffney, Tregub; No: None; Abstain: Sheahan, Thompson; Absent: None) and

WHEREAS, on May 5, 2022, staff issued the notice of the ZAB decision; and

WHEREAS, on May 19, 2022, the City Clerk received an appeal filing of the ZAB decision from Yvette Bozzini, resident at 1110 Harrison Street, and Dan Hayes, resident at 1116 Harrison Street. The Clerk set the matter for review by the Council on September 29, 2022; and

WHEREAS, on or before September 15, 2022, staff mailed and posted a Notice of Public Hearing at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area; and

WHEREAS, on September 29, 2022, the Council held a public hearing to consider the ZAB’s decision, and in the opinion of this Council, the facts stated in, or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A to affirm the decision of the ZAB to approve Use Permit #ZP2021-0070, adopts the conditions of approval in Exhibit A, adopts the project plans in Exhibit B, and dismisses the appeal.

Exhibits

A: Findings and Conditions

B: Project Plans, received March 23, 2022

ATTACHMENT 1 , EXHIBIT A
FINDINGS AND CONDITIONS
SEPTEMBER 29, 2022

1201-1205 San Pablo Avenue

Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units (including five Very Low-Income units), 1,680 square feet of commercial space, 2,514 square feet of usable open space, and 17 to 28 ground-level parking spaces.

PERMITS REQUIRED

- Use Permit under Berkeley Municipal Code (BMC) §23E.64.030.A to construct a mixed-use development with floor area of more than 9,000 square feet;
- Use Permit under BMC §23E.64.030.A to construct new dwelling units;
- Use Permit under BMC §23E.64.050.B, to create new gross floor area of 5,000 square feet or more;
- Administrative Use Permit under BMC §23D.04.020.C to construct rooftop projections, such as mechanical appurtenances or architectural elements, which exceed the maximum average height limit for the district.

CONCESSIONS/ WAIVERS UNDER GOVERNMENT CODE SECTION 65915-65918

- Concession to reduce the Usable Open Space requirement from 2,640 to 2,514 square feet;
- Waiver of BMC §23E.64.070.A to increase maximum FAR to 3.6 where 3.0 is the limit;
- Waiver of BMC §23E.64.070.B to increase maximum average building height to be 68'-3", where 50' is the limit for a mixed-use building; and
- Waiver of BMC §23E.64.070.B to increase maximum number of stories to be 6 stories, where 4 stories is the limit for a mixed-use building.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to §15332 ("In-Fill Development Projects").

The project meets all of the requirements of this exemption, as follows:

- A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
- B. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
- C. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
- D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
- E. The site can be adequately served by all required utilities and public services.

2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows:
 - (a) the site is not located in an environmentally sensitive area, (b) there are no significant cumulative impacts, (c) there are no significant effects due to unusual circumstances, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. DENSITY BONUS FINDINGS

1. Pursuant to Government Code Section 65915, the City Council hereby finds that:
 - A. Under the City's methodology for implementing density bonuses, the "base project" consists of 50 units;
 - B. The project will provide at least 5 Very-Low Income qualifying units in the 50-unit "base project", as more fully set forth in Conditions 62 to 66;
 - C. The project is therefore entitled to a density increase of 32.5% over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, under the requirements of Government Code Section 65915(b) and (f), plus two concessions or incentives. This equates to a density bonus of 17 units above the Base Project (the project is including 16 out of the 17 allowable units), for a total of 66 units.
2. In accordance with Government Code Section 65915(d) and (k), the City Council hereby grants the following concessions in order to provide for affordable housing costs:
 - A. Reduce the Usable Open Space requirement from 2,640 to 2,514 square feet.
3. In accordance with Government Code Section 65915(d), in order to allow construction of the proposed project with the density permitted under State law, the City Council hereby finds that the approval of the concessions is required to provide for affordable rents, as provided in Government Code Section 65915(d)(1)(A) because 1) approval of the concession would result in identifiable and actual cost reduction; 2) approval of the concession would not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) would not be contrary to State or Federal law.
4. In accordance with Government Code Section 65915(e) the City Council hereby grants the following waivers:
 - A. Waiver of BMC §23E.64.070.A to increase maximum FAR to 3.6 where 3.0 is the limit;
 - B. Waiver of BMC §23E.64.070.B to increase maximum average building height to be 68'-3" where 50' is the limit for a mixed-use building; and
 - C. Waiver of BMC §23E.64.070.B to increase maximum number of stories to be 6 stories where 4 stories is the limit for a mixed-use building.

These waivers are required because State law requires the City to modify development standards as necessary to accommodate these density bonus units, and because the City Council hereby finds that the density bonus units can best be accommodated by granting these waivers.

5. In accordance with Government Code Section 65915(e), in order to allow construction of the proposed project with the density permitted under State law, the City Council hereby finds that

approval of waivers: 1) is required to construct the proposed project at the density permitted under State law; 2) approval of requested waivers would not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) approval of the requested waivers would not be contrary to State or Federal law.

III. FINDINGS FOR APPROVAL

6. The Housing Accountability Act, Government Code Section 65589.5(j) requires that when a proposed housing development project complies with applicable, objective general plan and zoning standards, a local agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that:
 - A. The development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density; and
 - B. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.

Because the Base Project would comply with applicable, objective general plan and zoning standards, §65589.5(j) applies to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified by staff. The project includes construction of 66 dwelling units.

7. As required by Section 23.406.040.E.1 of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - A. The project is consistent with all applicable C-W District development standards and qualifies for waivers and concessions from the district standards pursuant to State Density Bonus Law, Government Code, Section 65915;
 - B. Shadow impact on adjacent dwellings to the east, south, and west are to be expected, because the subject site is located in the C-W District, which allows heights of up to 50' and four stories for mixed-use buildings. A waiver is granted for additional height beyond the district height limits to accommodate the density bonus units to allow a 68-foot, 3-inch-tall, six-story building. Shadow impacts from the project would be reasonable and not detrimental; and
 - C. The project is subject to the City's standard conditions of approval regarding construction noise and 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.

IV. OTHER FINDINGS FOR APPROVAL

8. As required by Section 23E.64.090.B of the BMC, the City Council hereby finds that:
- A. The mixed-use building at this location will be an appropriate utilization of a currently underutilized site that will bring 66 new residential units (including five below-market-rate units) and 1,680 square feet of new commercial space to the district and the neighborhood;
 - B. The project will further the purposes of the district by increasing the neighborhood population with new residents of mixed income who would patronize the local businesses and contribute to the livability and character of an underutilized portion of the San Pablo Avenue commercial corridor;
 - C. The new residents and commercial patrons from the project will increase street-level activity to provide continuity for the ground-level activation near this intersection of San Pablo Avenue and Harrison Street, and would extend the existing ground-level activation near the Tokyo Fish Market (1220 San Pablo) on the west side of San Pablo Avenue to the east side of the avenue;
 - D. The project's corner commercial space and primary building orientation toward San Pablo Avenue, along with a similar configuration at the approved mixed-use building to be constructed across the street at 1200-1214 San Pablo, would serve to engage both the southwest and southeast corners of this intersection, and would contribute to the continuity of ground-level activation in the Gilman node of the West Berkeley Plan area;
 - E. At six stories tall, the proposed project will help realize the development potential in the C-W District along San Pablo Avenue, which allows up to four stories (for mixed use buildings with additional height allowed by density bonus provisions), and will add to the trend of taller, mixed-use development along San Pablo Avenue, north of University Avenue; and
 - F. The project will be an appropriate intensity of use that will not exceed local traffic and parking capacities. The City's parking reform ordinance (effective March, 2021) eliminated the residential parking requirement and established parking maximums for this district. The proposed 17 to 28 parking spaces falls within the minimum and maximum requirements.
9. As required by Section 23E.64.090.C of the BMC, the City Council hereby finds that:
- A. The project includes a commercial space at the northwest corner of the building at the intersection of San Pablo Avenue and Harrison Street. The commercial space has floor-to-ceiling windows all along the ground level, with its longer, entry (west) side oriented toward San Pablo Avenue, to activate both the Harrison Street and San Pablo Avenue sidewalks. Floor-to-ceiling windows along the commercial space, lobby, and bike room line approximately 90 percent of the project's San Pablo elevation with active spaces behind transparent glazing.
 - B. The project's strong orientation toward the San Pablo Avenue streetscape would add to the pedestrian activity and interest on this portion of the Avenue that already draws visitors daily. The project would contribute to the pedestrian activity near existing businesses by bringing new residents to the area, and by helping to draw in local visitors – potentially, those from beyond the immediate neighborhood.
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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 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. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

9. Pay Transparency Acknowledgement (BMC Section 13.104.030)

Prior to the issuance of a building permit for any Project subject to this Chapter:

- A. A Responsible Representative of the Permittee shall certify under penalty of perjury that: (1) the Permittee has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (2) the Permittee will be responsible for demonstrating compliance with this Chapter.
- B. The Permittee shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. A Responsible Representative of the Permittee shall certify under penalty of perjury that the Contractor and all Qualifying Subcontractors performing work on the Project will comply with Chapter 13.104 of the Berkeley Municipal Code and with Labor Code sections 226(a) and 2810.5 for each employee who works on the Project.

10. Pay Transparency Attestations Following Project Completion (BMC Section 13.104.040)

Within 10 days of the approved final inspection of any Project subject to this Chapter, each Permittee shall provide to the City for each Contractor and Qualifying Subcontractor a Pay Transparency Attestation on a form approved by the City. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor shall attest under penalty of perjury that the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code and Labor Code sections 226(a) and 2810.5 for each employee who performed work on the Project. The City will maintain Pay Transparency Attestation forms for period of at least three years after their date of receipt by the City.

11. Posting of Ordinance (BMC Section 13.104.050)

Each day work is performed on the Project, each Permittee shall post, and keep posted in a conspicuous location where it may be easily read by employees during the hours of the workday, a notice that: (A) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (B) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (C) provides current contact information, including office address, telephone number, and email address of the Labor Commissioner of the State of California.

12. Conditions of Approval (BMC Section 13.104.060)

The requirements of Sections 13.104.030 through 13.104.050 shall be included as conditions of approval of any Use Permit or Zoning Certificate for any Project that is subject to this Chapter. Failure to comply with the requirements of any provision of this Chapter shall be grounds for issuance of an administrative citation under Chapter 1.28 and/or the revocation or modification of any Use Permit issued for the Project under Chapter 23B.60.

13. 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 23.406.040.E, the City Council attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

14. 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 #

15. Final Design Review. The Project requires approval of a Final Design Review application by the Design Review Committee. Plans presented shall include an alternate design with open railings for the parapet on the eastern edge of the 5th floor.

16. Screening Trees. The Project Proponent shall consult with the project landscape architect for species recommendations for planting in the 5-foot-wide landscape strip on the eastern property line that closely achieves this objective: a row of large screening trees (24”box minimum) that

have an initial height of 10' and full height of 25-30 feet height minimum. The project Landscape Plan shall include the proposed plantings to be reviewed by Land Use Planning staff.

17. Fence at East Property Line. The Project Proponent shall replace/rebuild the retaining wall and fence along the eastern property line to six feet in height.
18. 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.
19. Geotechnical Plan Review. The applicant's geotechnical consultant shall review and approve all geotechnical aspects of the project building and grading plans (i.e., site preparation and grading including removal and replacement/treatment of expansive soils, site surface and subsurface drainage improvements including site runoff discharge, and design parameters for foundations and hardscape) to ensure that their recommendations have been properly incorporated and to ensure that the project concept has not changed significantly since preparation of their report. The results of the plan review should be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.
20. 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. 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:
 - A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
 - B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
 - C. 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.
 - D. 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.
 - E. Prohibit unnecessary idling of internal combustion engines.
 - F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
 - G. 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.
 - H. 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.

- I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.

21. 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 or 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. This study shall establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and 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.

22. Compliance with Conditions and Environmental Mitigations. The building permit application is subject to verification of compliance to the adopted. The applicant shall be responsible for demonstrating compliance with all conditions of approval and mitigation measures per the timeline set forth by this use permit. 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 these Conditions of Approval and other applicable conditions and regulations. 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.

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

23. 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 during extended work hours and reason for extended hours, (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, and (5) 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.

- 24. 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.
- 25. Construction and Demolition Diversion.** Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.
- 26. 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 2 years old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at: http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
 - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
 - 3) If the Phase I is over 2 years old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
- B. Soil and Groundwater Management Plan:
- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.

- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
 - 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
- C. Building Materials Survey:
- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.
- D. Hazardous Materials Business Plan:
- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

Prior to Issuance of Any Building (Construction) Permit

27. Bike Boulevard. The Project Proponent shall responsible for establishing Kains Avenue, between Harrison Street and Gilman Avenue, as a Class 3 bike boulevard (installing sharrow pavement markings and signage as required), consistent with the bike network improvements stated in the City's Bicycle Plan (May 2017). The Project Proponent shall coordinate with the Public Works Department (Engineering and Transportation Divisions) to obtain necessary approvals.
28. Traffic Study. The Project Proponent shall retain the project traffic consultant to perform an analysis of the remaining eight traffic signal warrants at San Pablo and Harrison Avenues for consideration of a traffic signal for the intersection. The traffic study shall include an analysis of Level of Service (LOS) at this intersection for consideration of a left turn prohibition at the intersection. The traffic study shall be submitted to the Transportation Division for review and approval.
29. Parking Garage Exit. The Project Proponent shall submit plans showing the installation of a "Left Turn Only" sign and left turn pavement markings at the parking garage exit, to facilitate left turns only onto Harrison Street. The Project Proponent shall also consider modifying the driveway to

angle toward the left to facilitate left turns. Sound level specifications for a pedestrian alert system at the garage exit shall be submitted for review and approval by Land Use Planning staff.

30. Geotechnical Construction Inspections. The geotechnical consultant shall inspect, test (as needed), and approve all geotechnical aspects of the project construction. The inspections shall include, but not necessarily be limited to: site preparation and grading, site surface and subsurface drainage improvements, and excavations for foundations and retaining walls prior to the placement of steel and concrete. The results of these inspections and the as-built conditions of the project shall be described by the geotechnical consultant in a letter and submitted to the City Engineer for review prior to final (granting of occupancy) project approval.
31. Parcel Merger. The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
32. Percent for Public Art. Consistent with BMC §23C.23, 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.
33. Affordable Housing Mitigation Fee. Consistent with BMC §22.20.065, and fee resolution applicable to this project, the applicant shall provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the AHMF, and they shall pay this fee.
34. HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
35. Interior Noise Levels. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
36. Solar Photovoltaic (Solar PV). A solar PV system, on the solar zone specified in Section 110.10 of the 2019 Energy Code, shall be installed (subject to the exceptions in Section 110.10) as specified by the Berkeley Energy Code (BMC Chapter 19.36). Location of the solar PV system shall be noted on the construction plans.
37. Electric Vehicle (EV) Charging. At least 20% of the project parking spaces for residential parking shall be "EV Charger Ready": equipped with raceway, wiring, and power to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation, and at least 80% of the project parking spaces for residential parking shall be "EV Spaces Raceway Equipped": equipped with a raceway between an enclosed, inaccessible, or concealed area and an electrical service panel/subpanel as specified by the Berkeley Green Code (BMC Section 19.37.040). Any

Level 2 EV charging systems installed at parking spaces will be counted toward the applicable readiness requirement. Readiness for EV charging and EV charging station installations shall be noted on the construction plans.

38. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET_o) for Berkeley is 41.8.
39. Prohibition of Natural Gas Infrastructure in New Buildings. The project shall comply with the City of Berkeley Prohibition of Natural Gas Infrastructure in New Buildings (BMC Chapter 12.80).
40. 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).
41. 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.
42. Required Parking Spaces for Persons with Disabilities. Per BMC Section 23.322.040.H of the Zoning Ordinance, "If the number of required off-street parking spaces in a non-residential district is reduced as allowed by this chapter, the number of required parking spaces for persons with disabilities shall be calculated as if there had been no reduction in required spaces."

Prior to Demolition or Start of Construction:

43. 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.

During Construction:

44. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
45. 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.

46. 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.
47. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District’s phone number shall also be visible to ensure compliance with applicable regulations.
48. 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:
- A. 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 Land Use Planning Division for review and approval prior to the issuance of building permits; or
 - B. 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 (Tier 4 engines automatically meet this requirement) 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:

- 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.
- 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.

49. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

50. Low-Carbon Concrete. The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.

51. 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.

- 52. Avoid Disturbance of Nesting Birds.** 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.
- 53. 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.
- 54. 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.

- 55. 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.
- 56. Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
- 57. 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. 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.
 - K. 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.
- 58. 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.

59. 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.
60. 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.
61. 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.
62. 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.
63. 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:

64. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
65. 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 **March 23, 2022**, except as modified by conditions of approval.
66. Transportation Demand Management. Prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Planning Department staff to confirm that the physical improvements required in Section 23.334.030(C) and 23.322.090 (bike parking) have been installed. The property owner shall also provide documentation that the programmatic measures required in 23.334.030(A) and 23.334.030(B) will be implemented.
- A. Consistent with Section 23.334.030(A), all parking spaces provided for residents be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units, such that potential renters or buyers shall have the option of renting or buying a dwelling unit at a price lower than would be the case if there were a single price for both the dwelling unit and the parking space(s).
- B. Consistent with Section 23.334.030(B), at least one of the following transit benefits shall be offered, at no cost to the resident, for a period of ten years after the issuance of a Certificate of Occupancy. A notice describing these transportation benefits shall be posted in a location or locations visible to all employees.

1. One monthly pass for unlimited local bus transit service for every bedroom in each dwelling unit, up to a maximum of two benefits per dwelling unit.
 2. Subject to the review and approval of the Zoning Officer in consultation with the Transportation Division Manager, a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass.
- C. Consistent with Section 23.334.030(C), publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors, shall be provided. Transportation information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.
- Property owners may be required to pay administrative fees associated with compliance with this Condition.

BELOW MARKET RATE UNITS

- 67.** Number of Below Market Rate Units. The project shall provide **five (5) Very Low Income**, below market rate rental dwelling units (“BMR Units”), which are required to comply with the State Density Bonus Law (Government Code Section 65915). The BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR Units shall conform to the addresses assigned to the building by the City.
- 68.** Regulatory Agreement. Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements Government Code Section 65915 and this Use Permit. The Regulatory Agreement may include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The maximum qualifying household income for the BMR Units shall be 50 percent of area median income (AMI), and the maximum housing payment shall be 30 percent of 50 percent of AMI, as set forth in the following paragraphs of this condition. If the BMR units are occupied by very low income tenants receiving a rental subsidy through the Section 8 or Shelter Plus Care programs, the rent received by the project sponsor may exceed the restricted rent to the payment standards allowed under those programs so long as the rent allowed under the payment standards is not greater than the market rents charged for comparable units in the development. The applicant shall submit the Regulatory Agreement to the Housing and Community Services Department (HHCS) via email to affordablehousing@cityofberkeley.info for review and approval.
- 69.** In addition, the following provisions shall apply:
- A. Maximum rent shall be adjusted for the family size appropriate for the unit pursuant to California Health & Safety Code Section 50052.5 (h).
 - B. Rent shall include a reasonable allowance for utilities, as published and updated by the Berkeley Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking and refrigeration fuels. Such allowance shall take into account the cost of an adequate level of service. Utilities do not include telephone service. Rent also includes any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.
 - C. BMR units will be provided for the life of the project under Section 22.20.065.

70. Determination of Area Median Income (AMI).

- The “AMI” (Area Median Income) shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.
- The applicable AMI for the purpose of determining the allowable rent for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with the following table:

Unit Size	AMI Standard
Studio unit	AMI for a one person household
One-bedroom unit	AMI for a two person household
Two-bedroom unit	AMI for a three person household
Three-bedroom unit	AMI for a four person household

71. Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.

At All Times:

72. Transportation Demand Management Compliance. The property owner shall submit to the Planning Department periodic TDM Compliance Reports in accordance with Administrative Regulations, subject to the review and oversight of the Zoning Officer. Property owners may be required to pay administrative fees associated with compliance with this Condition, pursuant to BMC Section 23.334.040(B).

73. 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.

74. 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.

75. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.

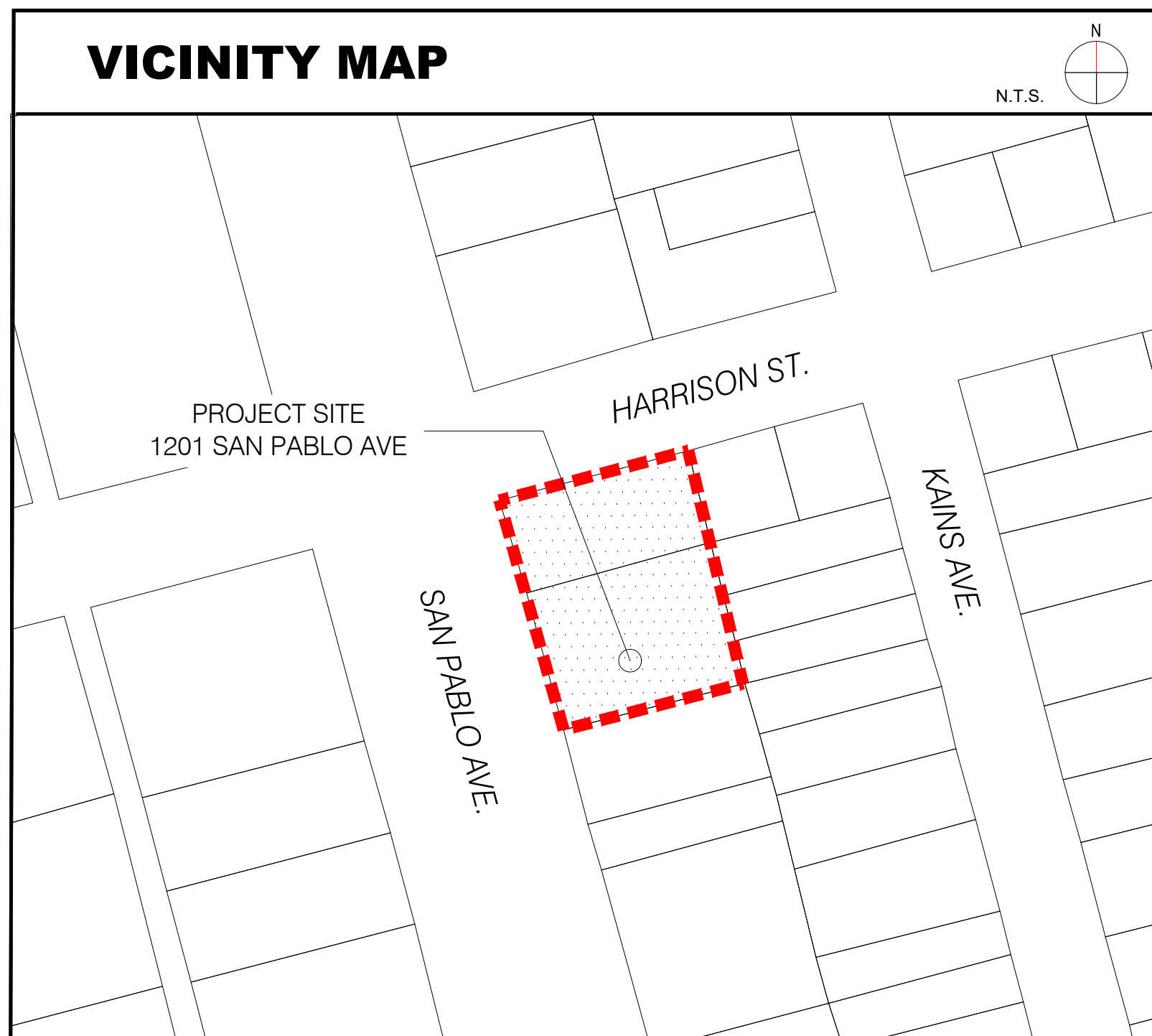
76. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

77. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.

78. Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The Land Use Planning staff shall notify the Finance Department, Customer

Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to Land Use Planning staff prior to issuance of an occupancy permit or final inspection.

79. Tenant Notification. The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and entertainment uses, and that each occupant shall not seek to impede their lawful operation.
 80. Transit Subsidy Condition. The applicant / operator of the commercial space 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.
 81. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
-



PROJECT DIRECTORY

OWNER/APPLICANT:
Lanhai Su
4500 Great America Pkwy
Santa Clara CA, 95054

ARCHITECT:
David Trachtenberg, Principal
TRACHTENBERG ARCHITECTS
2421 Fourth Street
Berkeley, CA 94710
510.649.1414
www.TrachtenbergArch.com

PROJECT DESCRIPTION

PROJECT ADDRESS: 1201 SAN PABLO AVENUE, BERKELEY, CA 94706
APN: 060 240500100, 060 240503101

SCOPE OF WORK:
SB-330 APPLICATION FOR THE CONSTRUCTION OF A NEW 6-STORY MIXED-USE RESIDENTIAL DEVELOPMENT WITH 66 DWELLING UNITS, GROUND LEVEL LOBBIES, COMMERCIAL, AND PARKING, WITH A STATE OF CALIFORNIA DENSITY BONUS.

ZONING CODE SUMMARY
(BASED ON THE BERKELEY MUNICIPAL ZONING CODE)

ZONING: C-W

SEE SHEET A0.1 FOR COMPLETE ZONING DATA

DRAWING LIST

SHEET NO. & TITLE

ARCHITECTURAL

A0.0 GENERAL INFORMATION

A0.1 ZONING INFORMATION

A0.3 DENSITY BONUS DIAGRAMS

A0.4A SHADOW STUDIES

A0.4B SHADOW STUDIES

A0.4C SHADOW STUDIES

A0.4D SHADOW STUDIES

A0.4E SHADOW STUDIES

A0.5 SITE CONTEXT PHOTOS

A1.0 SURVEY

A2.1 SITE PLAN/ PLAN AT GROUND LEVEL

A2.2 PLAN AT LEVELS 2 - 4

A2.3 PLAN AT LEVEL 5

A2.4 PLAN AT LEVEL 6

A2.5 PLAN AT ROOF

A3.1 ELEVATIONS

A3.2 ELEVATIONS

A3.3 ELEVATIONS

A3.4 ELEVATIONS

A3.5 STREET STRIP ELEVATIONS

A3.6 PERSPECTIVE VIEWS

A3.7 PERSPECTIVE VIEWS

A3.8 PERSPECTIVE VIEWS

A3.9 PERSPECTIVE VIEWS

A3.10 PERSPECTIVE VIEWS

A3.11 PERSPECTIVE VIEWS

A3.12 PERSPECTIVE VIEWS

A3.13 PERSPECTIVE VIEWS

A3.14 PHOTO MATCH PERSPECTIVES

A4.1 BUILDING SECTIONS

A4.2 WALL SECTIONS & DETAILS

SW-1 PRELIMINARY STORMWATER MANAGEMENT PLAN

G-1 CONCEPTUAL GRADING PLAN

MAT MATERIAL BOARD

CONCEPTUAL VIEW OF PROJECT LOOKING SOUTH ALONG SAN PABLO



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**1201
SAN PABLO
MIXED-USE**

Berkeley, CA 94706

- 03.11.2021 SB-330 PRE-APPLICATION
- 04.29.2021 ZONING APPLICATION
- 07.13.2021 ZONING COMPLETENESS
- 08.30.2021 ZONING COMPLETENESS
- 01.07.2022 ZAB REVISIONS
- 03.15.2022 DRC REVISIONS
- 03.23.2022 DRC REVISIONS

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JOB: 1928

SHEET:
**GENERAL
INFORMATION**

A0.0

TRACHTENBERG ARCHITECTS

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1201 SAN PABLO MIXED-USE

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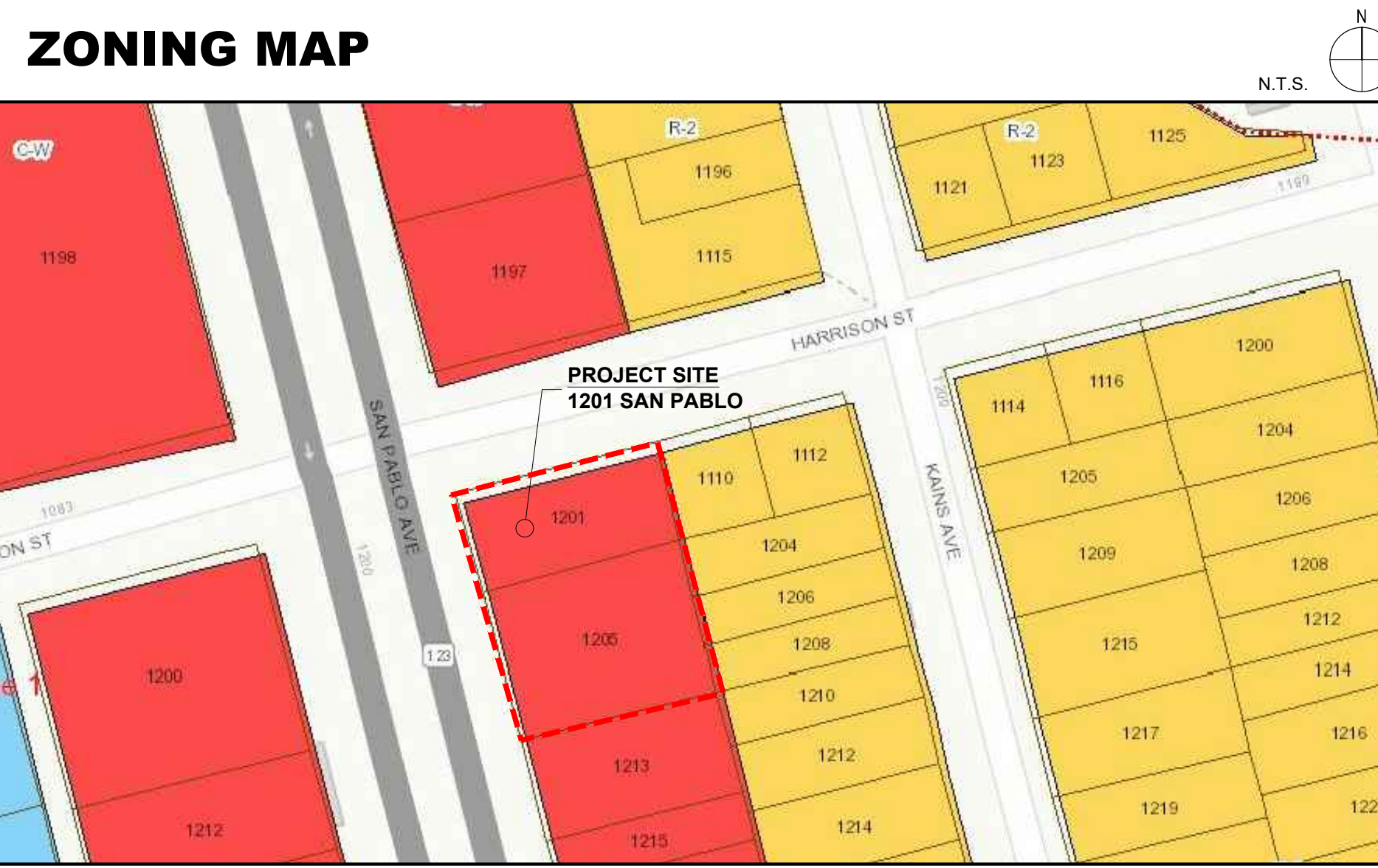
SHEET:

ZONING DATA

A0.1

REFUSE AND RECYCLING

Waste and Recycling Calculation								
# of Bedrooms	Factor	Occupants	Total cuft required (.25cy or 50 gallons / 3)	Waste (40%)	Recycling (40%)	Organics (20%)		
72	1.75	126	10.50 cy	2,100 gal	4.20 cuft	840 gal		
Space Calculation			Container Quantities		Space Required		150% Additional	
	Waste	Recycling	Organics	Factor/container	Space/Container	Required	Provided	
2 cy bin (404 gal)	2	2			28 sf	112 sf		
96 gallon cart	1	1	5		7 sf	49 sf		
64 gallon cart					6 sf			
Total capacity	904 gal	904 gal	480 gal			161 sf	242 sf	375



ZONING CODE DATA

CITY OF BERKELEY ZONING TABULATIONS

	PROPOSED	PERMITTED/REQUIRED	ALLOWABLE W/ 32.5% DENSITY BONUS
NUMBER OF DWELLING UNITS	66	N/A	N/A
COMMERCIAL AREA	1,680	N/A	N/A
PARKING	SEE TABLE	SEE TABLE	SEE TABLE
BIKE PARKING	68	28	N/A
FRONT YARD SETBACK (HARRISON)	0'	0'	N/A
STREET SIDE YARD SETBACK (SAN PABLO)	VARIES; 0' TO 1'	0'	N/A
SIDE YARD SETBACK	VARIES; 5' TO 47'-0"	VARIES; 0' TO 5'-0"	N/A
REAR YARD SETBACK	VARIES; 0' TO 10'-0"	0'	N/A
BUILDING HEIGHT	68'-3" **	50'	70' **
BUILDING STORIES	6	4	6
LOT AREA	13,000	13,000	13,000
LOT AREA (ACRES)	0.30	0.30	0.30
GROSS FLOOR AREA (SEE TABLE)	46,996	N/A	51,740
BUILDING FOOTPRINT	12,056	13,000	N/A
LOT COVERAGE	93%	100%	N/A
USABLE OPEN SPACE (SEE TABLE)	SEE TABLE	SEE TABLE	SEE TABLE
PROJECT FAR	3.60 **	3.0	3.98 **

** Via Density Bonus Waiver

FAR CALCULATIONS

	BASE PROJECT ALLOWABLE	ALLOWABLE W/ 35% DENSITY BONUS	PROPOSED W/ DENSITY BONUS
SITE AREA	13,000	13,000	13,000
FAR	3.00	4.05	3.62
FLOOR AREA	39,000	52,650	46,996

PROPOSED FLOOR AREA WITH DENSITY BONUS

	COMMERCIAL	RESIDENTIAL	MECH.	TOTAL
LEVEL 6		6,303		6,303
LEVEL 5		7,526		7,526
LEVEL 4		9,244		9,244
LEVEL 3		9,244		9,244
LEVEL 2		9,244		9,244
GROUND LEVEL (EXCLUDES PARKING)	1,680	2,906	849	5,435
TOTAL FLOOR AREA W/ DENSITY BONUS	1,680	44,467		46,996
FAR (FLOOR AREA RATIO)				3.62
PARKING				6,583
TOTAL WITH PARKING				53,579

UNIT COUNTS

UNIT TYPE	STUDIO	1-BED	2-BED	TOTAL
LEVEL 6	2	5	2	9
LEVEL 5	5	5	2	12
LEVEL 4	5	8	2	15
LEVEL 3	5	8	2	15
LEVEL 2	5	8	2	15
GROUND LEVEL				
TOTAL	22	34	10	66
PERCENT OF TOTAL	33%	52%	15%	
TOTAL BEDROOM COUNT	22	34	20	76

OPEN SPACE TABLE

	UNITS	RATIO	TOTAL	LANDSCAPE AREA
TOTAL UNITS	66	40	2,640	
TOTAL REQUIRED			2,640	
TOTAL CONCESSION REQUESTED			126	
TOTAL AREA PROVIDED			2,514	1,346
PODIUM LEVEL GARDEN			1,640	902
PODIUM LEVEL PATIOS			120	115
LEVEL 6 ROOF DECK			754	329

BICYCLE PARKING CALCULATIONS

	UNITS/SF	SPACES PER BEDROOM/SF	TOTAL REQ	PROVIDED
NEW COMMERCIAL	1,680	1/2000	2	2
RESIDENTIAL (LONG TERM)	76	0.33	26	64
RESIDENTIAL (SHORT TERM)	76	0.025	2	6
TOTAL PARKING			28	66

PARKING TABLE

	UNITS/SF	MIN.	MAX (.5/UNIT)	PROPOSED
RESIDENTIAL	66	0	33	UP TO 13-24*
COMMERCIAL	1680	2/1000 SF	N/A	4

* ON A VOLUNTARY BASIS, THE PROJECT PROPOSES TO PROVIDE UP TO 17 STANDARD NON-LIFT SPACES OR UP TO 28-SPACES IN DOUBLE-LIFTS.

ROOFTOP ARCHITECTURAL ELEMENTS CALCS

AVERAGE AREA	8936
TOTAL AREA OF ROOFTOP ELEMENTS	392
% AREA OF ROOFTOP ARCH. FEATURES	4.4%
ALLOWABLE % (PER 23E.04.020C)	15.0%

DENSITY BONUS TABLE

Base Project	Base	Base # Units	% VLI units	# VLI Units	# VLI Units	Bonus %	# DB Units	# DB Units	Maximum DB Project
sq. ft. - see calc. below	base project area / avg. unit size	Units/Max. Residential Density (rounded up)	VLI = Very Low Income <50% AMI	% VLI x Base # Units			% Bonus x Base # Units	% Bonus x Base # Units (rounded up)	% Bonus x Base # Units (rounded up)
32,865	49.46	50	10%	5.00	5.00	32.5%	16,2500	17	67

Base Project Res. Area	Floor	Proposed Project Res. Area	%VLI	%DB
	Sixth	6,303	5%	20.00%
	Fifth	7,526	6%	22.50%
10,190	Fourth	9,244	7%	25.00%
10,190	Third	9,244	8%	27.50%
10,190	Second	9,244	9%	30.00%
2,295	Ground	2,295	10%	32.50%
32,865		43,856	11%	35.00%

Base Project # of Units	Floor	Proposed Project # of Units
	Sixth	9
	Fifth	12
16	Fourth	15
17	Third	15
17	Second	15
	Ground	
Total		66

BASE PROJECT ZONING COMPLIANCE CHECKS

Base Project - FAR

	Res. Area	Commercial	Total GFA
GFA	32,865	1720	34,585
Site Area			13,000
FAR			2.660

Base Project - Open Space

	Units	Ratio	Total Area
Base Units	50	40	2000
Total Provided Open Space			2447
Podium Open Space			1692
Roof Deck			755

Base Project - Parking

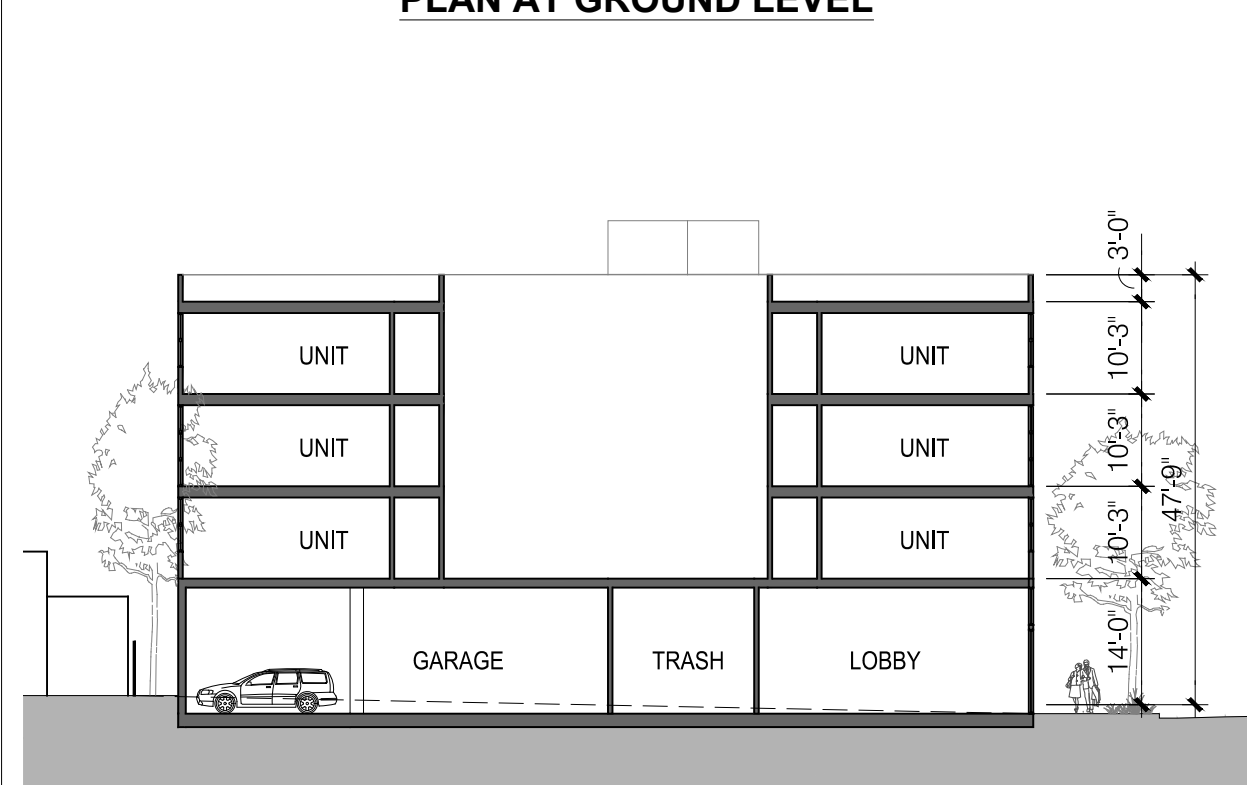
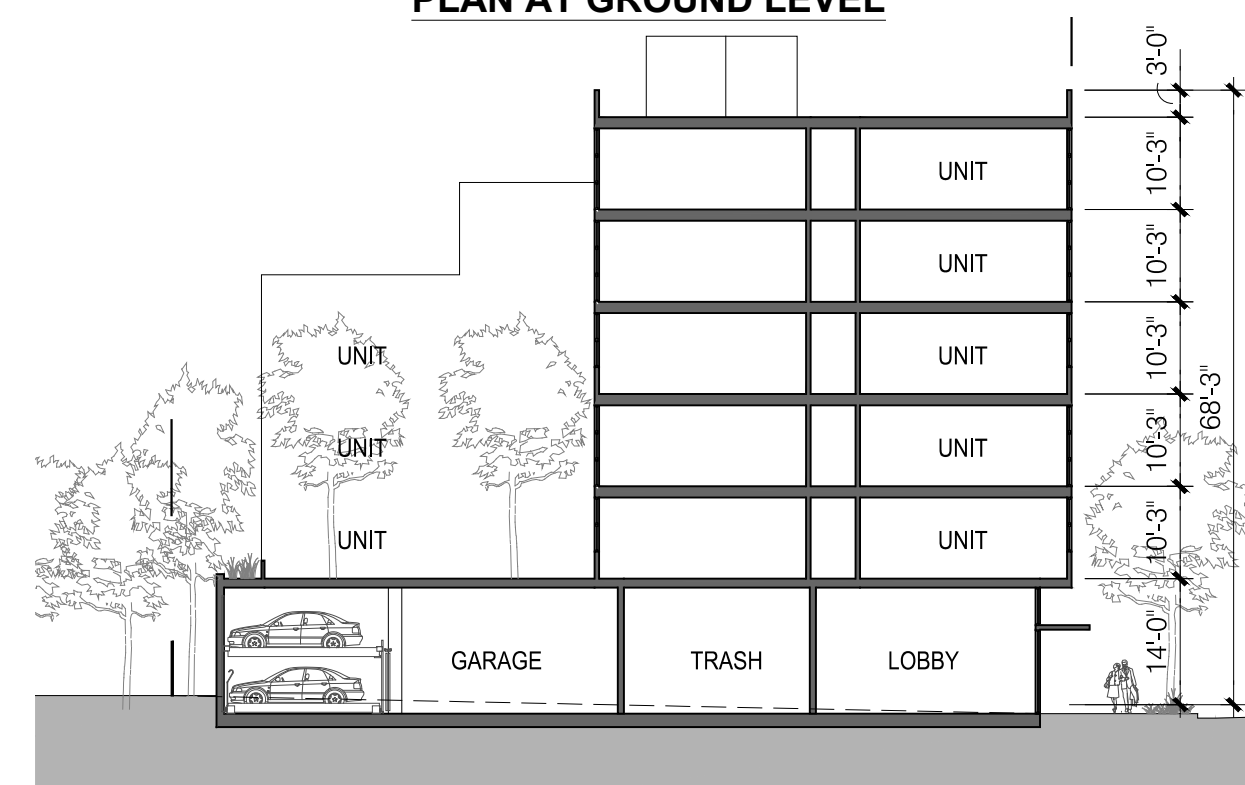
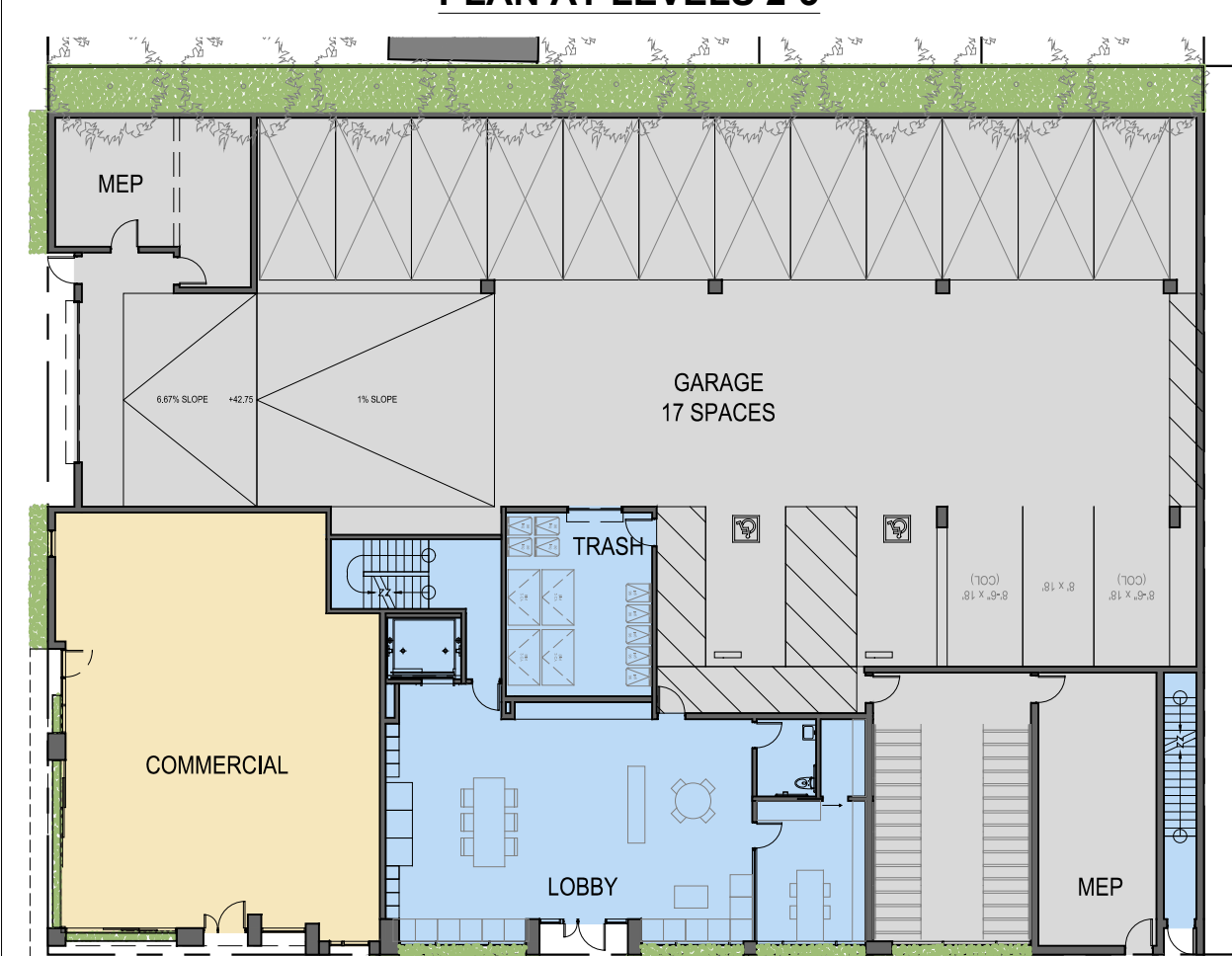
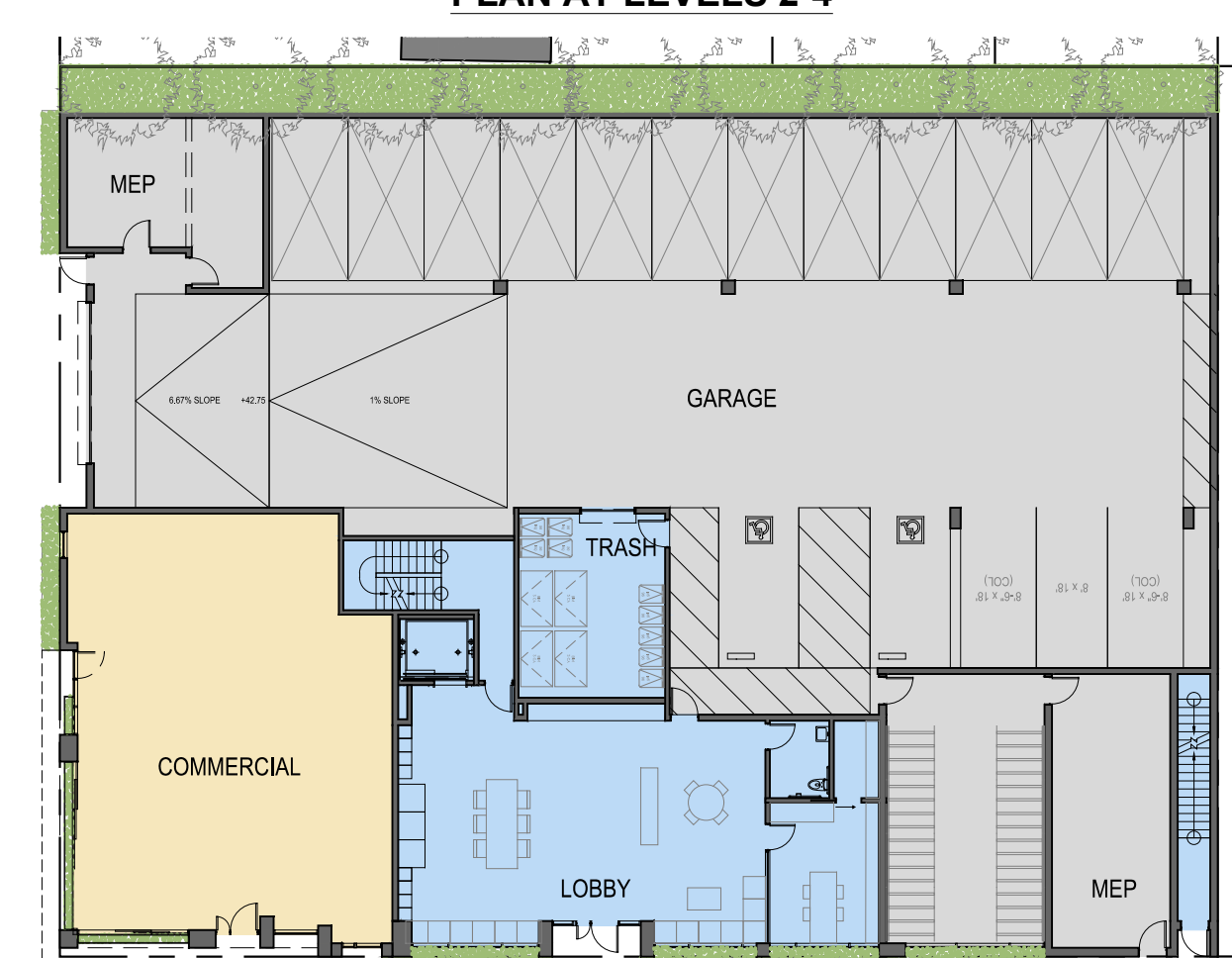
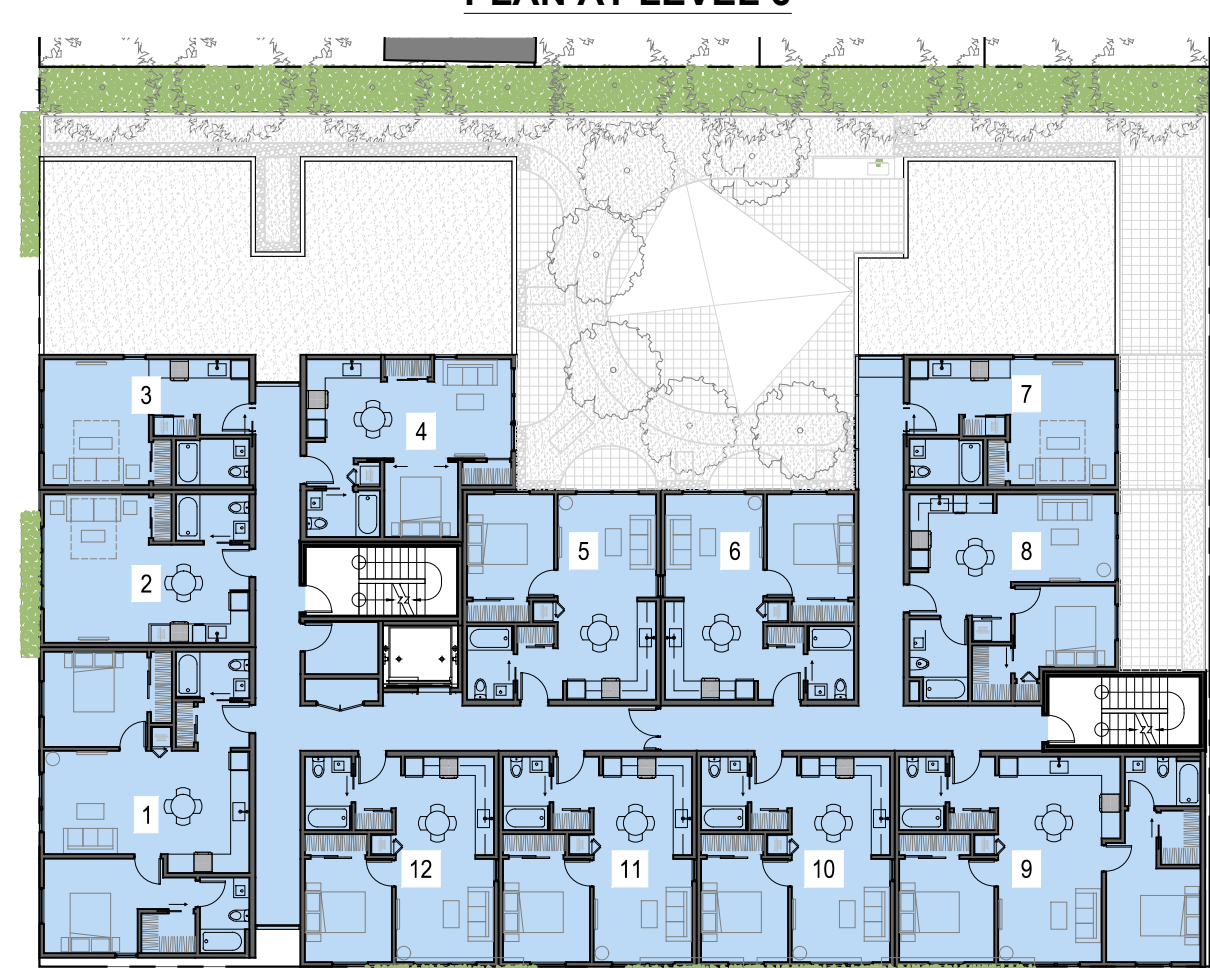
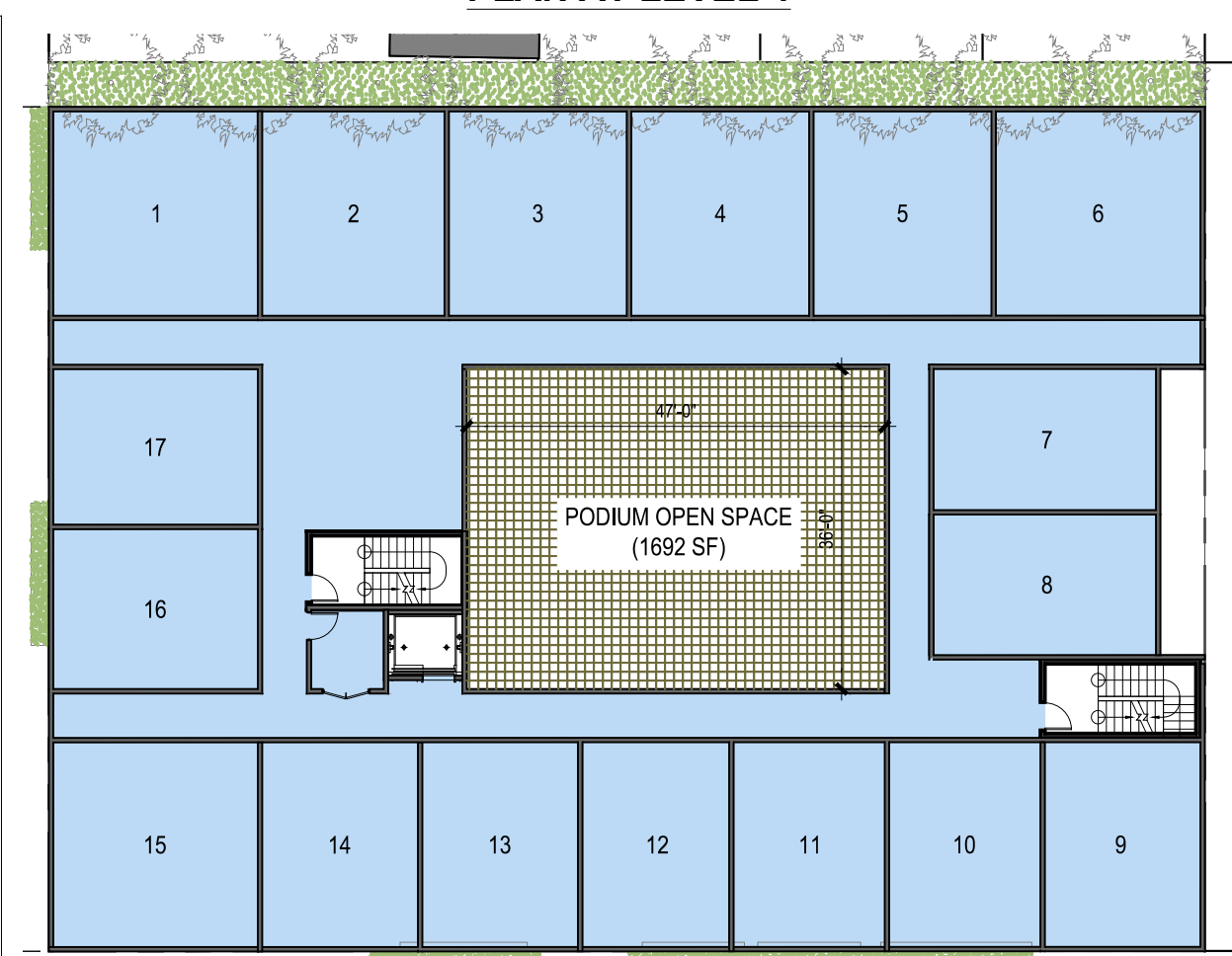
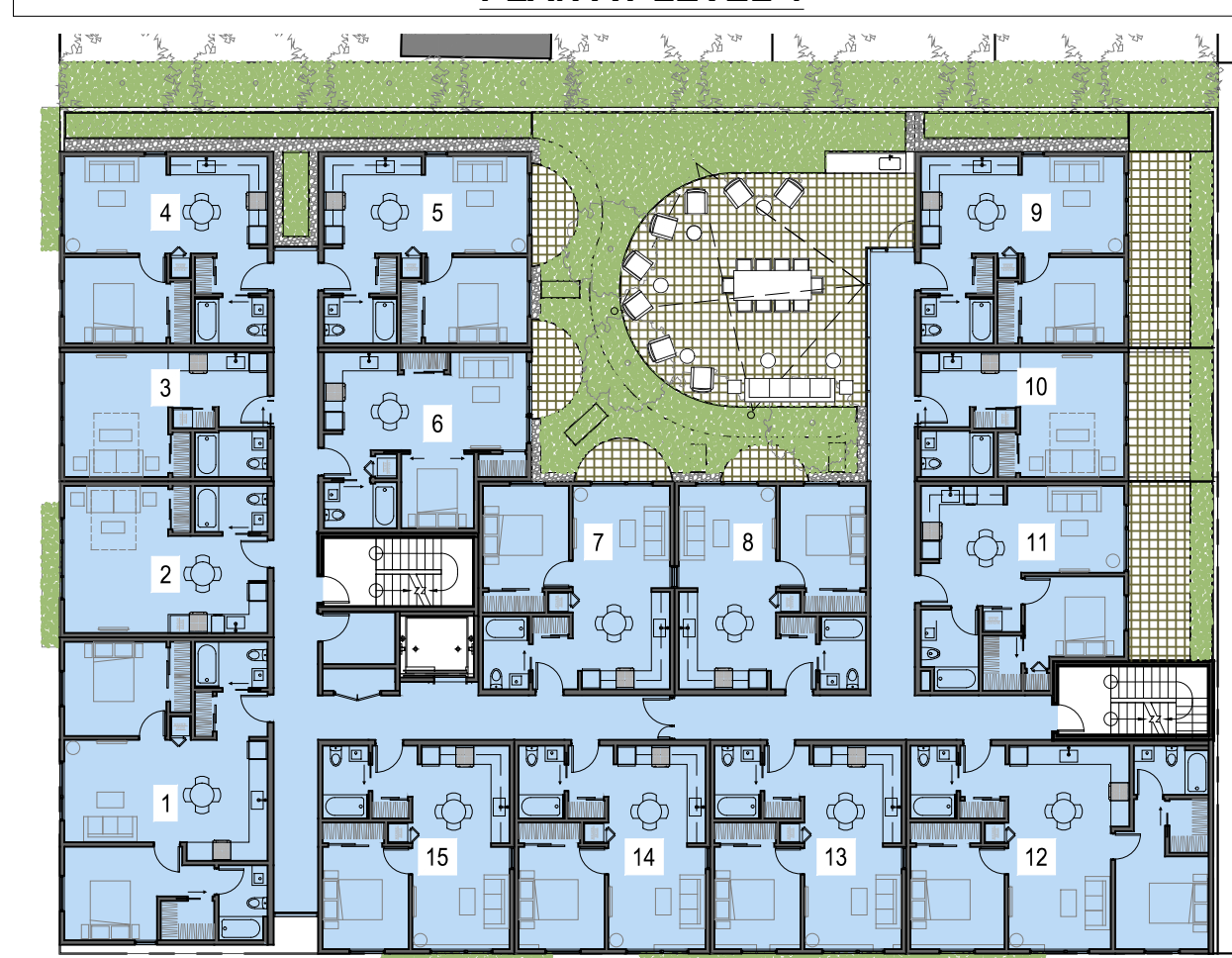
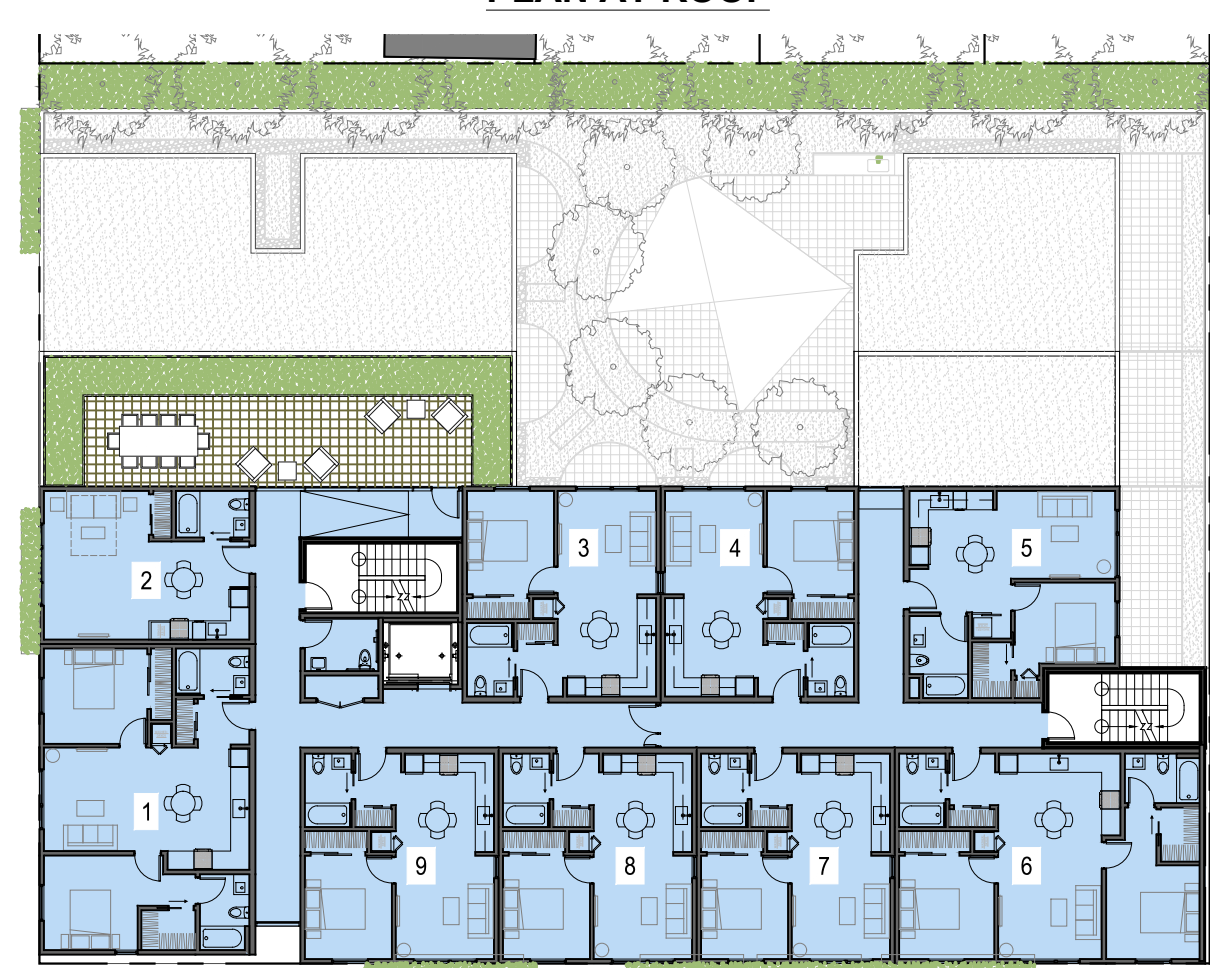
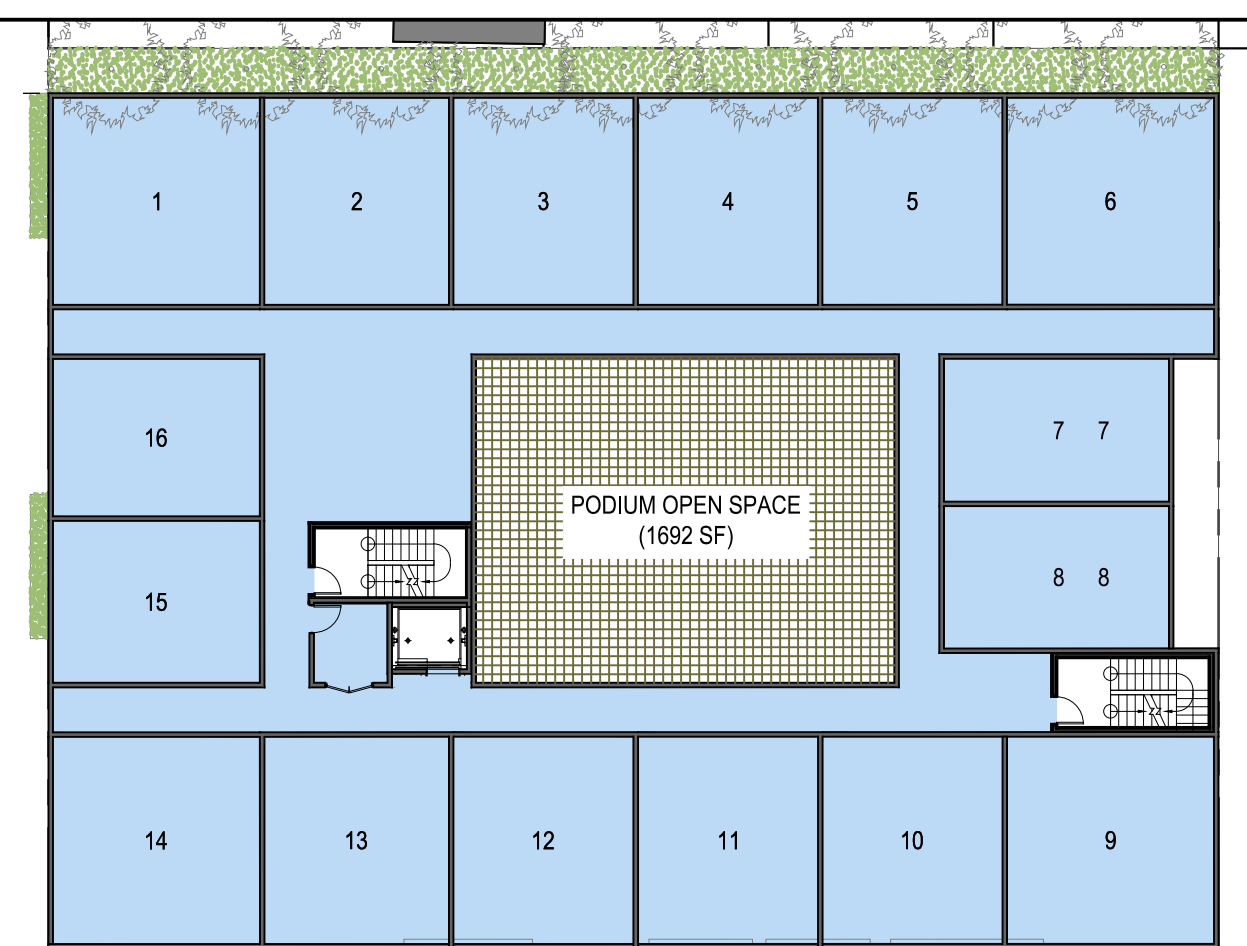
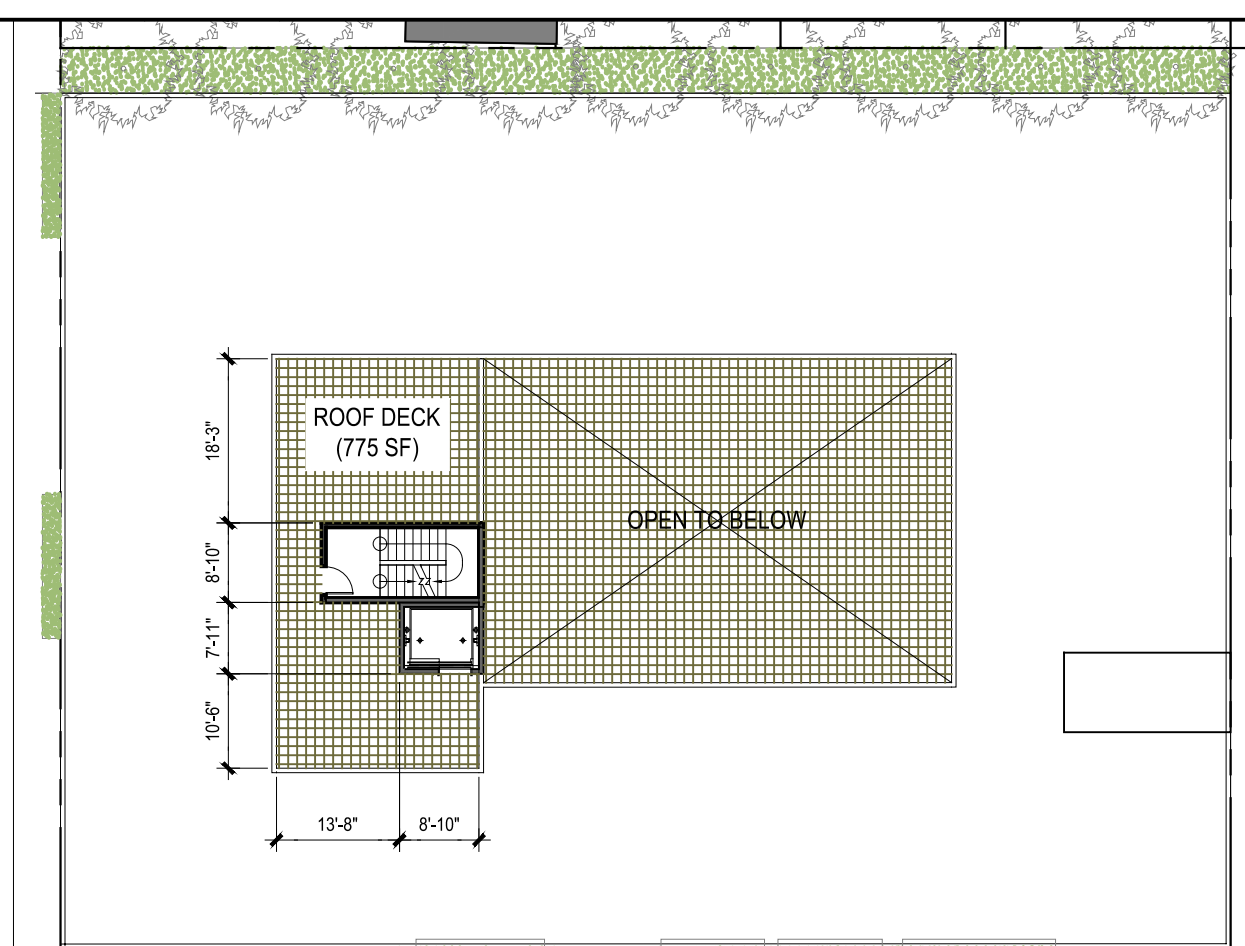
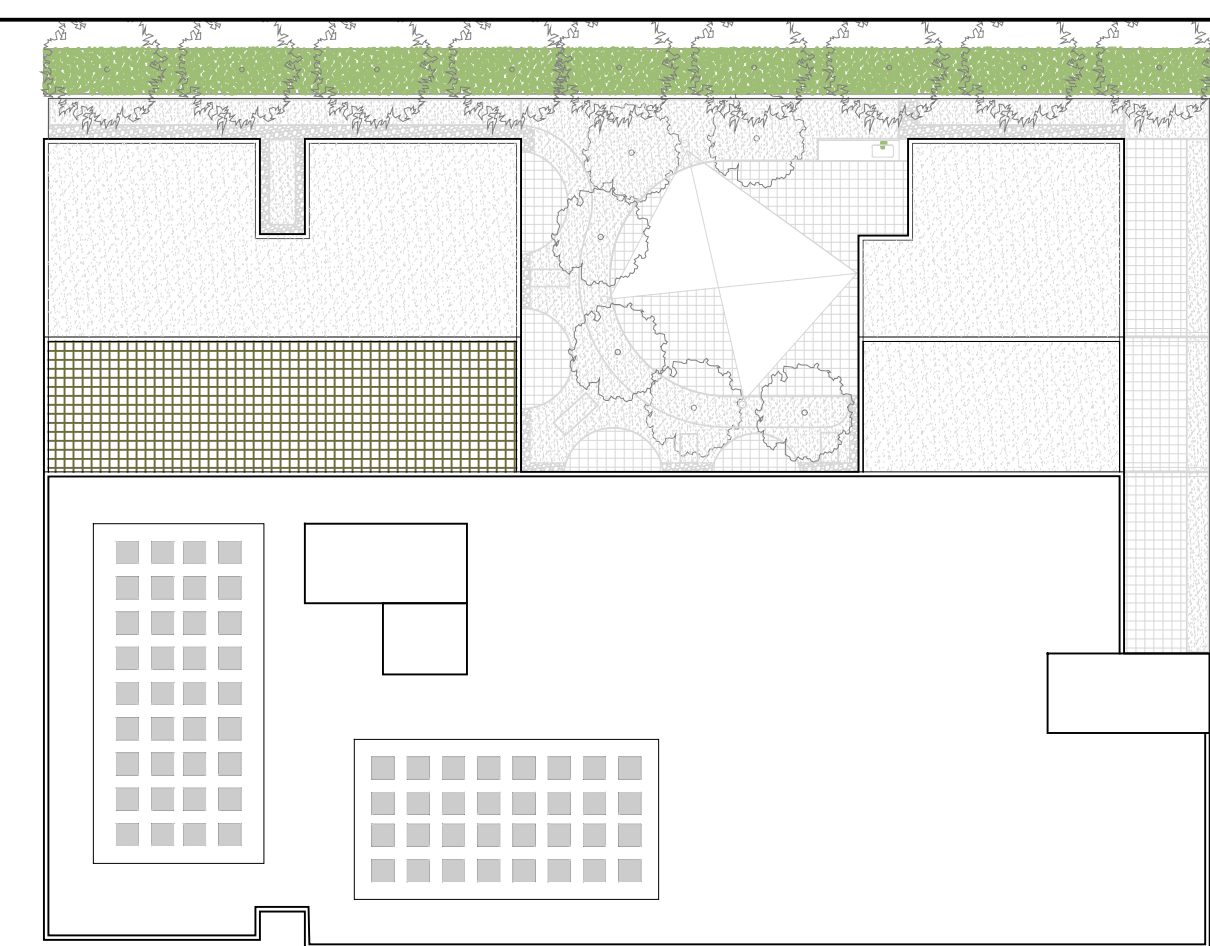
	Units/SF	Bedrooms	Ratio	Total Req.	Provided
Residential				0	13
Commercial	1,680	N/A	2/1000 SF	4	4

Base Project -Bicycle Parking

	Units/SF	Bedrooms	Ratio	Total Req.	Provided
New Comm.	1,680		1/2000	2	2
Res. (Long)		58	0.33	19	64
Res (Short)		58	0.025	1	6

Base Project - Stormwater

	Roof Area	%	Required	Provided
Base Units	13361	4%	534	534



PROPOSED DENSITY BONUS PROJECT
SCALE: 3/64" = 1'-0" @ 24 X 36

BASE PROJECT
SCALE: 3/64" = 1'-0" @ 24 X 36

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SHEET:
DENSITY BONUS DIAGRAMS

A0.3

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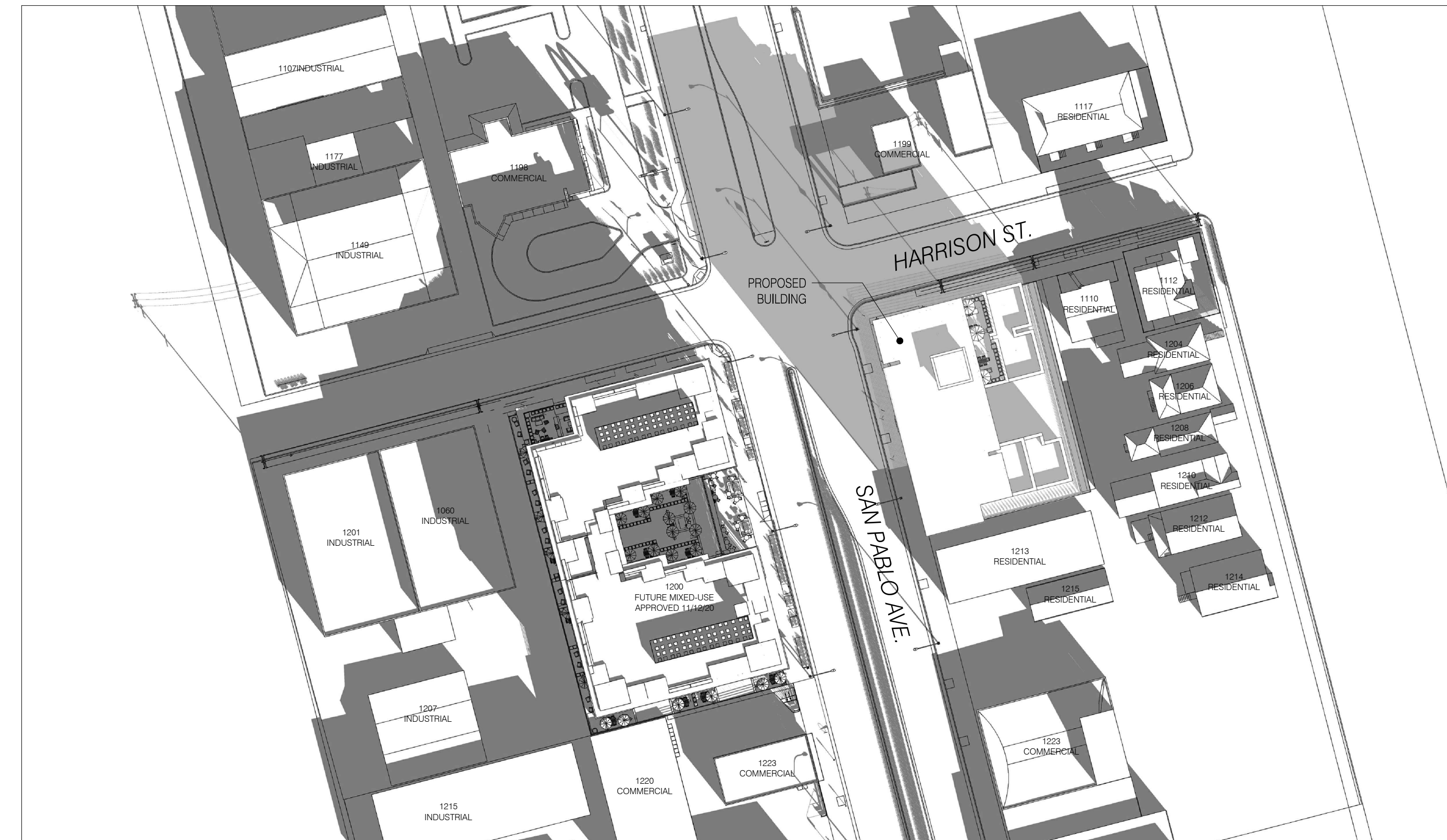
SHEET:

SHADOW STUDIES
DECEMBER 21ST

A0.4A



4 SHADOW STUDY AXONOMETRIC - DEC 21: 2-HRS AFTER SUNRISE
NTS



2 SHADOW STUDY - DECEMBER 21: 2 HRS AFTER SUNRISE
1:100 @ 11X17 1:50 @ 24X36



3 SHADOW STUDY - DECEMBER 21: NOON
1:100 @ 11X17 1:50 @ 24X36



1 SHADOW STUDY - DECEMBER 21: 2-HRS BEFORE SUNSET
1:100 @ 11X17 1:50 @ 24X36

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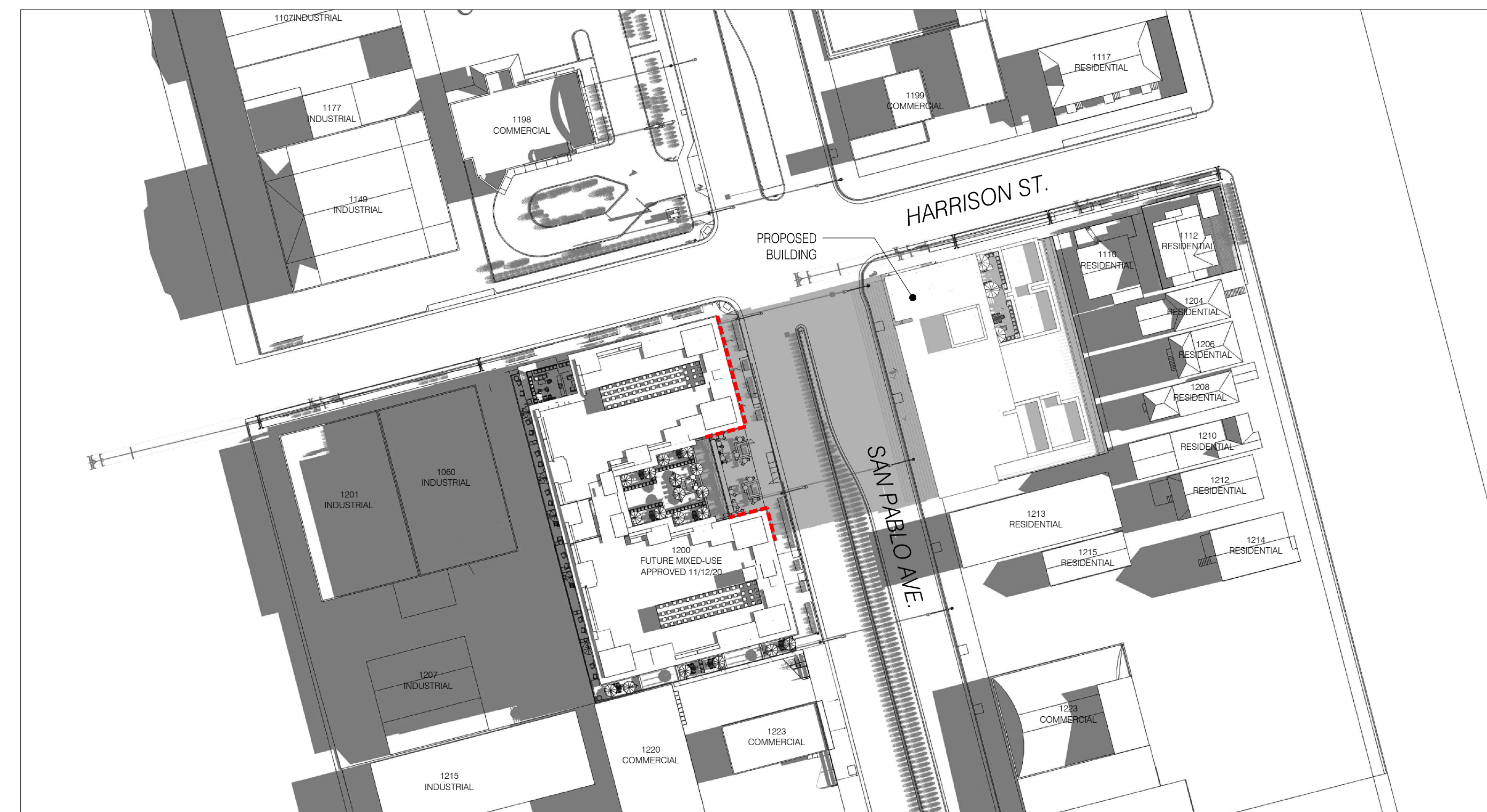
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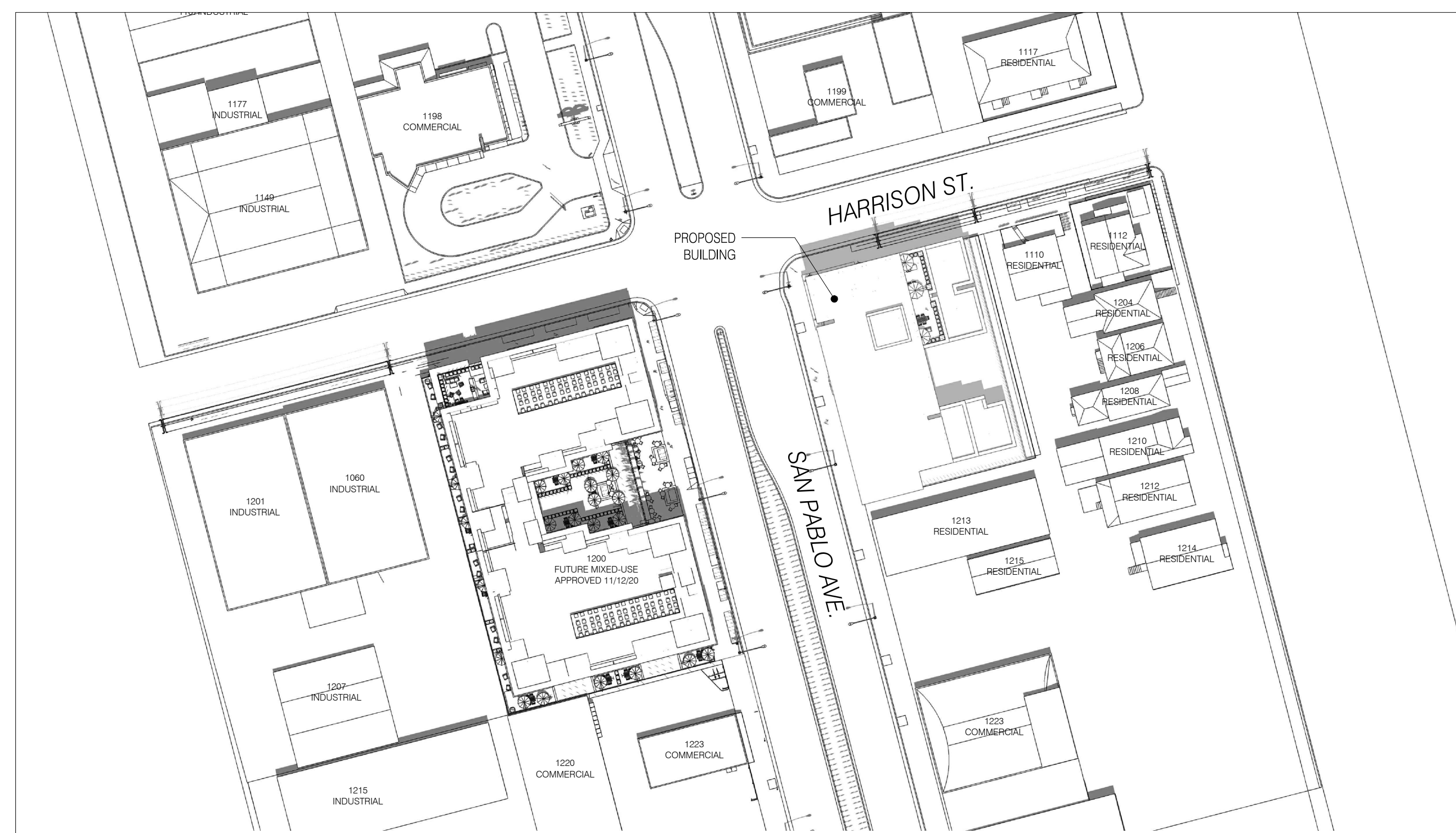
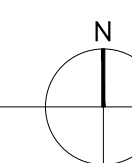
SHEET:

SHADOW STUDIES
JUNE 21ST

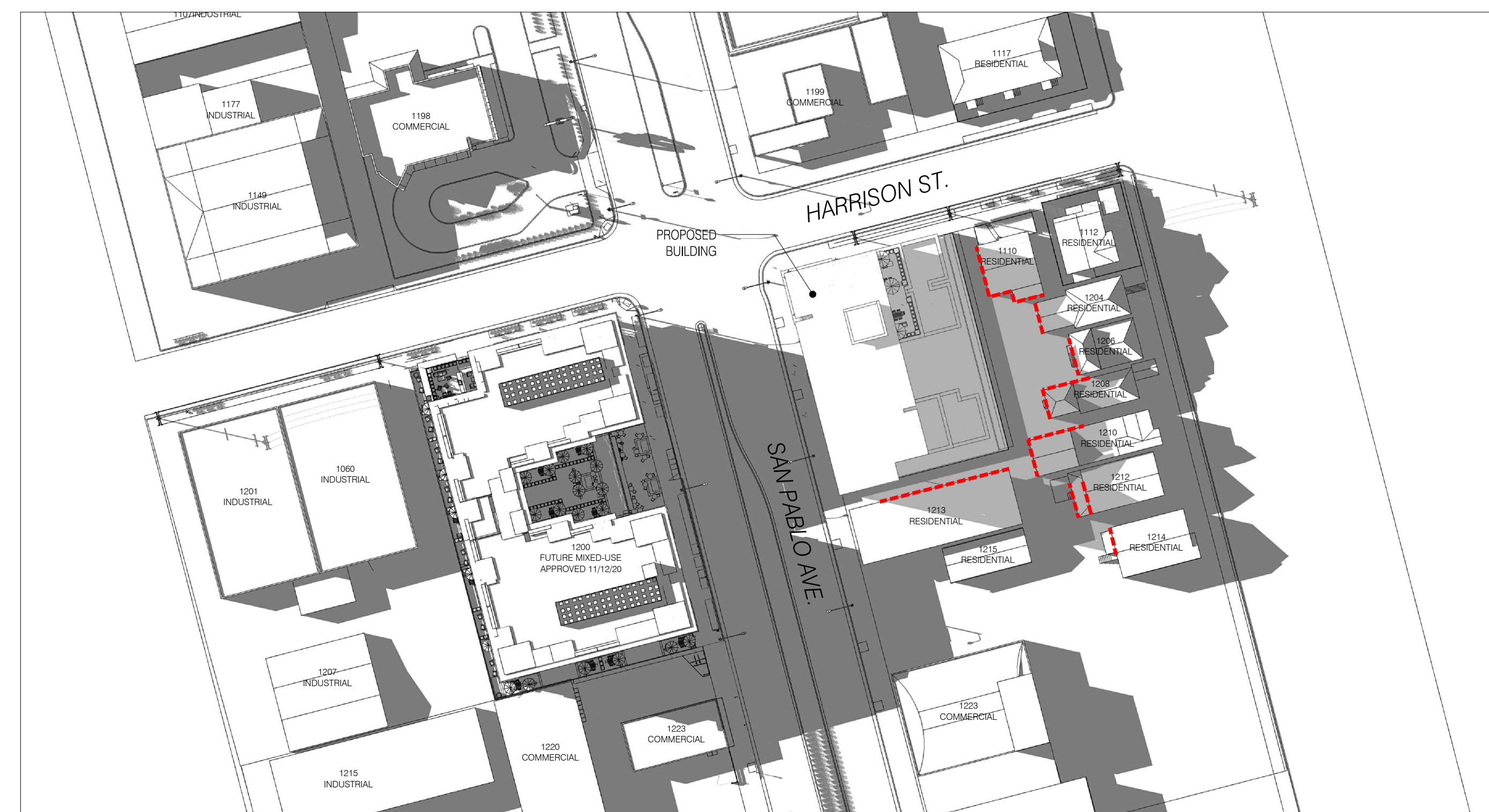
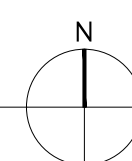
A0.4B



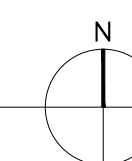
2 SHADOW STUDY - JUNE 21: 2 HRS AFTER SUNRISE
1:100 @ 11X17 1:50 @ 24X36



3 SHADOW STUDY - JUNE 21: NOON
1:100 @ 11X17 1:50 @ 24X36



1 SHADOW STUDY - JUNE 21: 2-HRS BEFORE SUNSET
1:100 @ 11X17 1:50 @ 24X36



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2 SHADOW STUDY AXONOMETRIC - JUN 21: 2-HRS BEFORE SUNSET
NTS



3 SHADOW STUDY AXONOMETRIC - JUNE 21: 2 HRS AFTER SUNRISE
1:100 @ 11X17 1:50 @ 24X36



1 SHADOW STUDY AXONOMETRIC - JUN 21: 2-HRS BEFORE SUNSET
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SHEET:

SHADOW STUDIES
JUNE 21ST

A0.4C

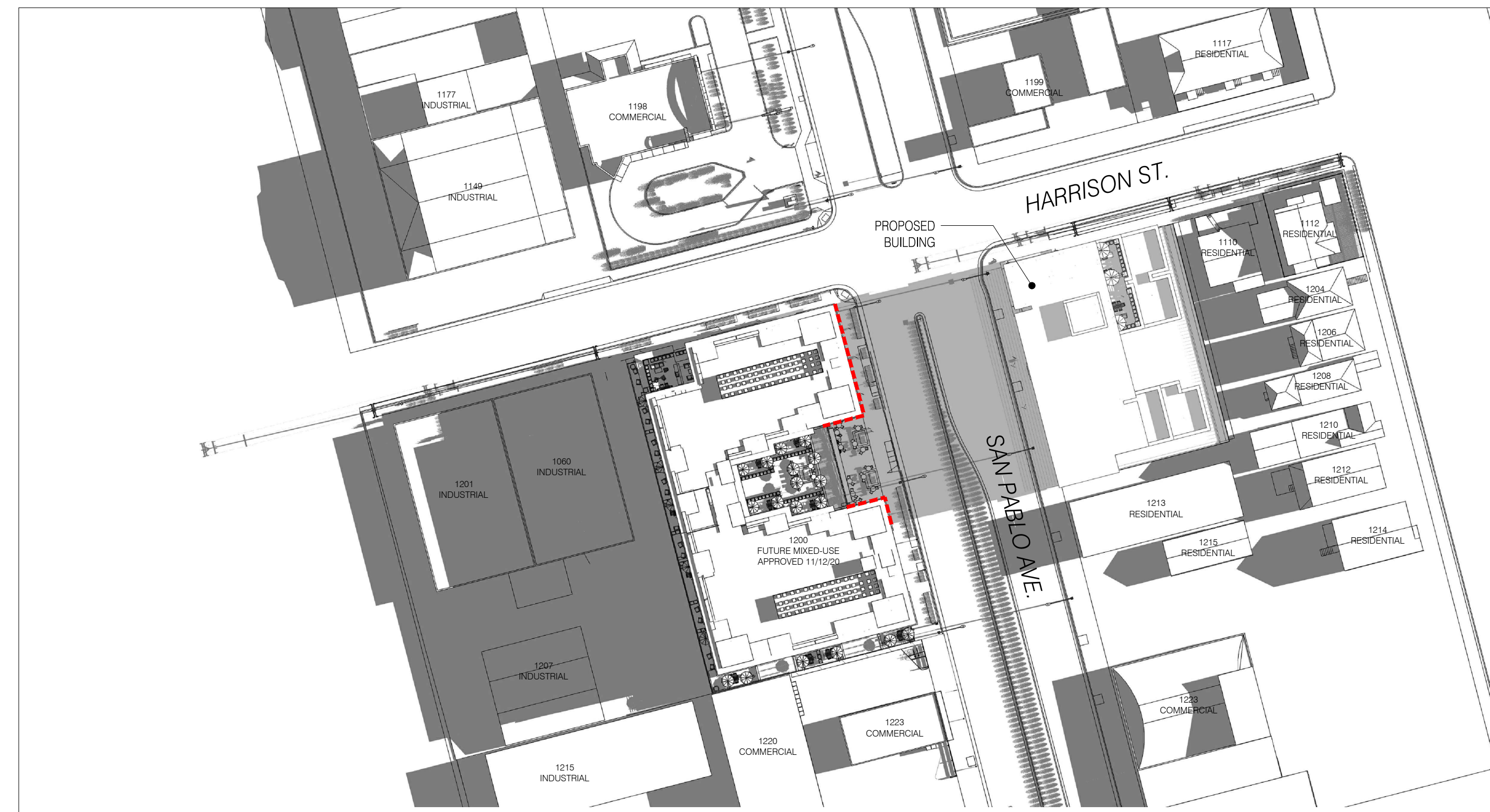
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2 SHADOW STUDY - JULY 2: 2 HRS AFTER SUNRISE
1:100 @ 11X17 1:50 @ 24X36

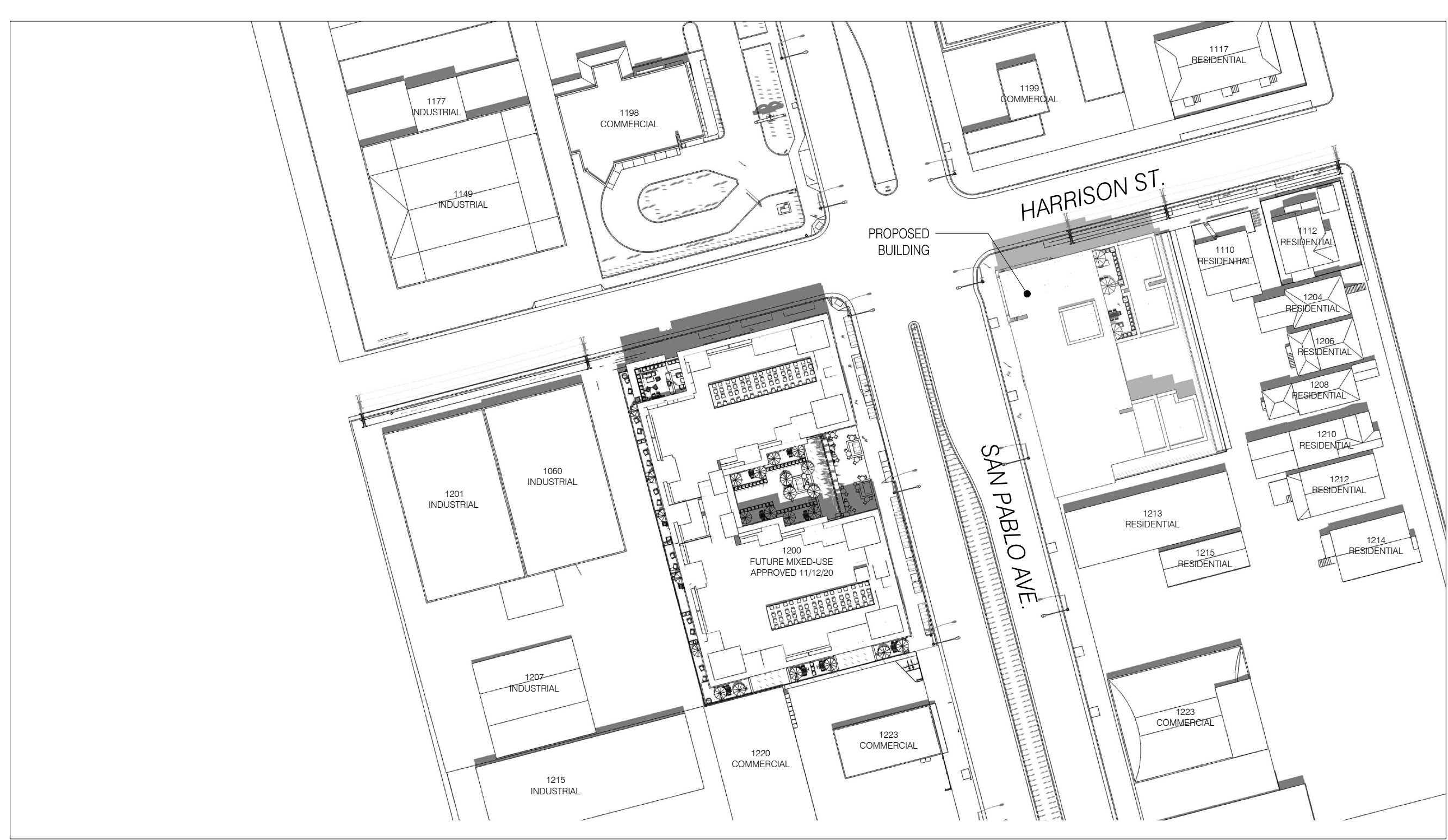
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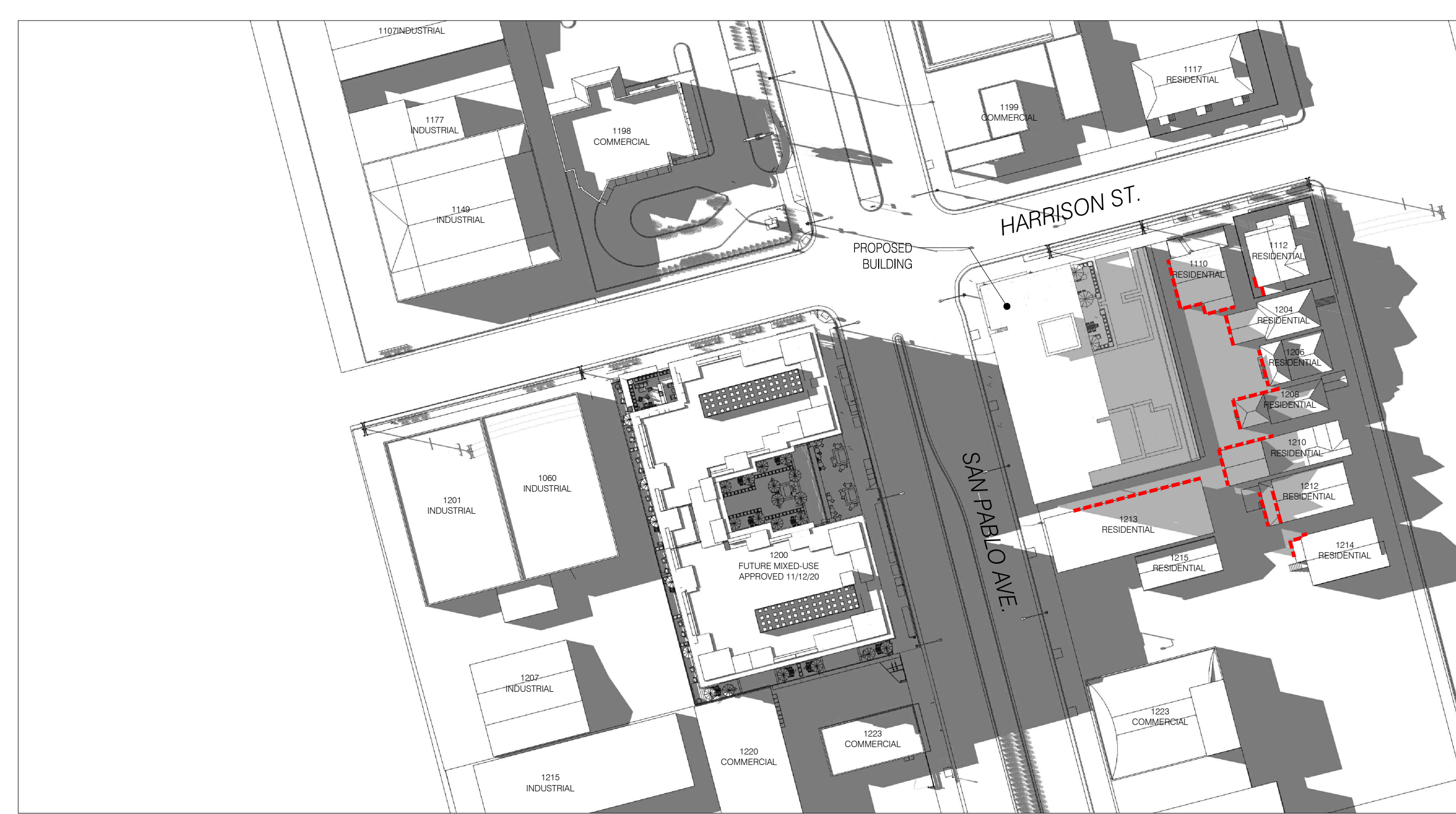
JOB: 1928

SHEET:
**SHADOW STUDIES
JULY 2ND**

A0.4D



3 SHADOW STUDY - JULY 2: NOON
1:100 @ 11X17 1:50 @ 24X36



1 SHADOW STUDY - JULY 2: 2-HRS BEFORE SUNSET
1:100 @ 11X17 1:50 @ 24X36

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SHEET:

SHADOW STUDIES
JULY 2ND

A0.4E



2 SHADOW STUDY AXONOMETRIC - JULY 2: 2 HRS BEFORE SUNSET
1:100 @ 11X17 1:50 @ 24X36



3 SHADOW STUDY AXONOMETRIC - JULY 2: 2 HRS AFTER SUNRISE
1:100 @ 11X17 1:50 @ 24X36



1 SHADOW STUDY AXONOMETRIC - JULY 2: 2-HRS BEFORE SUNSET
NTS

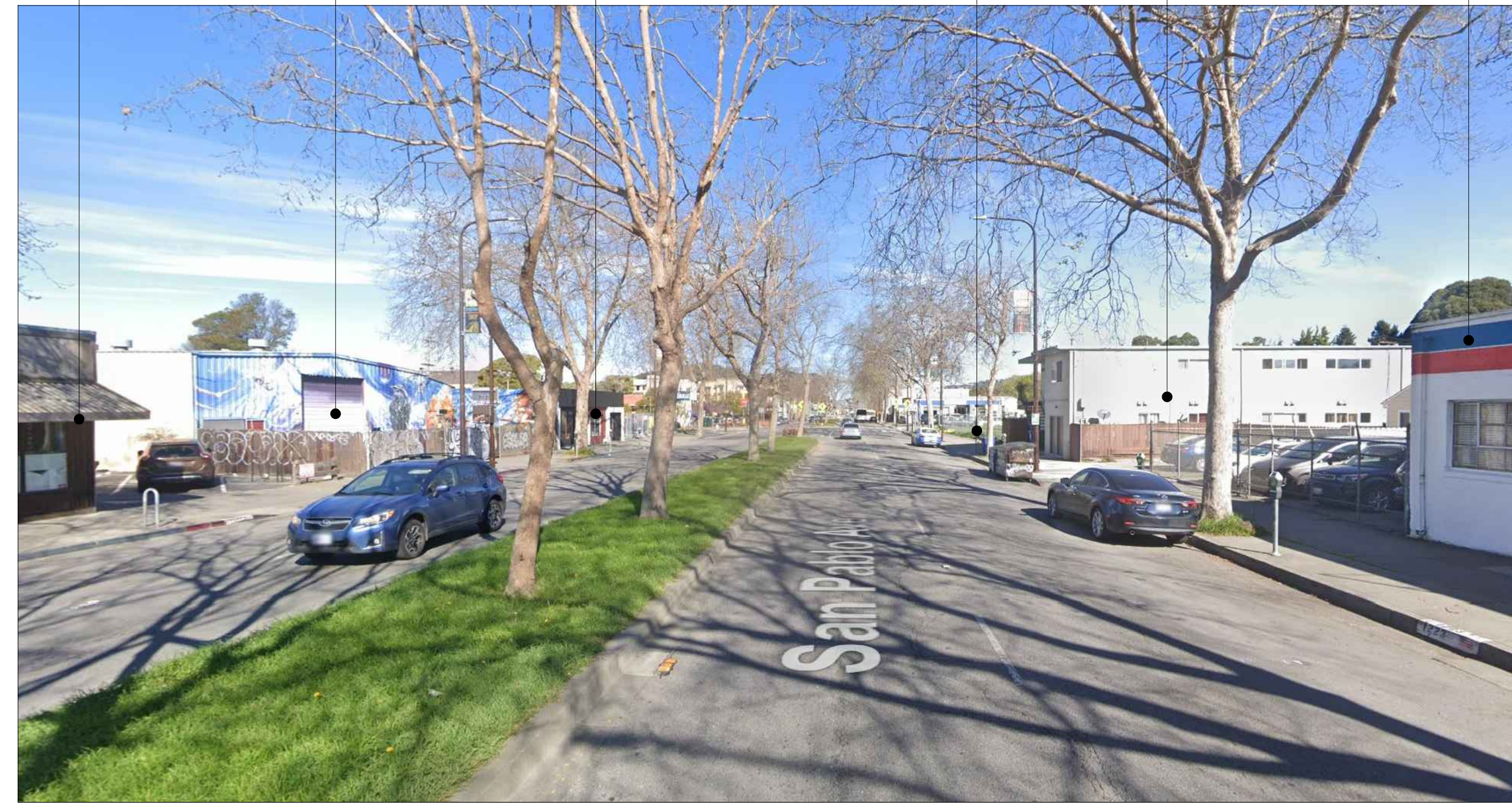
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1197 SAN PABLO (GILMAN AUTO)
1110 HARRISON SINGLE FAMILY RESIDENCE
PROJECT SITE 1201 SAN PABLO
1213 SAN PABLO (2-STORY MULTIFAMILY)
1200 - 1212 SAN PABLO (FUTURE 6-STORY MIXED-USE)



4 VIEW FROM HARRISON LOOKING EAST

1220 SAN PABLO (TOKYO FISH MARKET)
1200 - 1212 SAN PABLO (FUTURE 6-STORY MIXED-USE)
1200 - 1212 SAN PABLO (FUTURE 6-STORY MIXED-USE)
PROJECT SITE 1201 SAN PABLO
1213 SAN PABLO (2-STORY MULTIFAMILY)
1223 SAN PABLO (101 AUTOBODY)



2 VIEW FROM SAN PABLO LOOKING NORTH

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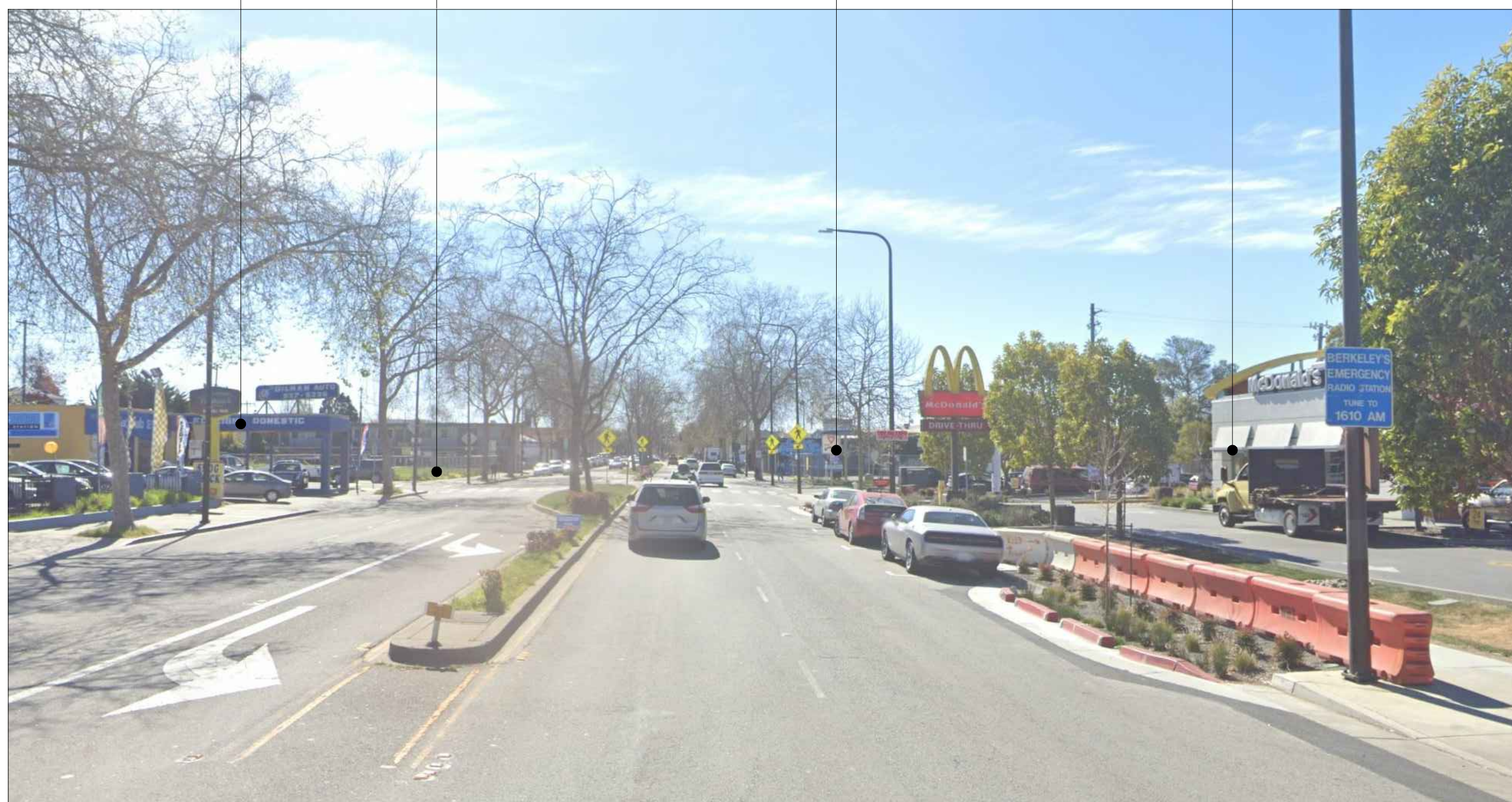
JOB: 1928

SHEET:

SITE CONTEXT
PHOTOS

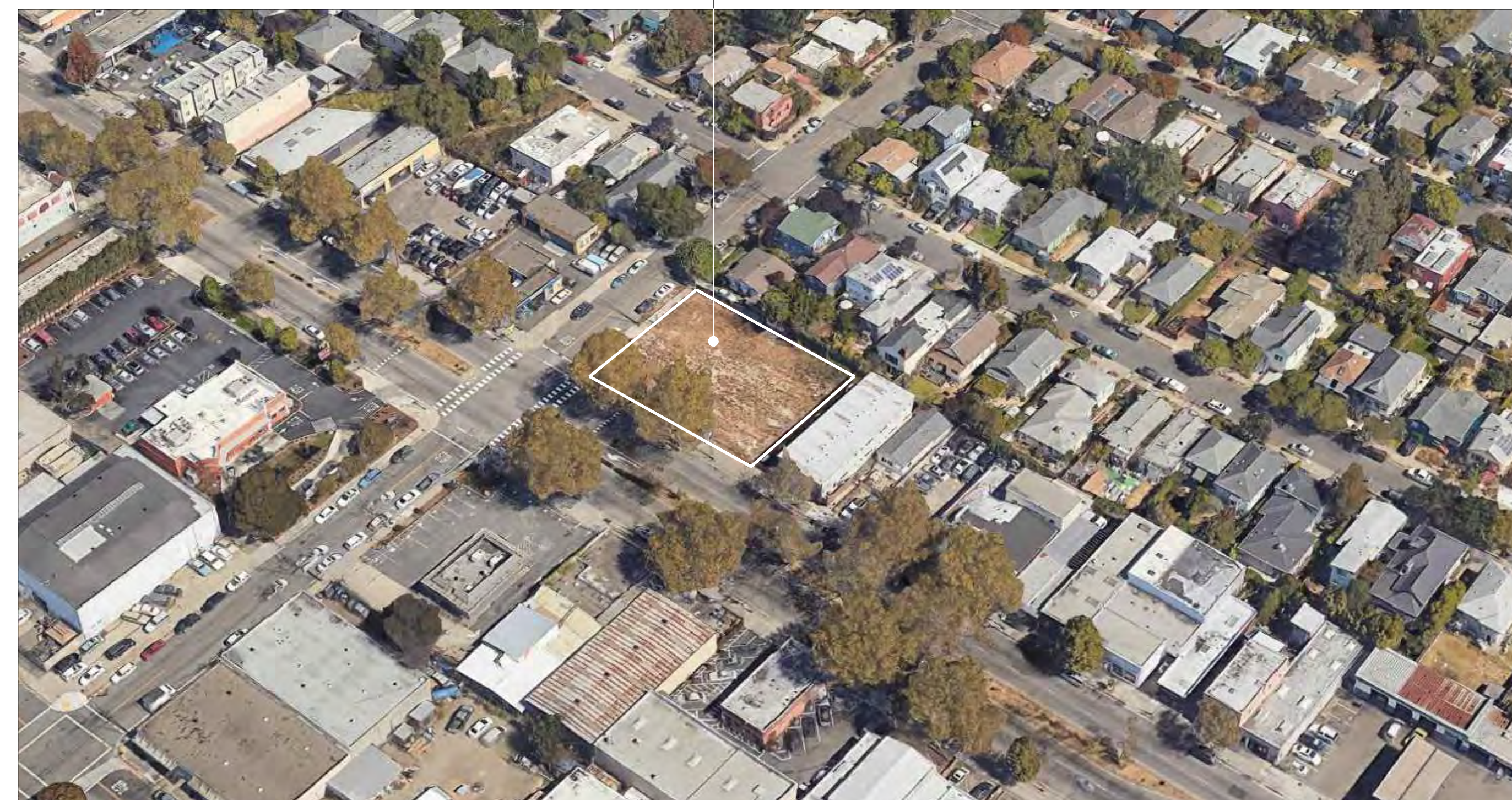
A0.5

1197 SAN PABLO (GILMAN AUTO)
PROJECT SITE 1201 SAN PABLO
1200 - 1212 SAN PABLO (FUTURE 6-STORY MIXED-USE)
1198 SAN PABLO (MCDONALD'S)



3 VIEW FROM SAN PABLO LOOKING SOUTH

PROJECT SITE 1201 SAN PABLO



1 GOOGLE EARTH BIRD'S EYE CONTEXT VIEW

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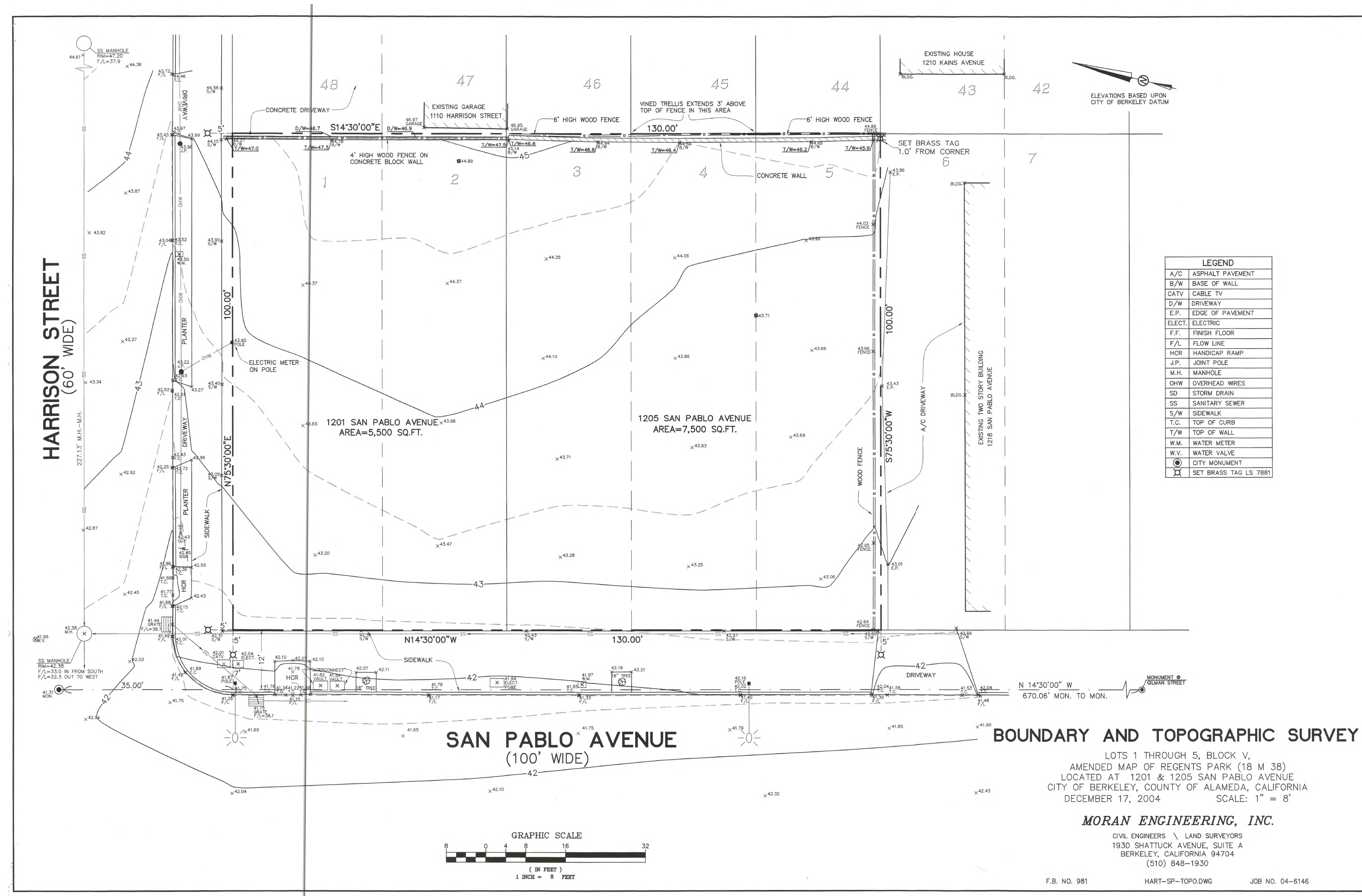
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JOB: 1928

SHEET:

SURVEY

A1.0



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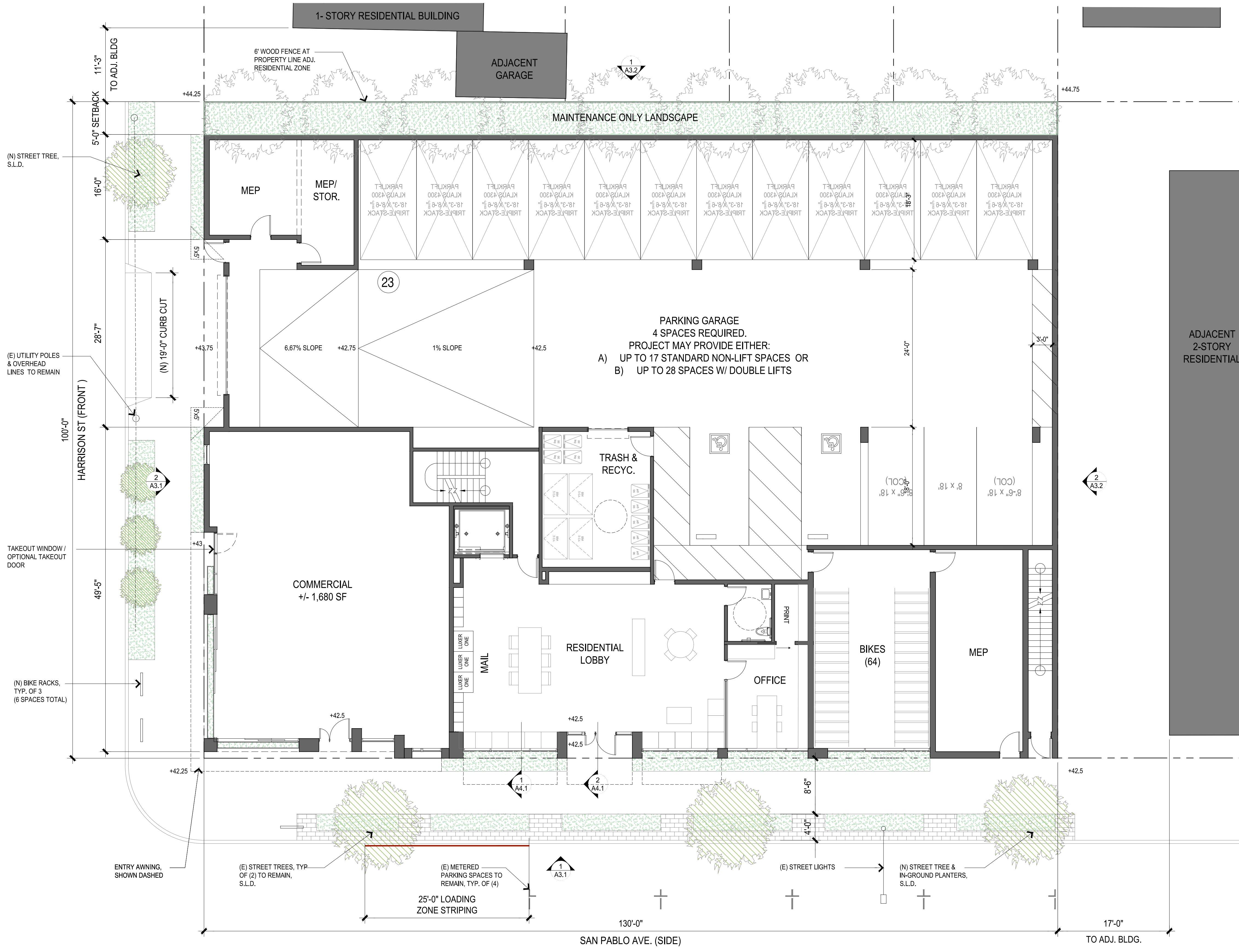
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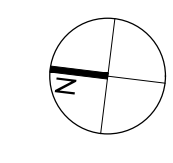
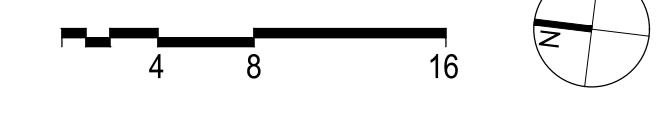
SHEET:

PLAN AT GROUND LEVEL/ SITE PLAN

A2.1



1 SITE PLAN / GROUND LEVEL PLAN
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36



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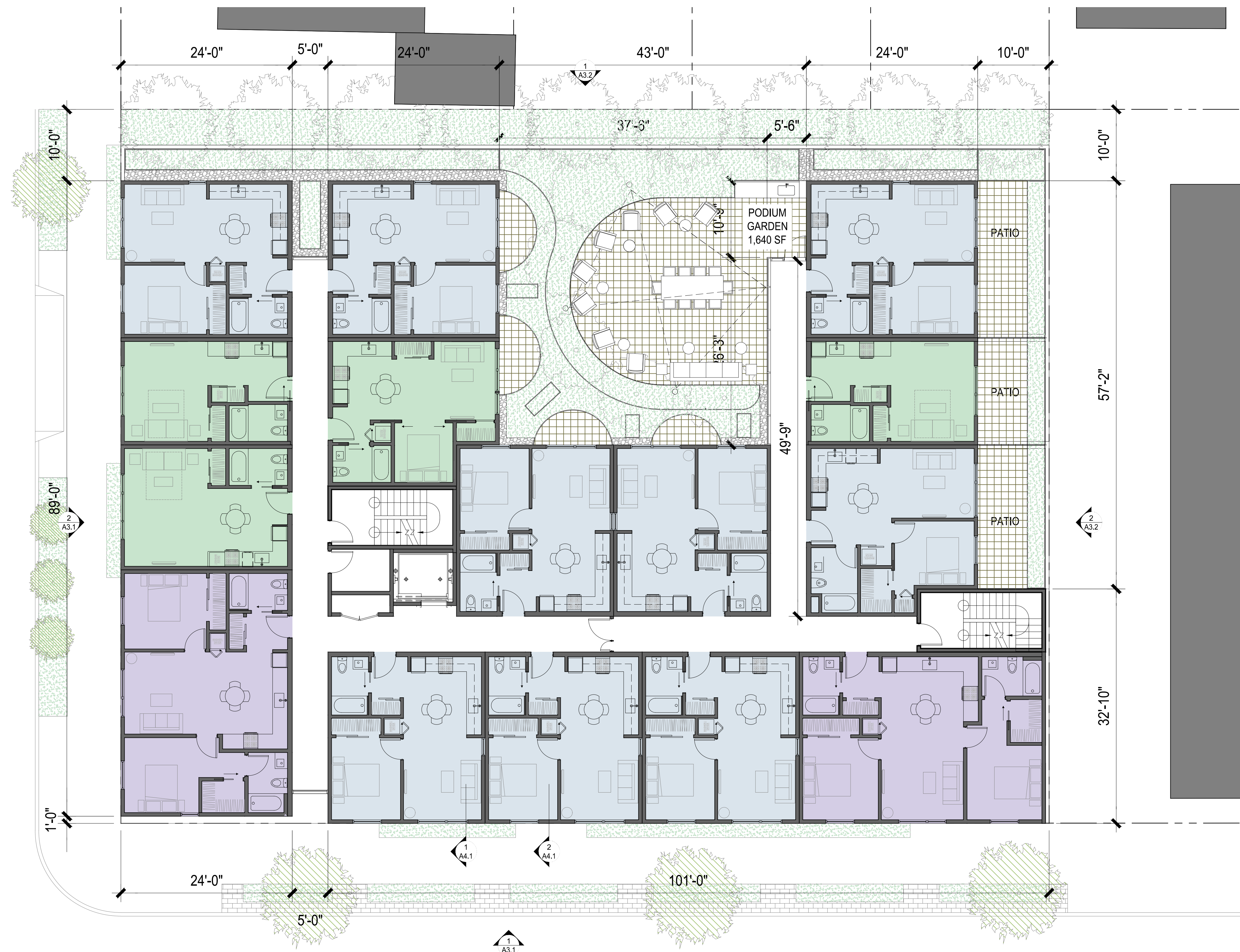
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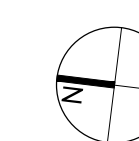
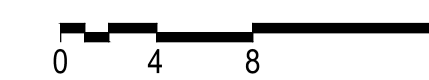
SHEET:

PLAN AT
LEVELS 2 - 4

A2.2



1 PLAN AT LEVELS 2 - 4
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36



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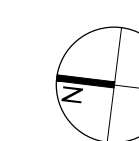
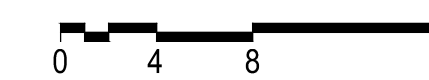
SHEET:

PLAN AT
LEVEL 5

A2.3



1 PLAN AT LEVEL 5
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36



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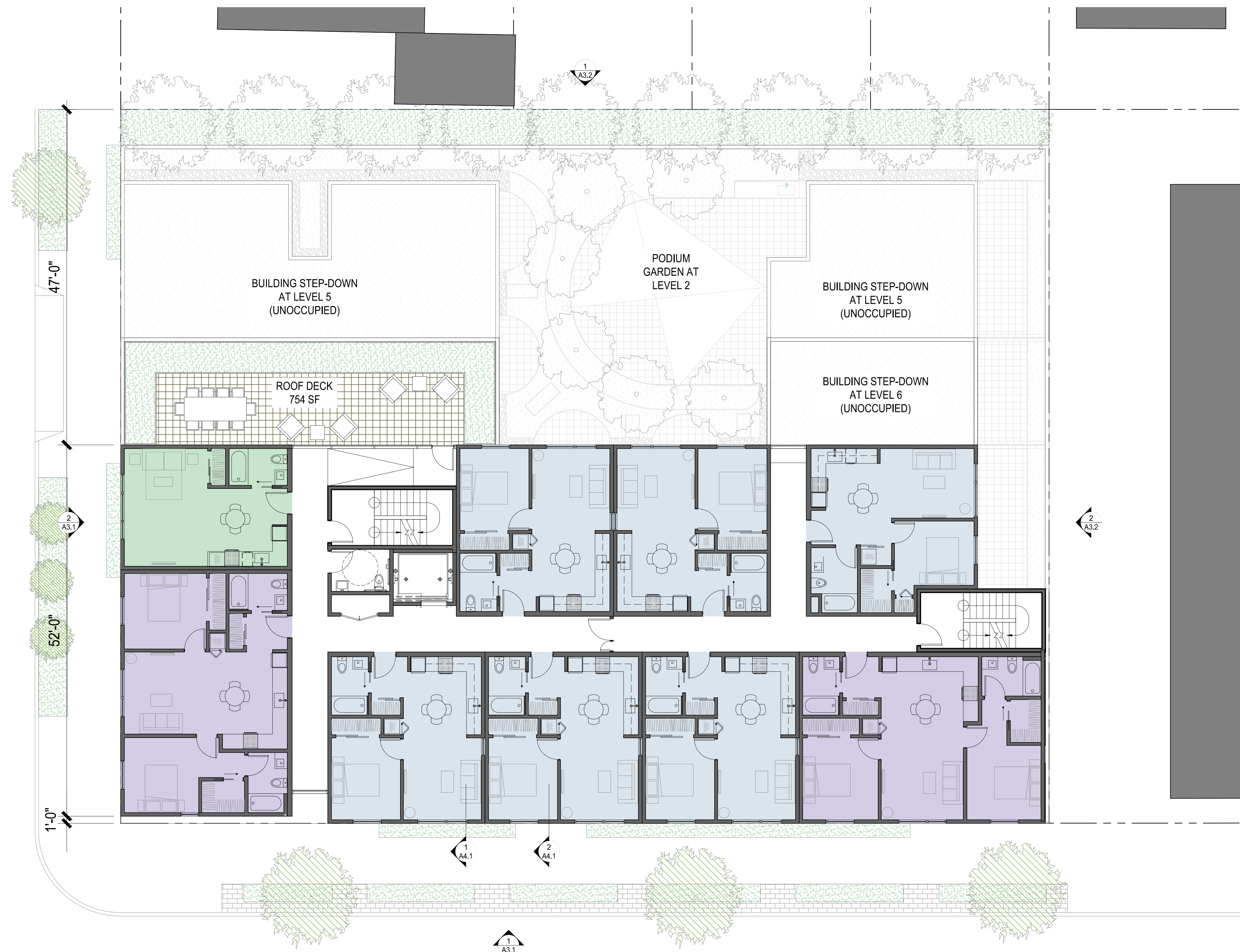
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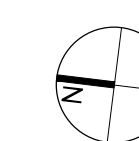
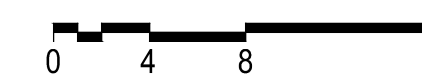
SHEET:

PLAN AT
LEVEL 6

A2.4



1 PLAN AT LEVEL 6
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36



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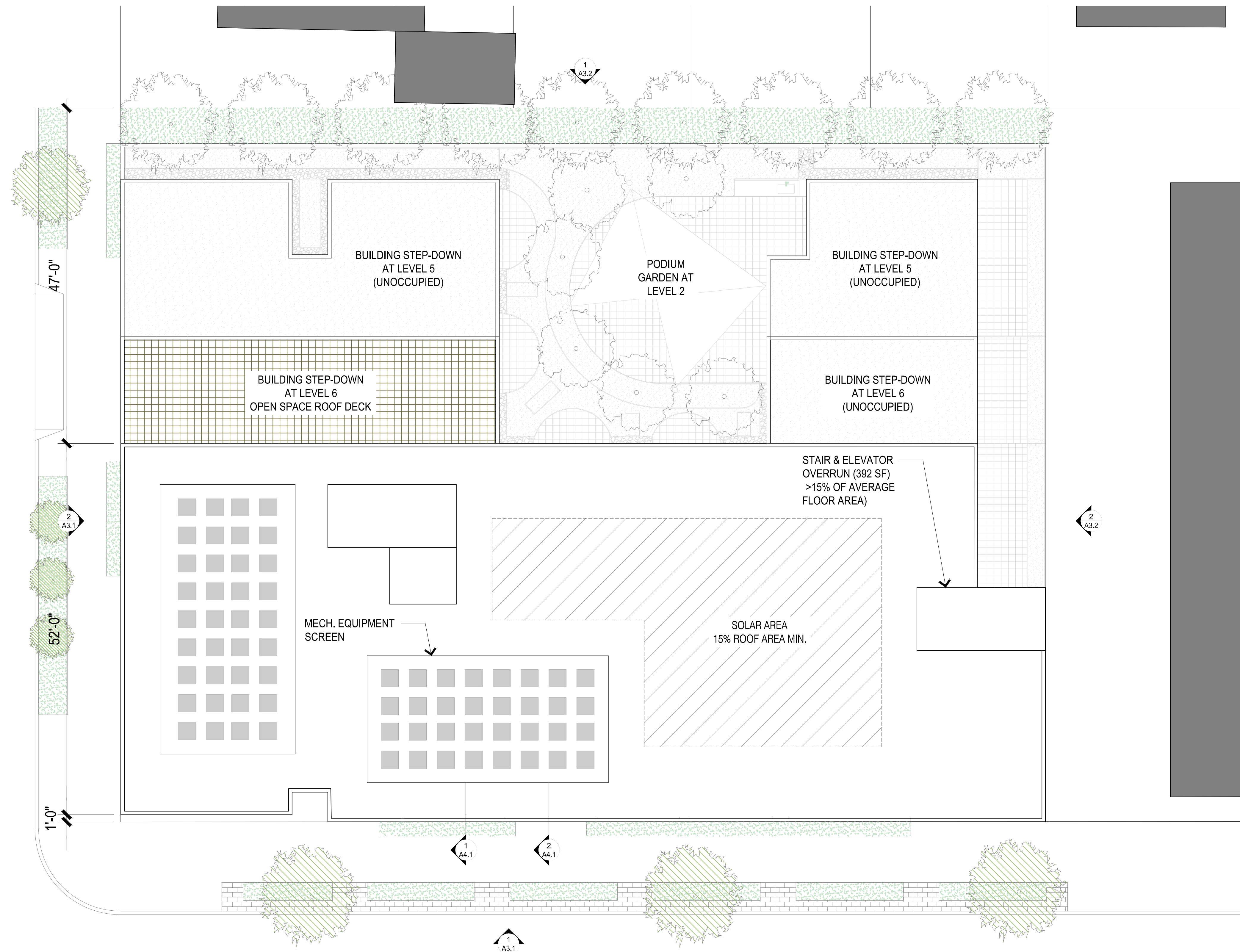
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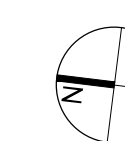
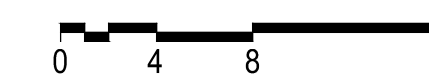
SHEET:

PLAN AT
ROOF

A2.5



1 PLAN AT ROOF
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36



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JOB: 1928

SHEET:

BUILDING
ELEVATIONS

A3.1



1 WEST ELEVATION

3/32" = 1'-0" @ 11X17 3/16" = 1'-0" @ 24X36





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JOB: 1928

SHEET:

BUILDING
ELEVATIONS

A3.2



1 NORTH ELEVATION
 3/32" = 1'-0" @ 11X17 3/16" = 1'-0" @ 24X36 0 4 8 16

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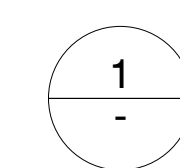
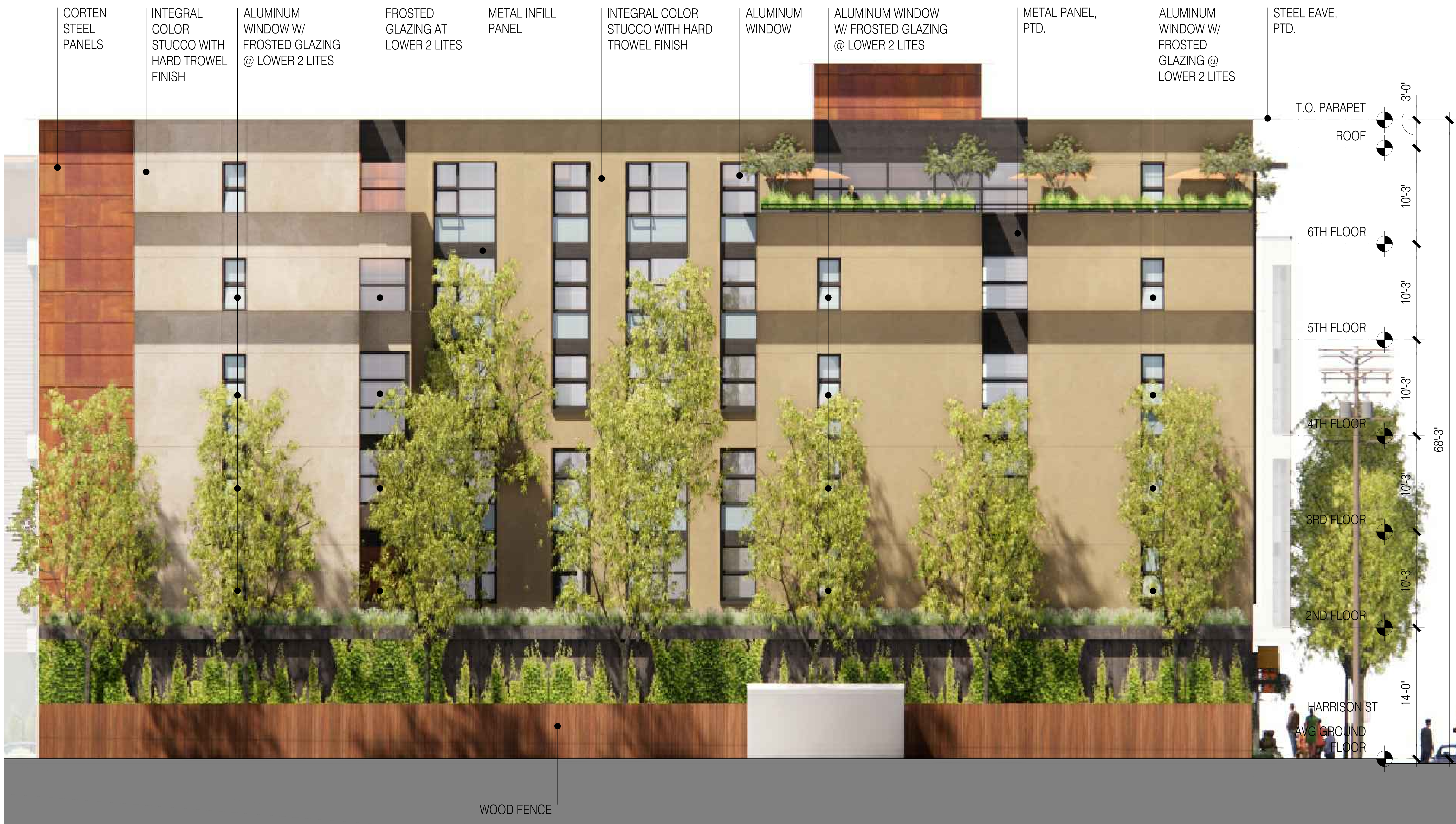
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SHEET:

BUILDING
ELEVATIONS

A3.3



EAST ELEVATION

3/32" = 1'-0" @ 11X17 3/16" = 1'-0" @ 24X36



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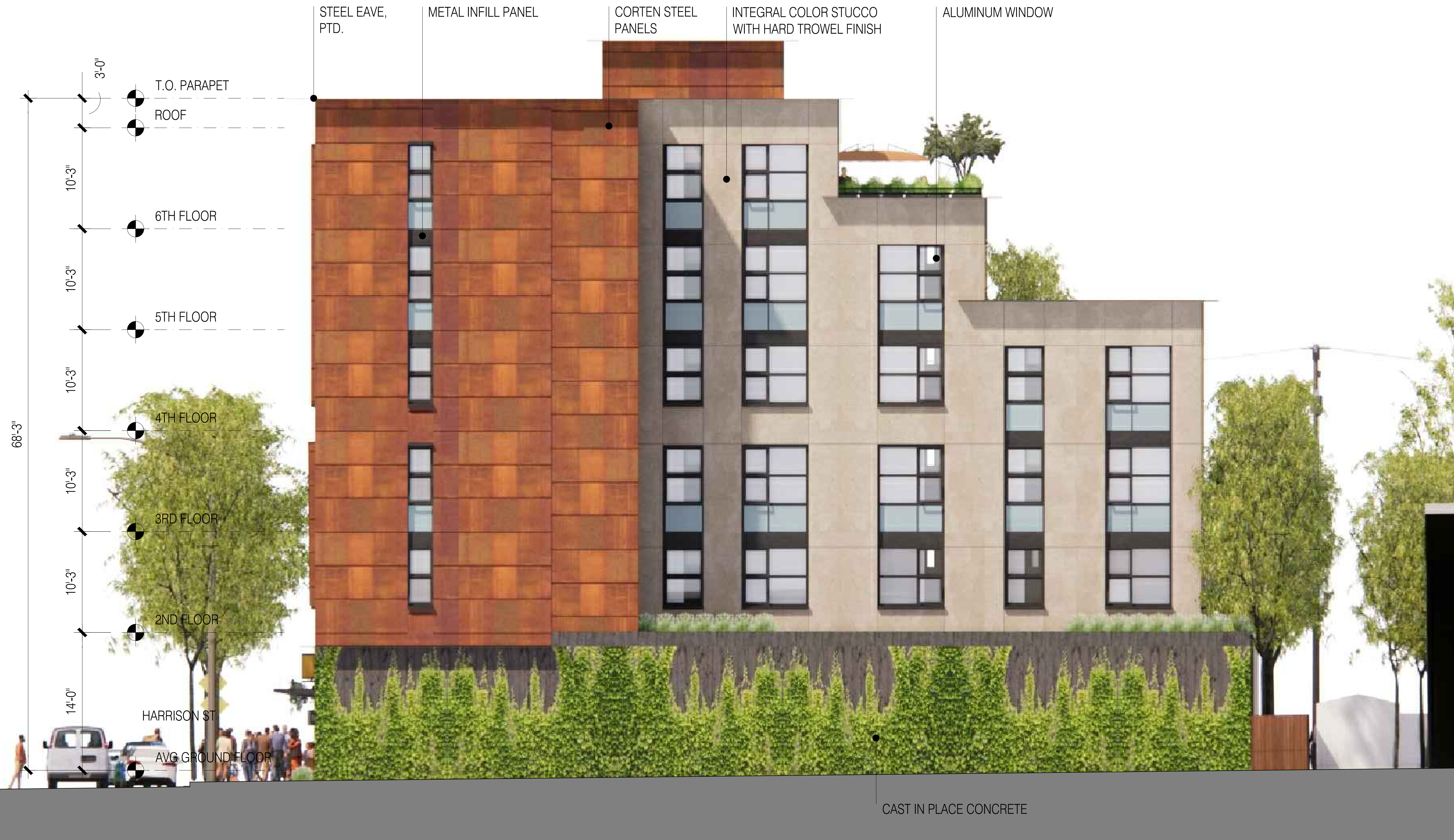
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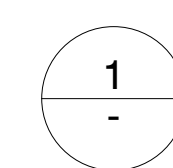
SHEET:

BUILDING
ELEVATIONS

A3.4



CAST IN PLACE CONCRETE



SOUTH ELEVATION

3/32" = 1'-0" @ 11X17 3/16" = 1'-0" @ 24X36



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JOB: 1928

SHEET:

STREET STRIP
ELEVATIONS

A3.5



2 STREET STRIP ELEVATION @ HARRISON ST.
1/32" = 1'-0" @ 11X17 1/16" = 1'-0" @ 24X36 0 4 8 16 32



1 STREET STRIP ELEVATION @ SAN PABLO AVE.
1/32" = 1'-0" @ 11X17 1/16" = 1'-0" @ 24X36 0 4 8 16 32

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JOB: 1928

SHEET:

PERSPECTIVE
VIEWS

A3.6



1
-
VIEW ALONG SAN PABLO - LOOKING SOUTH

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JOB: 1928

SHEET:

PERSPECTIVE
VIEWS

A3.7



1 - VIEW ALONG HARRISON - LOOKING EAST

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JOB: 1928

SHEET:

PERSPECTIVE
VIEWS

A3.8



1
-
VIEW ALONG HARRISON - LOOKING WEST

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JOB: 1928

SHEET:

PERSPECTIVE
VIEWS

A3.9



1 - VIEW ALONG SAN PABLO - LOOKING EAST

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SHEET:

PERSPECTIVE
VIEWS

A3.10



1 VIEW AT SAN PABLO INTERSECTION

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SHEET:

PERSPECTIVE
VIEWS

A3.11



1 CLOSE UP VIEW ALONG SAN PABLO

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SHEET:

PERSPECTIVE
VIEWS

A3.12



1 SHATTUCK LOOKING NORTH

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SHEET:

PERSPECTIVE
VIEWS

A3.13



1
-
CLOSE UP VIEW ALONG SAN PABLO



4 HARRISON LOOKING EAST - AFTER



2 SAN PABLO LOOKING SOUTH - AFTER



3 HARRISON LOOKING EAST - BEFORE



1 SAN PABLO LOOKING SOUTH - BEFORE

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SHEET:

PHOTO MATCH
PERSPECTIVES

A3.12

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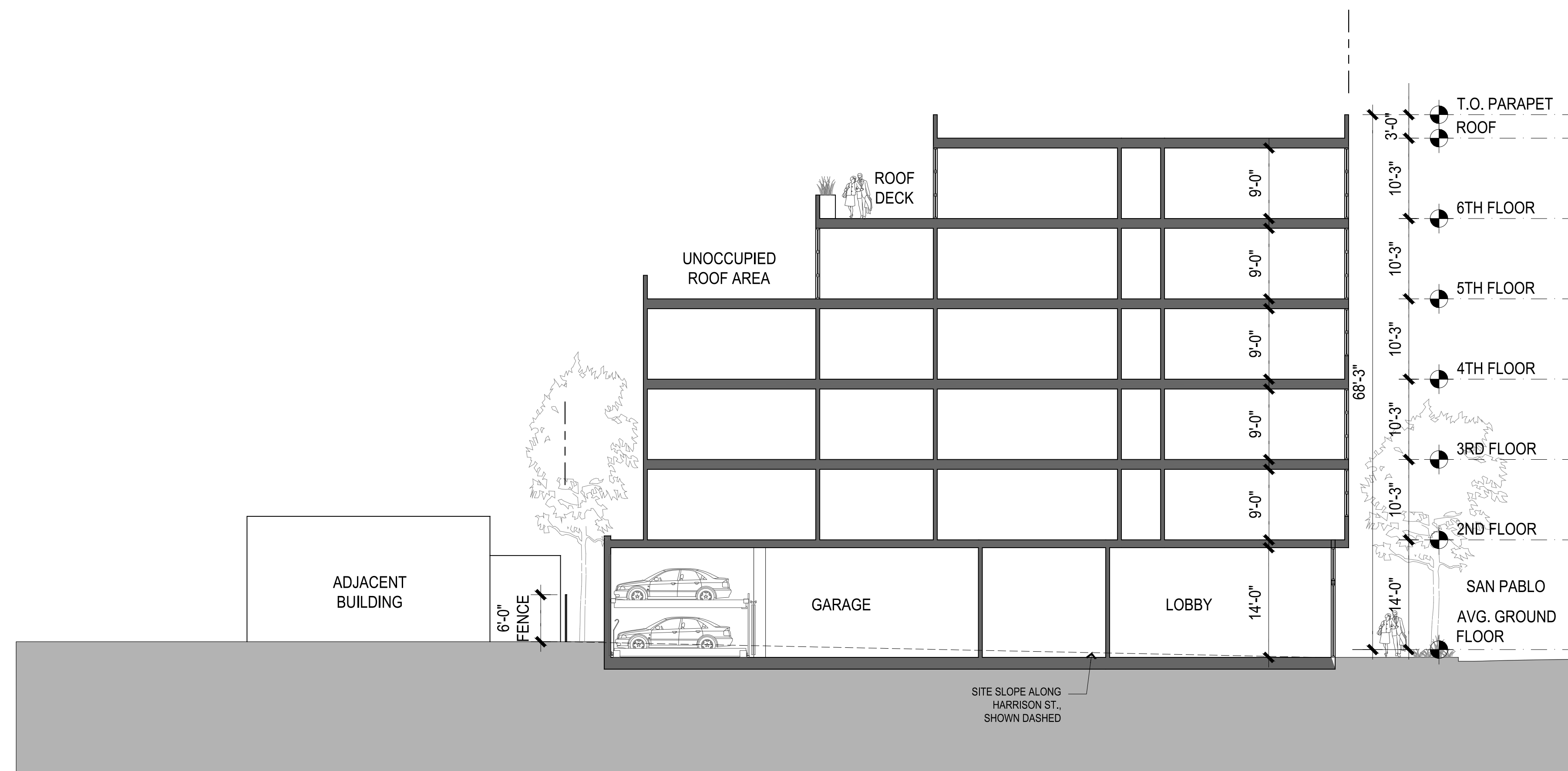
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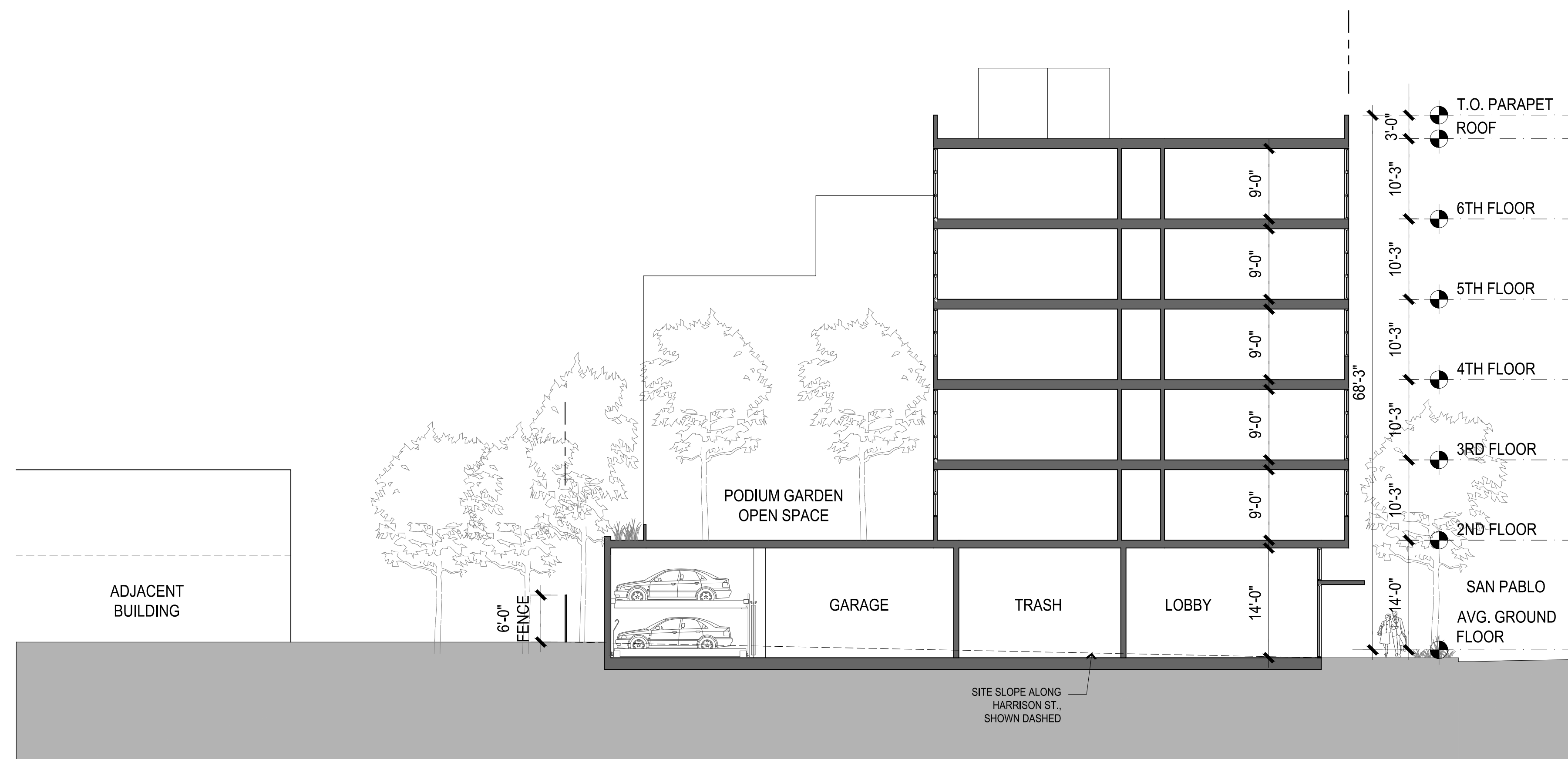
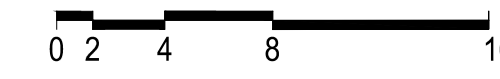
**BUILDING
SECTION**

A4.1



2 E-W SECTION THROUGH PODIUM GARDEN

3/64"=1'-0" @ 11X17 3/32"=1'-0" @ 24X36



1 E-W SECTION

3/64"=1'-0" @ 11X17 3/32"=1'-0" @ 24X36



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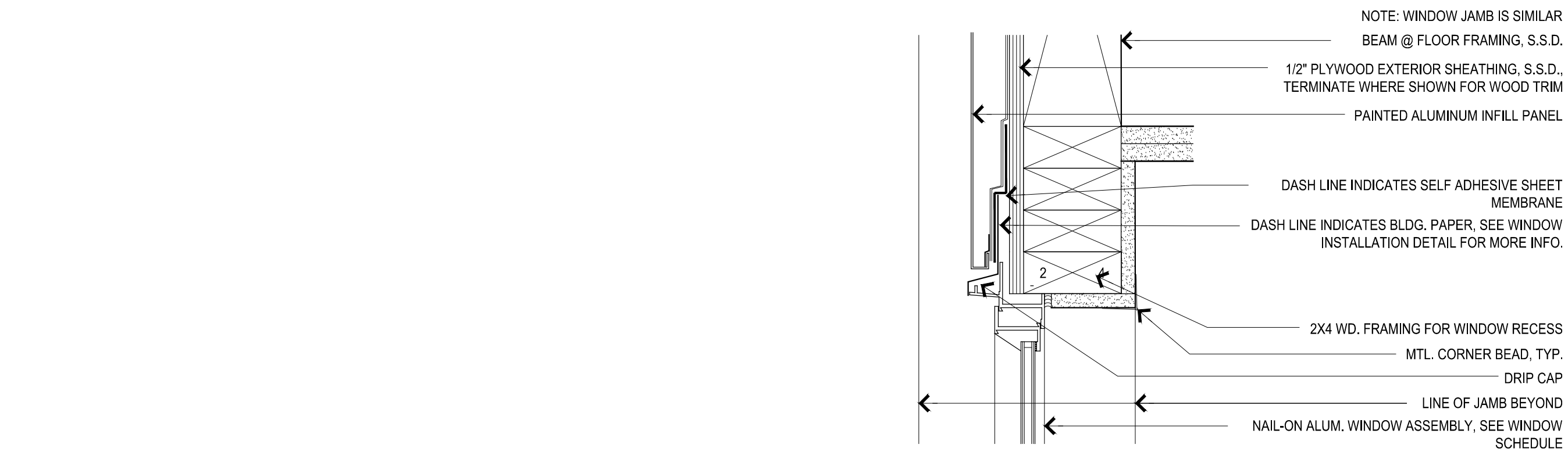
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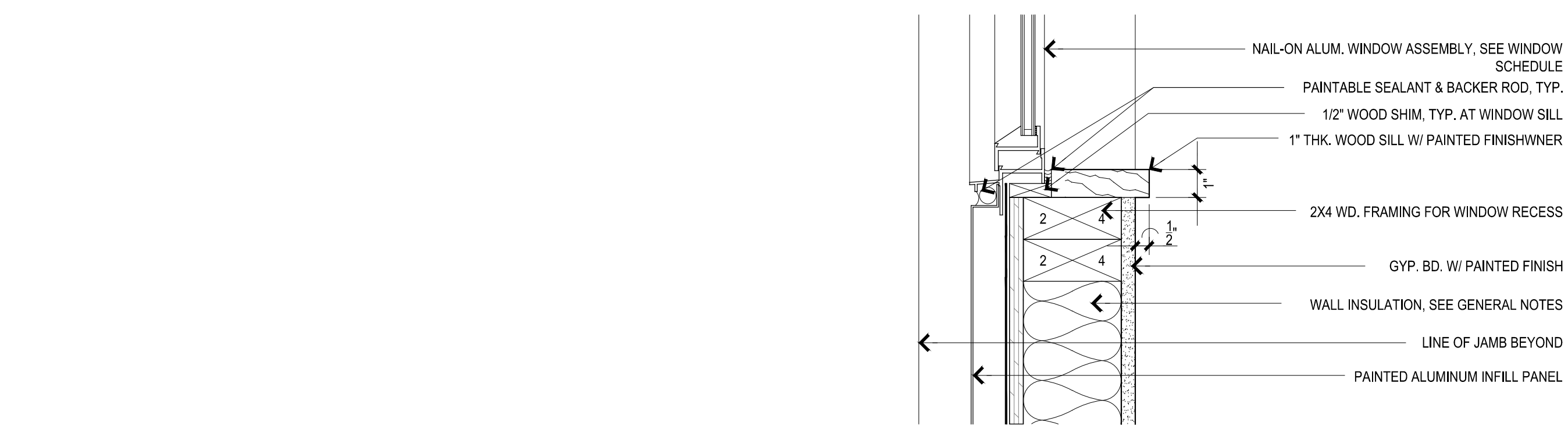
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**WALL SECTIONS &
DETAILS**

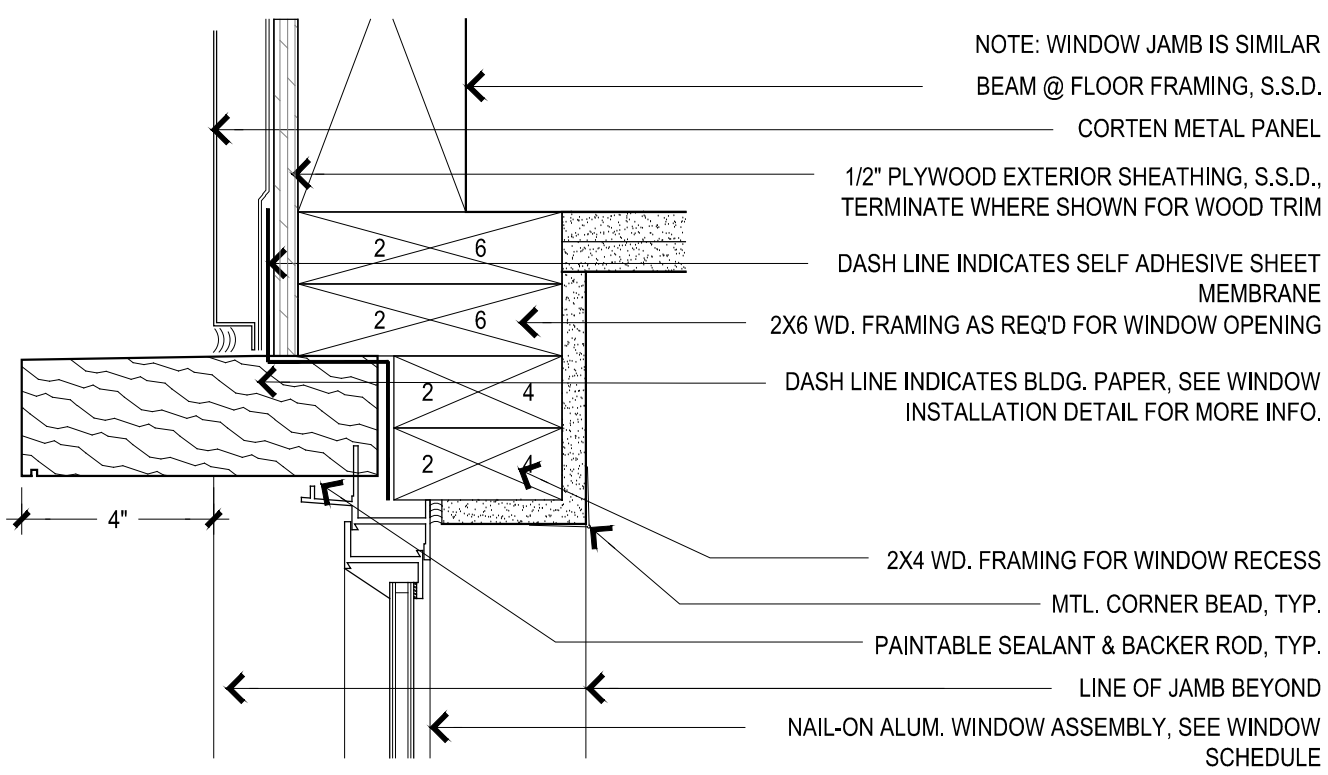
A4.2



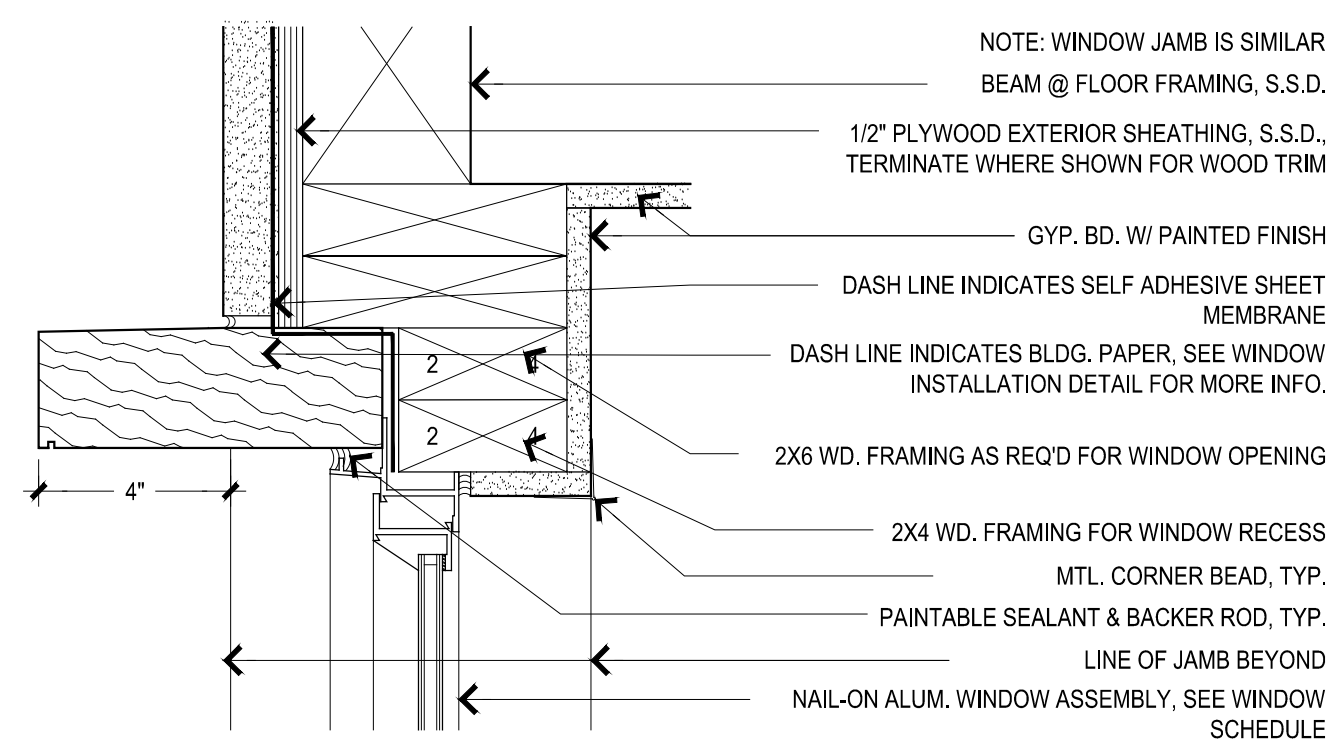
8 HEAD @ FILL PANEL
3"=1'-0"



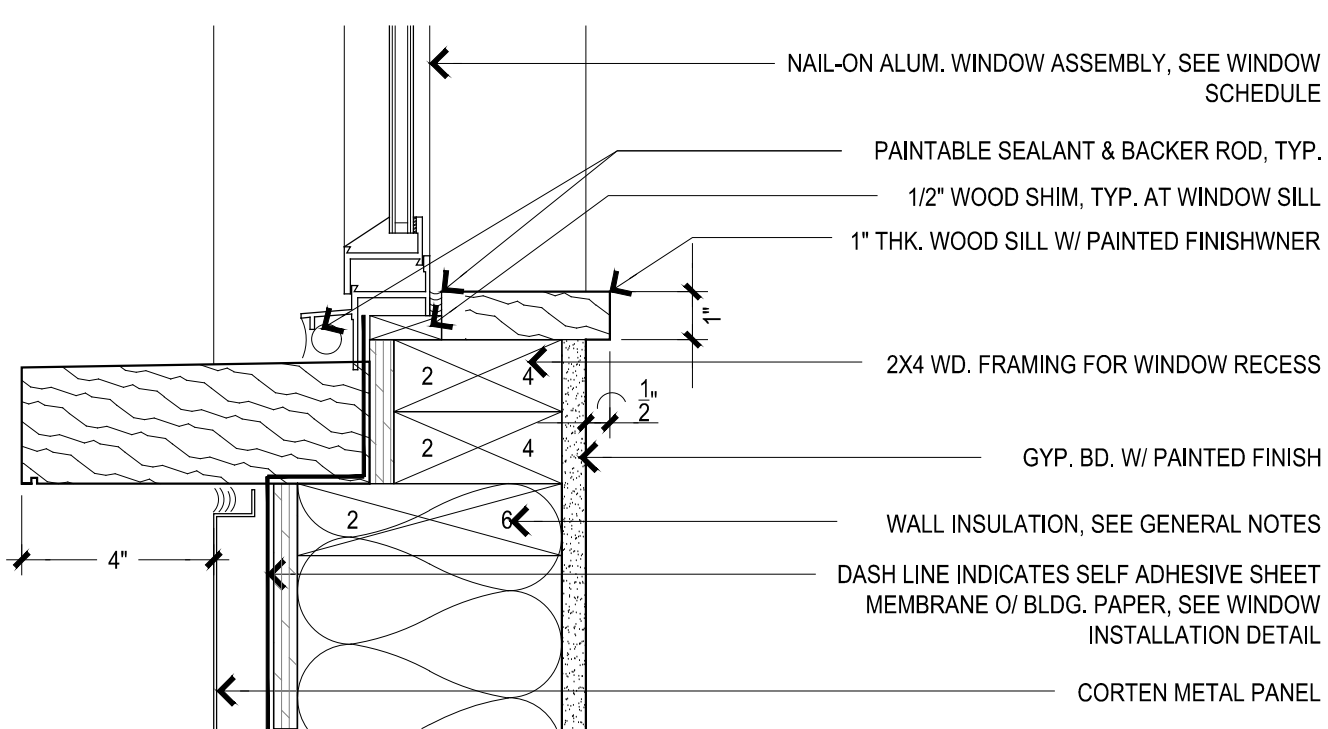
7 SILL AT FILL PANEL
3"=1'-0"



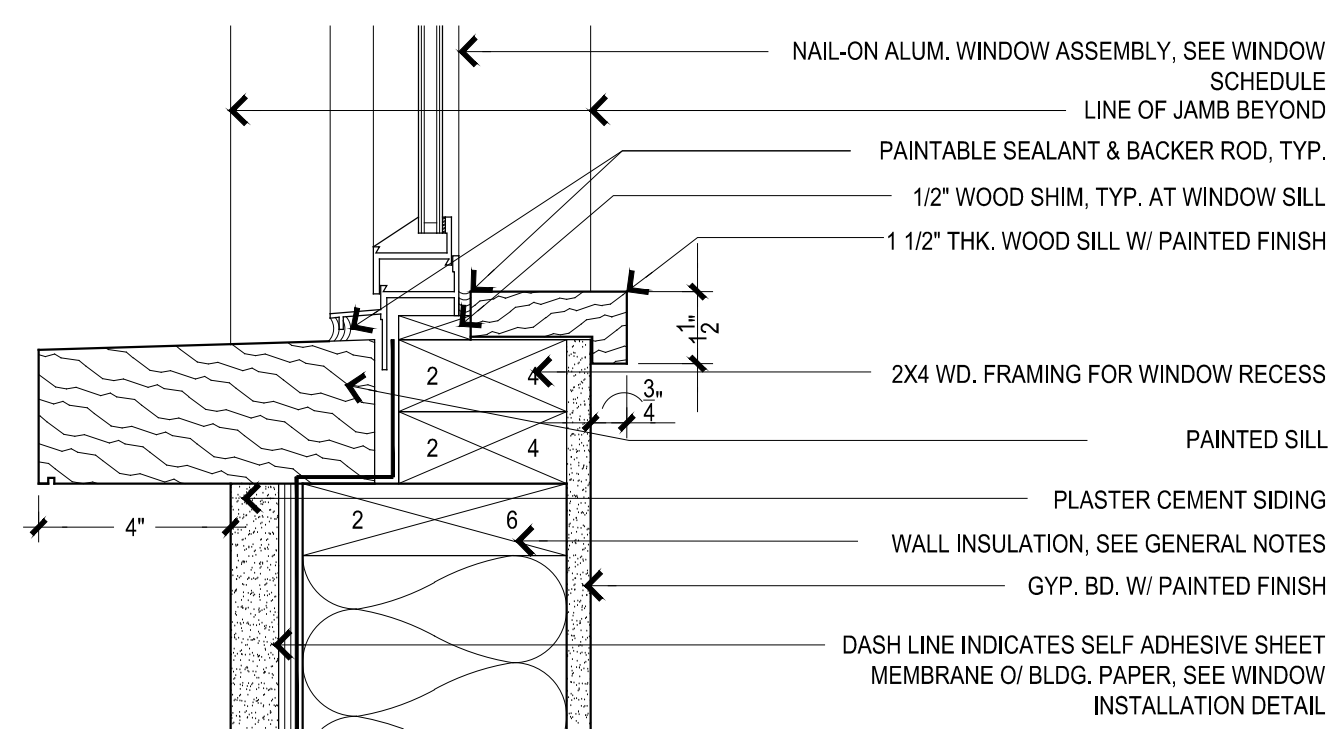
10 TYP. HEAD @ CORTEN
3"=1'-0"



6 TYP. STUCCO HEAD / JAMB
3"=1'-0"



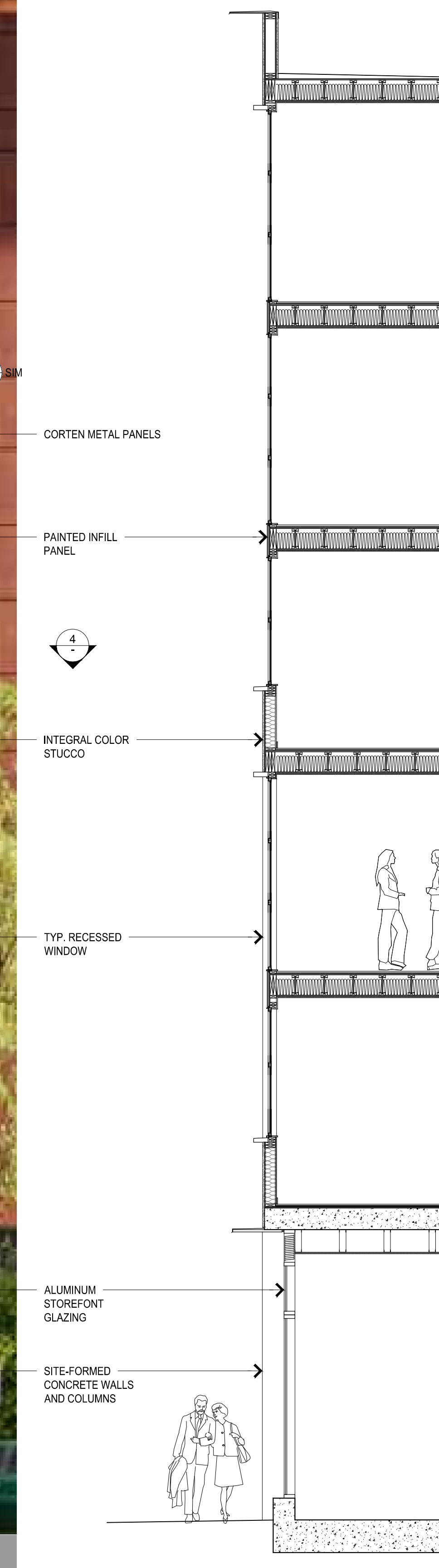
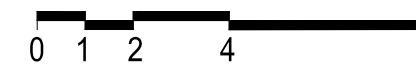
9 TYP. SILL @ CORTEN
3"=1'-0"



5 TYP. STUCCO SILL
3"=1'-0"



2 ELEVATION DETAIL
1/8"=1'-0" @ 11X17 1/4"=1'-0" @ 24X36



1 SECTION
1/8"=1'-0" @ 11X17 1/4"=1'-0" @ 24X36

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SHEET:

MATERIAL
BOARD

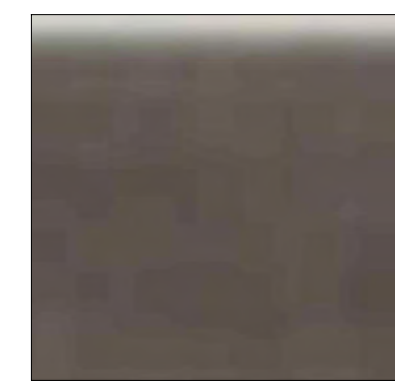
MAT



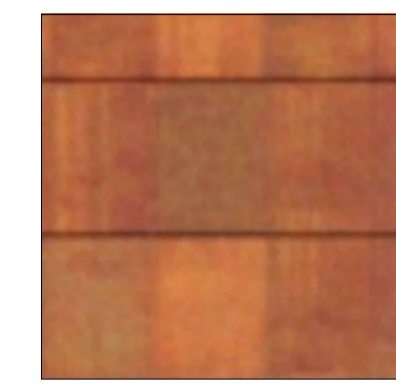
INTEGRAL COLOR STUCCO
W/ SMOOTH TROWEL FINISH



INTEGRAL COLOR STUCCO
W/ SMOOTH TROWEL FINISH



METAL INFILL PANEL



CORTEN METAL
PANEL

INTEGRAL COLOR
STUCCO W/ SMOOTH
TROWEL FINISH

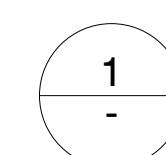
CORTEN METAL PANELS

ALUMINUM
STOREFRONT

METAL INFILL
PANEL

CAST-IN-PLACE
CONCRETE

STEEL EAVE, PTD.



WEST ELEVATION

3/32"=1'-0" @ 11X17 3/16" = 1'-0" @ 24X36





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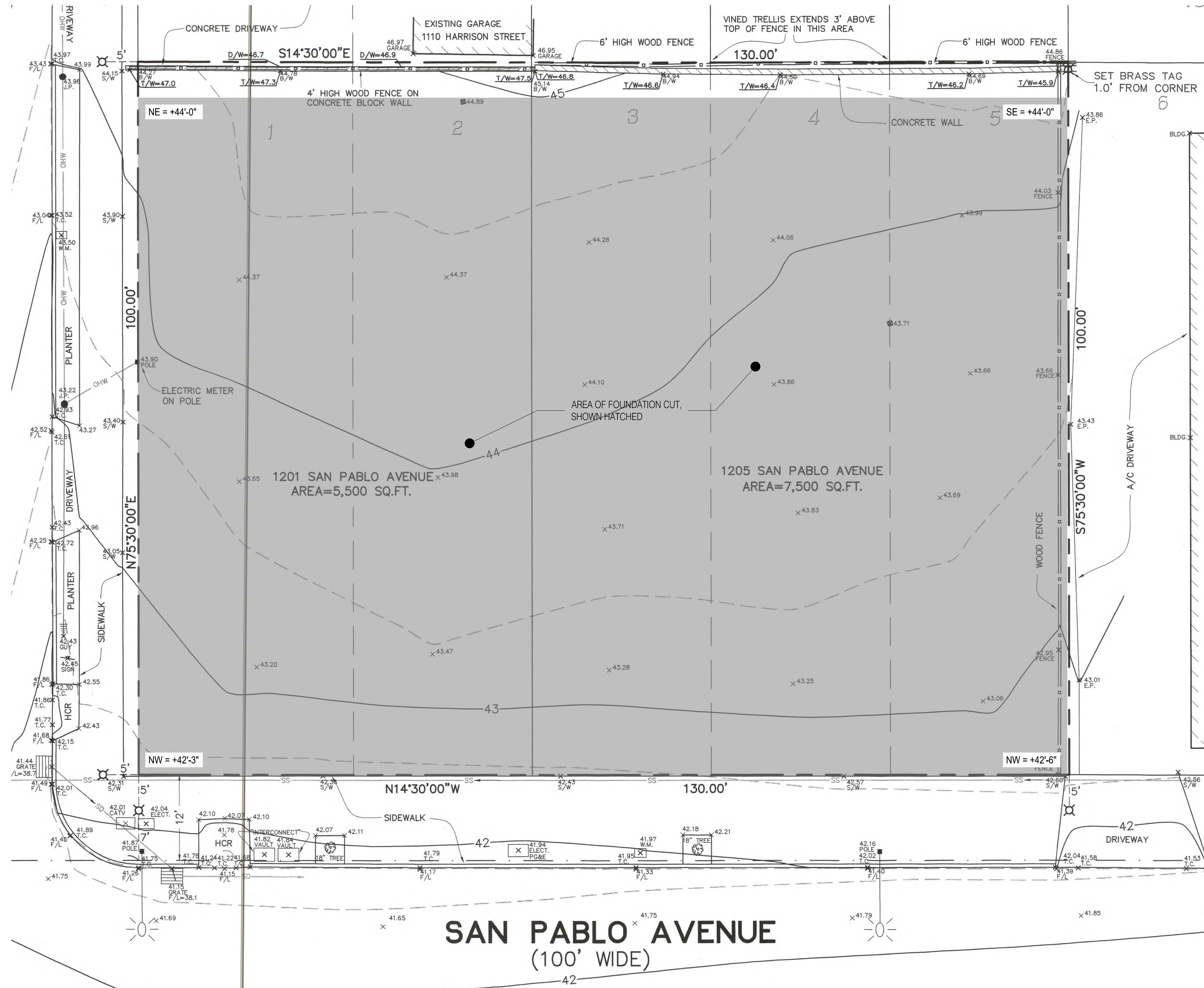
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SHEET:

CONCEPTUAL GRADING PLAN

G-01

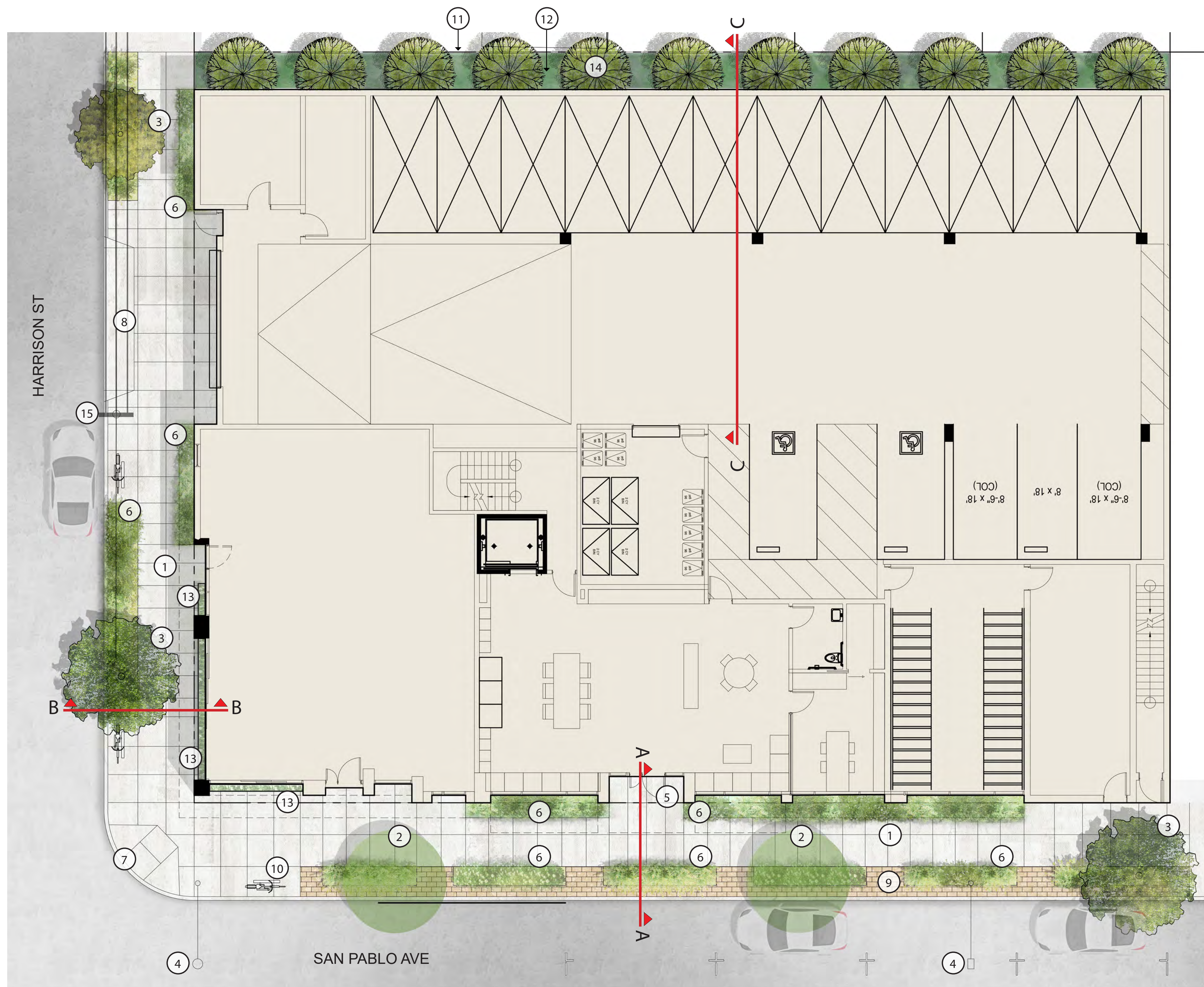


ESTIMATED QUANTITIES AND LOCATIONS OF FOUNDATION CUTS

	FEET	YARDS
TOTAL CUBIC YARDS OF CUT		1115 (CUBIC YARDS)
TOTAL AREA OF CUT	12346	1372 (SQUARE YARDS)
AVERAGE DEPTH OF CUT	2.4375	0.81 (YARDS)
CORNER 1 - NW	42.25	0.5 (YARDS)
CORNER 2 - NE	44	1.083333 (YARDS)
CORNER 3 - SE	44	1.08 (YARDS)
CORNER 4 - SW	42.5	0.583333 (YARDS)

2 ESTIMATED CUT/FILL DATA

1 CONCEPTUAL GRADING PLAN
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36



LEGEND

1. CONCRETE SIDEWALK PAVING
2. EXISTING STREET TREE
3. NEW 24" BOX STREET TREE, TYP. OF (3)
4. EXISTING STREET LIGHT
5. ENTRY TO LOBBY
6. AT-GRADE PLANTING
7. CURB RAMP
8. DRIVEWAY TO GARAGE
9. UNIT PAVERS SET ON PLANTING AREA SUB GRADE
10. NEW BIKE RACKS, TYP. OF (3)
11. 6' HIGH WOOD NEIGHBOR FENCE
12. LANDSCAPE MAINTENANCE AREA
13. 30" HIGH METAL PLANTER
14. EVERGREEN PRIVACY SCREEN
15. EXISTING JOINT POLE, GUY AND OVERHEAD LINES

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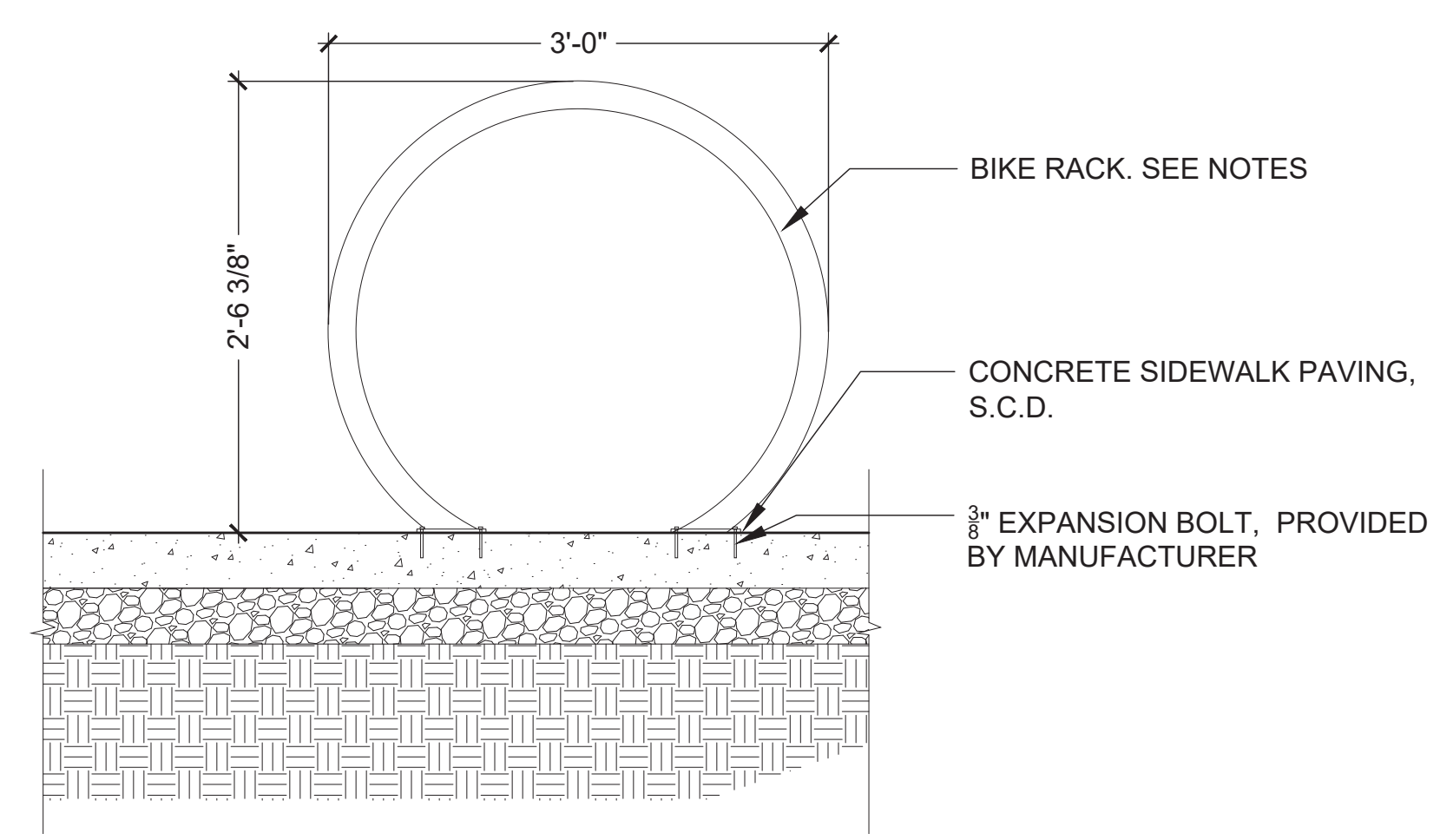
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2022.03.15 DRC REVISIONS

2022.03.23 DRC REVISIONS

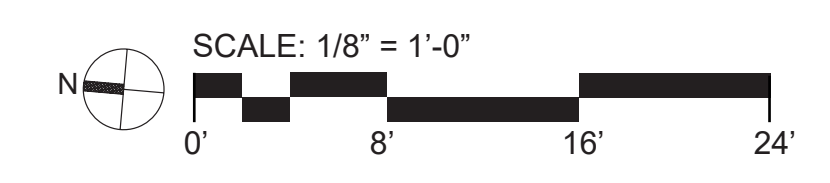


BIKE RACK



BIKE RACK: 'WELLE' CIRCULAR, SQUARE TUBE, HOT-DIPPED GALVANIZED FINISH, SURFACE MOUNT, MODEL: WCR02-SQ-SF-G.

BIKE RACK DETAIL



PLANTING NOTES

1. PLANT SPECIES SELECTED FOR DROUGHT TOLERANCE, ECOLOGICAL BENEFIT AND SITE SUITABILITY IN TERMS OF SIZE, SHADE/SUN-TOLERANCE, AND MAINTENANCE NEEDS. PLANT MATERIAL FROM VARIOUS CALIFORNIA HABITATS HAS BEEN EMPHASIZED.
2. BAY-FRIENDLY BEST PRACTICES REGARDING MULCHING AND SOIL HEALTH WILL BE IMPLEMENTED TO FACILITATE PLANT GROWTH, INCLUDING SPECIFICATION OF ORGANIC SOIL AMENDMENTS AND COMPOST.
3. THE PLANTING DESIGN WILL GROUP PLANTS WITH SIMILAR EVAPOTRANSPIRATION FACTORS WITHIN LEGIBLE ZONES. EVAPOTRANSPIRATION WILL BE ASSIGNED PER WUCOLS VERSION IV.
4. THE LANDSCAPE ARCHITECT WILL PROVIDE PLANT AND SOIL MAINTENANCE RECOMMENDATIONS AS PART OF THE PROJECT SPECIFICATIONS.
5. LAWN AND TURF AREAS WILL NOT BE INCLUDED IN THE PROJECT.

IRRIGATION NOTES

1. THE IRRIGATION SYSTEM WILL BE DESIGNED BY A LICENSED IRRIGATION PROFESSIONAL.
2. A DEDICATED EBMUD METER OR SUBMETER WILL BE PROVIDED FOR THE IRRIGATION SYSTEM DESIGN WITH LOCATION AND POINT OF CONNECTION NOTED.
3. A MANUAL SHUTOFF VALVE, REDUCED PRESSURE BACKFLOW PREVENTER AND FLOW SENSOR WITH MASTER SHUT OFF VALVE WILL BE PROVIDED AFTER THE POINT OF CONNECTION.
4. WATER PRESSURE AND FLOW RATES AT POINT OF CONNECTION AND ALL REMOTE CONTROL VALVES WILL BE INDICATED ON IRRIGATION PLANS.
5. IRRIGATION PLANS WILL SHOW SCHEMATIC LOCATION FOR ALL MAINLINES, LATERALS, SLEEVES AND REMOTE CONTROL VALVES.
6. REMOTE CONTROL VALVES WILL BE OPERATED BY A SMART, WEATHER-BASED IRRIGATION CONTROLLER WITH RAIN SENSOR MOUNTED IN AN APPROPRIATE LOCATION.
7. ALL PLANTED AREAS WILL BE WATERED USING HIGH-EFFICIENCY IRRIGATION TECHNOLOGY, SUCH AS DRIP LINES AND BUBBLERS WITH FLUSH AND AIR RELIEF VALVES WHERE REQUIRED. ALL COMPONENTS SHALL HAVE FIXED FLOW RATES.
8. IRRIGATION ZONES WILL BE GROUPED BY WATER DEMAND AND THE OVERALL PLANTING PLAN WILL COMPLY WITH WATER USE LIMITATIONS OUTLINED IN THE LATEST WATER EFFICIENT LANDSCAPE ORDINANCE.

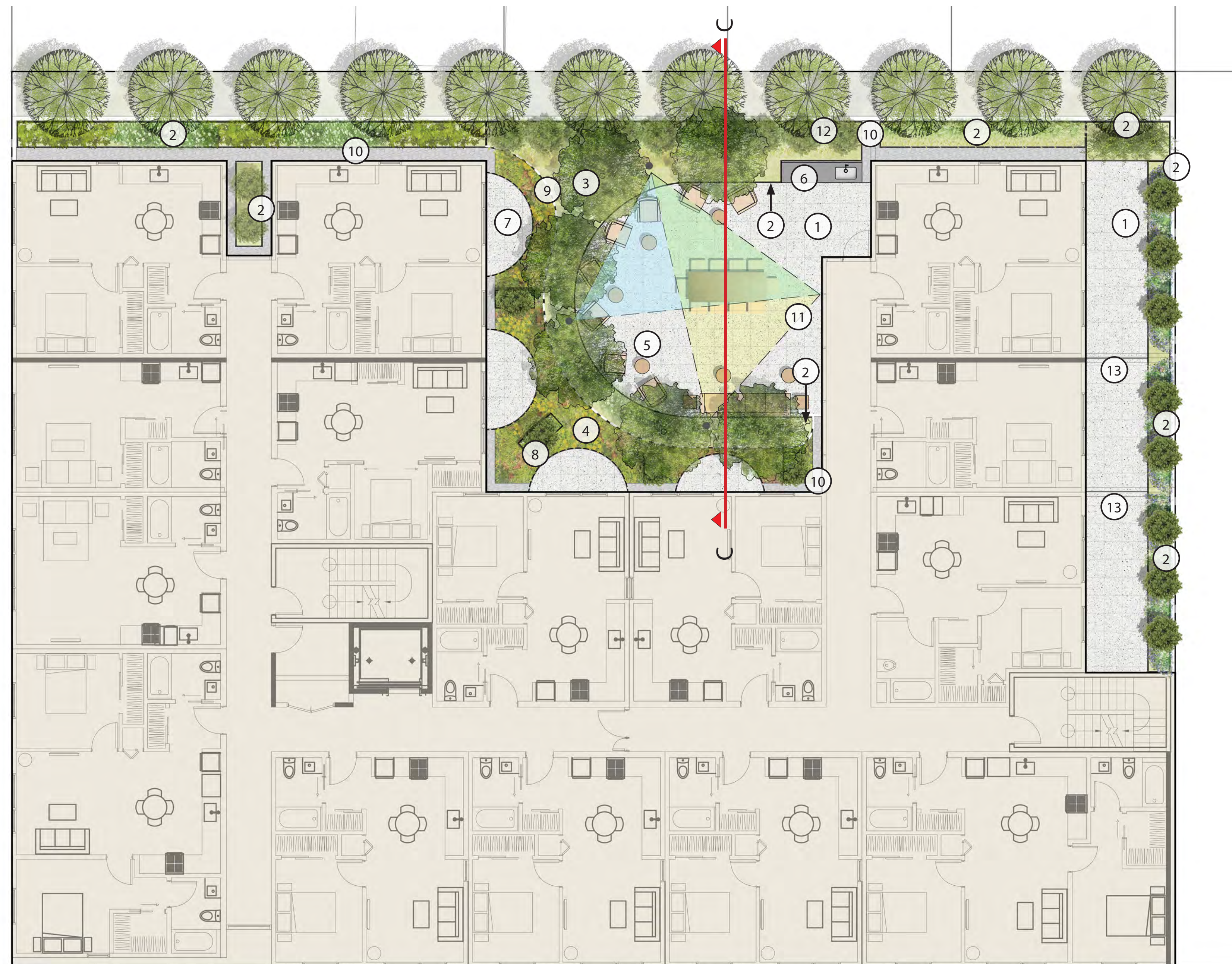
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JOB: 1928

SHEET:

LANDSCAPE PLANS GROUND LEVEL

L1.1



LEGEND

- 1. UNIT PAVERS ON PEDESTALS
- 2. RAISED METAL PLANTERS
- 3. 24" BOX TREES, TYP OF (6)
- 4. INTENSIVE VEGETATED ROOF
- 5. MOVABLE FURNITURE, TYP.
- 6. OUTDOOR COUNTER AND SINK
- 7. UNIT PATIO W/ METAL EDGE
- 8. SCREEN PLANTING IN RAISED METAL PLANTER
- 9. 48" HIGH PERFORATED METAL SCREEN
- 10. GRAVEL
- 11. SHADE SAILS
- 12. SCREEN PLANTING
- 13. WOOD NEIGHBOR SCREEN

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ARCHITECTS

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510.649.1414
www.TrachtenbergArch.com

MILLER COMPANY
landscape architects

1885 FOLSOM ST. SAN FRANCISCO, CA 94103
415.252.7288 www.millercomp.com

1201 SAN PABLO MIXED-USE

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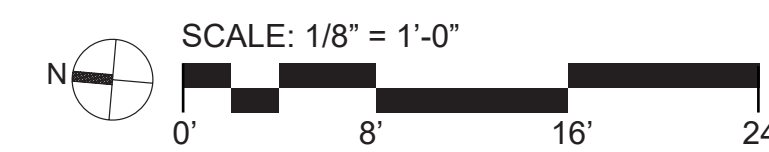
JOB: 1928

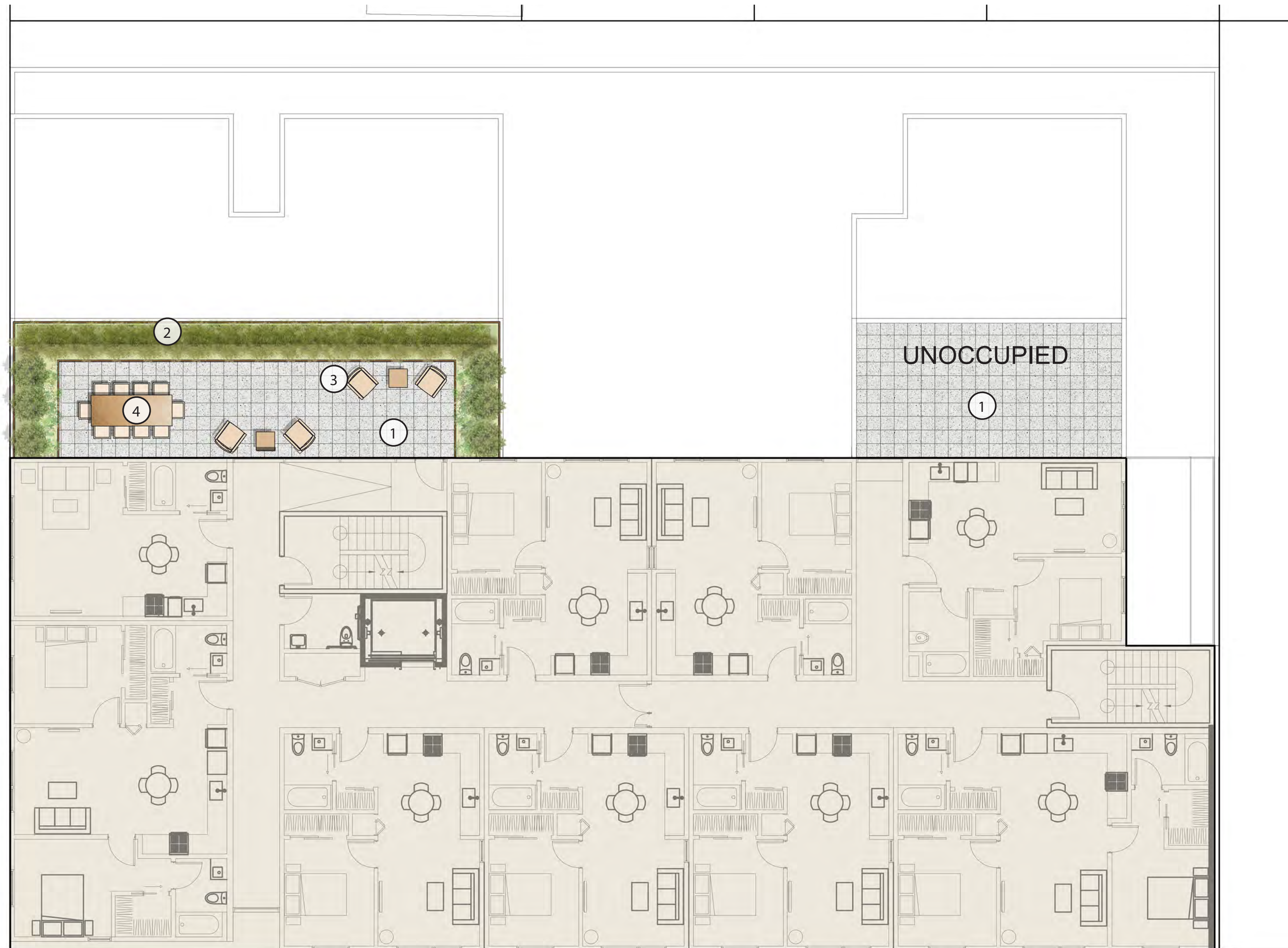
SHEET:

LANDSCAPE PLAN
LEVEL 2

L1.2

2ND LEVEL PLAN





LEGEND

- 1. UNIT PAVERS ON PEDESTALS
- 2. RAISED METAL PLANTERS
- 3. MOVABLE CHAIRS WITH SIDE TABLES
- 4. DINING TABLES AND CHAIRS



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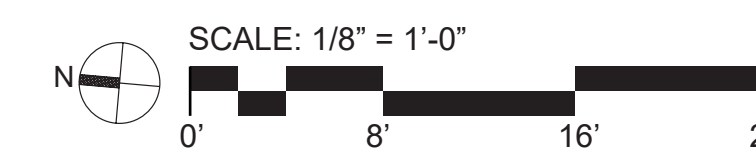
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6TH LEVEL PLAN



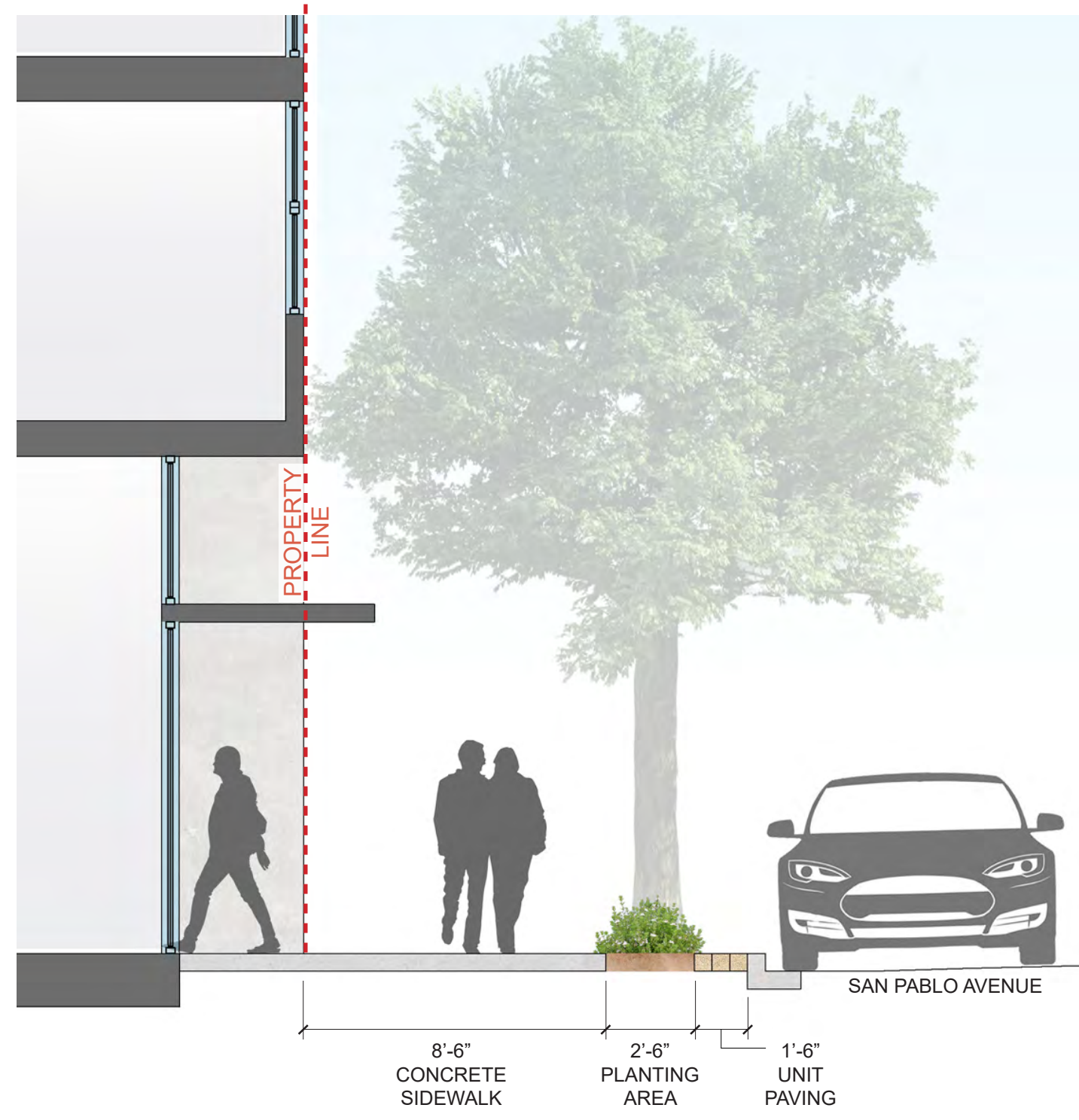
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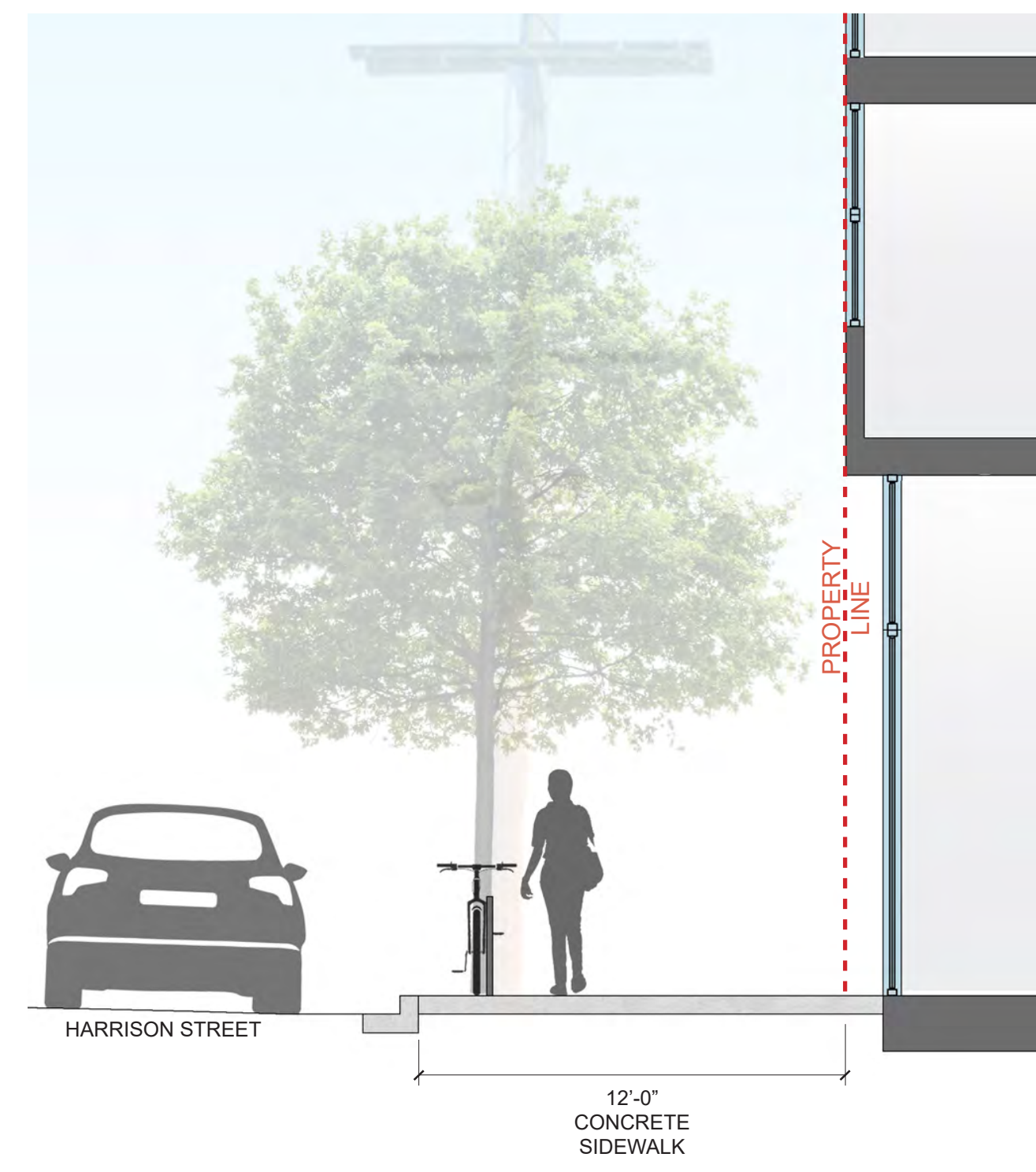
SHEET:

LANDSCAPE PLAN
LEVEL 6

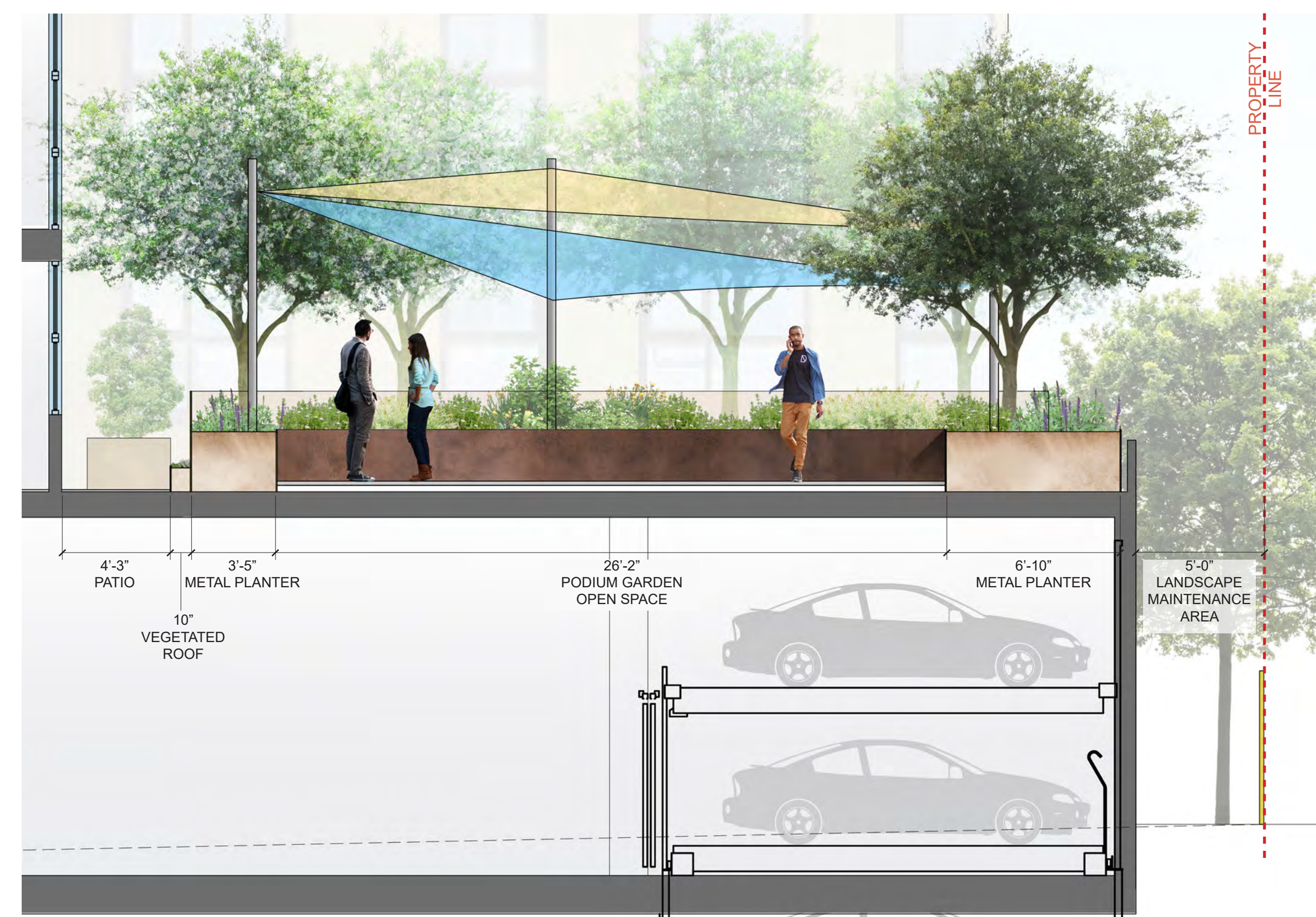
L1.3



SECTION A-A: SAN PABLO AVE



SECTION B-B: HARRISON ST



SECTION C-C: PODIUM GARDEN

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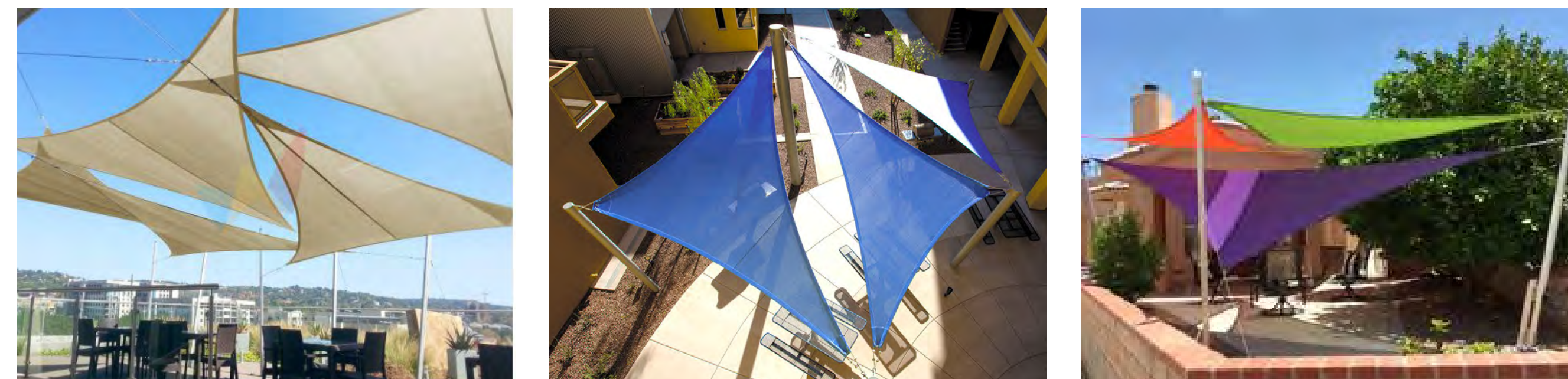
2022.03.15 DRC REVISIONS

2022.03.23 DRC REVISIONS

OPEN SPACE TABLE				
	UNITS	RATIO	TOTAL	LANDSCAPE AREA
TOTAL UNITS	66	40	2,640	
TOTAL AREA PROVIDED			2,514	1,346
PODIUM LEVEL GARDEN			1,640	902
PODIUM LEVEL PATIOS			120	115
LEVEL 6 ROOF DECK			754	329

TOTAL LANDSCAPED AREA ON EACH LEVEL

SHADE SAILS



STREET TREES

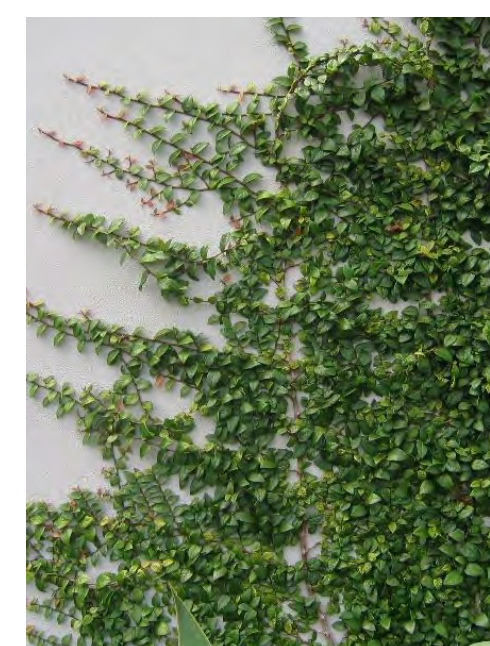


David Elm
Ulmus davidiana var. *japonica*



Bronze Loquat
Eriobotrya deflexa

GROUND LEVEL



Creeping Fig
Ficus pumila



Stalked Bulbine
Bulbine frutescens



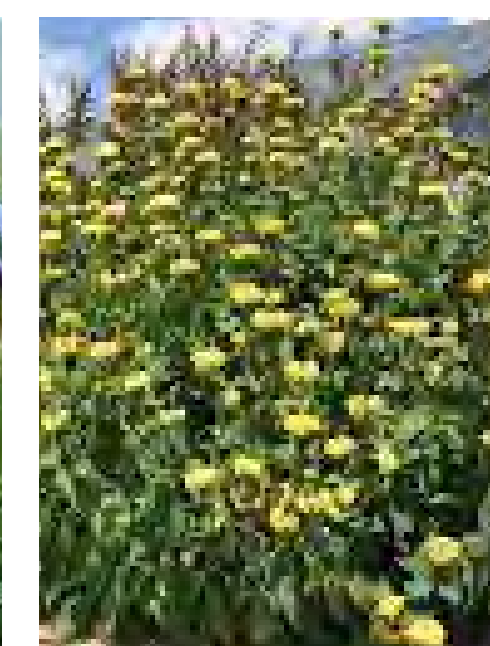
California Fuchsia
Epilobium canum



California Fescue
Festuca californica



Douglas Iris
Iris douglasiana



Jerusalem Sage
Phlomis fruticosa

UNIT PATIO SCREEN



Kohuhu
Pittosporum tenuifolium

2nd LEVEL PLANTER



Evergreen Dogwood
Cornus capitata



Dwarf Mahonia
Mahonia aquifolium repens



Coffeeberry (Podium Edge)
Frangula californica 'Seaview'



Giant Wildrye
Elymus condensatus



Island Alum Root
Heuchera maxima



Western Swordfern
Polystichum munitum



Hummingbird Sage
Salvia spathacea

6th LEVEL TERRACE



Point Molate
Mimulus aurantiacus 'Pt. Molate'



Santa Barbara Daisy
Erigeron karvinskianus

PLANT PALETTE

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JOB: 1928

SHEET:

LANDSCAPE
SECTIONS AND
PLANT PALETTE

L1.4

Sweet Shade

Hymenospermum Flavum
24" Box Installed Size

MAINTENANCE AREA TREE SELECTION

CHARACTERISTICS

Tree Shape: Conical or Rounded
Foliage Type: Evergreen
Maximum Height: 35 feet
Canopy Width: 15-20 feet
Growth Rate: ~12-24 inches/year

Flowers: Showy, Fragrant
Flower Color: Yellow
Flower Type: Both male and female parts (perfect)
Flowering Time: Spring or Summer

Fruit: Medium brown or mostly green capsule
Fruiting Time: Summer or Fall

Bark: Light Green or Light Gray, Rough

Litter: Dry Fruit, Flowers

SITE CONDITIONS

Planting Area: 5' to 10'

Sunset Zones: 8-9, 14-23

Sun Exposure: Partial Shade to Full Sun

Soil Texture: Loam or Sand

Soil pH: Slightly Acidic to Very Alkaline

Soil Salinity Tolerance: Coastal Moderate



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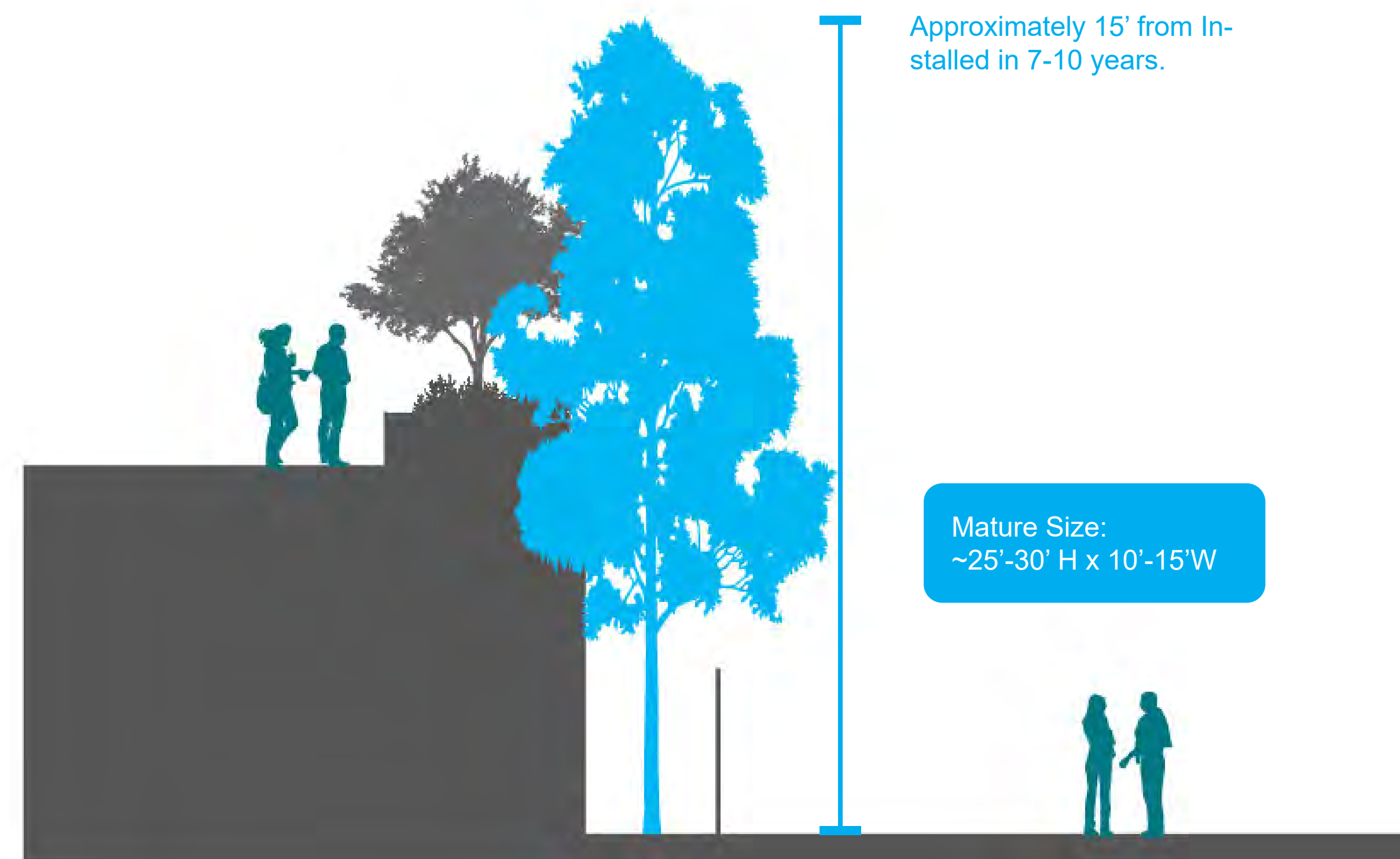
SHEET:

EAST PROPERTY
LINE SCREEN

L1.5



SECTION AT EAST PROPERTY LINE - APPROXIMATE INSTALLED CONDITION



SECTION AT EAST PROPERTY LINE - MATURE CONDITION

CITY OF BERKELEY - CITY CLERK
2022 MAY 19 PM2:56

To: Berkeley City Council

From: Concerned neighbors of 1201-1205 San Pablo Avenue Project

Date: May 18, 2022

Re: Formal appeal of the 1201-1205 San Pablo Ave. development project
(Use Permit #ZP2021-0070)

This letter is a formal appeal to the Berkeley City Council of the Berkeley Zoning Adjustment Board's approval for the development at 1201-1205 San Pablo Ave. We ask that you add the following as conditions of approval for the project. Each of these requests has been made previously and directly to the developer of the project, to the City of Berkeley planning staff, to City Council member Rashi Kesarwani, and to the Zoning Adjustment Board.

We have been in discussion with the developer about a number of these issues and if we are able to come to an agreement, we ask that those items be included as conditions of approval.

1. Relocate the parking garage entrance/exit of the project to San Pablo Avenue as a condition of approval for the project. We ask that the Berkeley City Council require the developer to work with CalTrans to formally move the garage entrance to San Pablo Ave. This will significantly improve traffic patterns within the adjacent neighborhood and will help mitigate the impact on neighbors directly affected by the project on surrounding streets, and prevent the neighbor at 1110 Harrison St (12 feet from project) from being subjected to 24/7 garage door noise.

2. Require the developer to complete an updated traffic study (including peak commute hour traffic), and for traffic mitigation measures to be implemented before completion of the project as a condition of approval for the project. We believe that the previous traffic study in the developer's previous application from 2017 is outdated and inadequate. As a condition of approval of the project, an updated traffic and parking study should be completed. Also, all necessary traffic mitigation measures should be implemented in advance of completion of construction (such as the installation of traffic barriers and traffic lights to reduce the impact of increased car traffic in the neighborhood).

3. Require the developer to compensate directly the adjacent neighbor at 1110 Harrison for impacts on their property as a condition for approval of the project. This includes compensating neighbor for the loss of natural light and privacy in home and in yard; explicitly committing to compensation for potential damage to existing home foundation, walls, and driveway during construction; and compensation for disruption of work in home office during construction (resident works from home as a writer.)

4. Require the developer to compensate directly adjacent neighbor at 1206 Kains Avenue for loss of ability to generate solar power as a condition of approval for the project. The proposed project will significantly impact the ability of the residents of 1206 Kains Avenue to capture and draw power from their solar panels. As a condition of approval we ask that the developer compensate the owners of 1206 Kains Avenue for this loss (e.g., to pay for installation of updated solar panels that capture more power with less hours of light).

5. Institute a parking permit program in the neighborhood as a condition of approval of the project. As part of the approval for the project, the City of Berkeley should implement a residential parking permit program for the surrounding neighborhood in advance of completion of construction.

6. Require the higher number of 28 parking spaces proposed in the existing plan as a condition of approval of the project. The developer has proposed installing either 17 or 28 parking spaces as part of the project. Requiring the higher number of 28 parking spaces will help mitigate the impact of parking on the surrounding community.

7. Correct the planted tree box size as a condition of approval of the project. A correction to item #16 in the "Finding and Conditions" section of ZAB's Notice of Decision. The planted tree box size should be amended to read (48" box minimum) instead of 24".

Finally, it should be known that there was no initial outreach to us, the neighbors, at the outset of the project proposal, as is mandated by the City of Berkeley, and all communication between the neighbors and the architect and the developer were initiated by individual neighbors.

During the subsequent ZAB hearings and Design Review Committee hearings, there was only very limited engagement with the neighbors and consideration of our concerns. At several points during these hearings, ZAB members simply threw up their hands and stated that they were powerless to address any of our concerns.

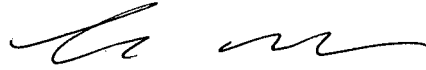
Together, it is clear that the process as it currently stands leaves no meaningful way for neighbors to have a voice. Had this not been the case, this appeal might not have been necessary, as these issues may have been resolved.

Yvette Bozzini
Yvette Bozzini
4110 Harrison St

Dan Hayes
Dan Hayes
1116 HARRISON ST

We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

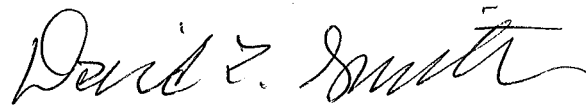
Libby Black
1208 Kains Ave



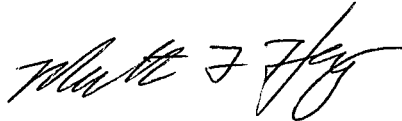
Mary Mulvehill
1205 Kains Ave



David A Smith
1205 Kains Ave



Matthew Hardy
1206 Kains Ave.




Kate O'Hara
1206 Kains Ave
Guy Cash
1224 KAINS



Renee gentler
1217 KAINS AVE
BERKELEY, CA
94706



DANIEL ARONEN
1214 KAINS AVE
BERKELEY, CA 94706



Kazumi Taniguchi
1214 Kains Ave.
Berkeley, CA 94706



We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

ALAN WESTIOTT 1119 Harrison

~~Alan Westiott~~

DORIS M. BURLESON

1125 HARRISON ST

~~Doris M. Burleson~~

Adrian Shore 1192 Kains Ave APT #
~~Adrian Shore~~

Terry Reader 1213 San Pablo 105

Terry Y. Reader

Terence Ratchford 1213 San Pablo 207

~~Terence Ratchford~~

Eric Danysh 1212 Stannage

Eric Danysh

Ava Charney-Danysh 1212 Stannage Ave.

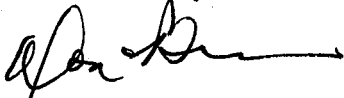
Ava Charney-Danysh

We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

Rebecca M. Dalton
Rebecca M. Dalton

and

DONALD C. BURNS




1225 Kains

Margaret Pitt

1231 Kains

Mariko de Mantuffe

1226 KAINS AVE, 94706.

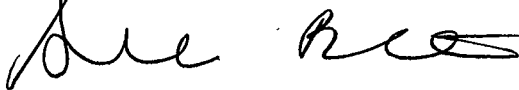
Elise Obolensky  1116 Harrison Street

TERRY WALTERS  1223 Kains Ave

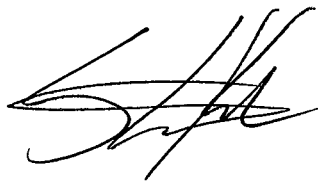
Fiona Rhea  1223 Kains Ave.

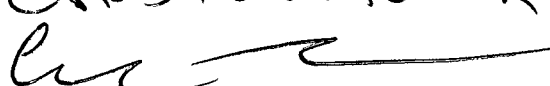
Holly Turner  1114 Harrison St.

Susan Alderman
1209 Kains Ave



STEVE KOSACH
1209 KAINS AVE



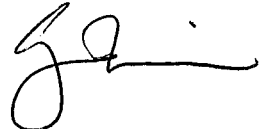
Christina Turner

1196 KAINS

We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

Terri Fashing
1112 Harrison St.

 5/18/2022


Gabriel Winer
1112 Harrison St

 5/18/2022

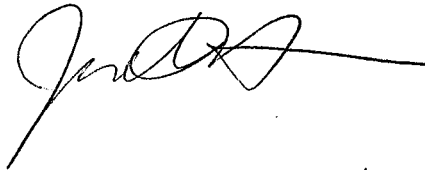
Manuela Delnevo
1219 Kains Ave.

 5/18/2022

Dani Rozman
1219 Kains Ave

 5/18/2022

Juliette Aamer
1219 Kains Ave




Michael Ketema
1204 Kains Ave.

 5/19/2022

We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

Asahiko Kikuchi

 5/19/22

1175 Kains ^{Ave.}, Berkeley, CA 94706

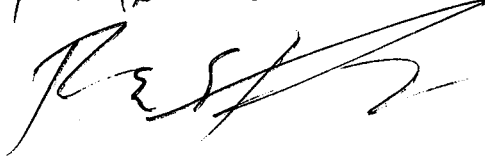
Nick Shapiro



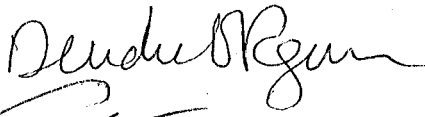
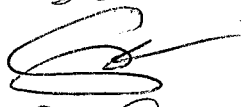




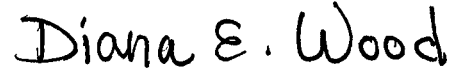
11/4 Harrison

RICHARD STECHER

1208 STANFORD AVE
BERKELEY 94706.



We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

Signature	Printed Name	Street Address
	Deirdre O'Regan	1134 Stannage Ave
	Sarah Allen	1229 Stannage Ave
	DORIS IARDOLI	1123 HARRISON ST.
	Betty Yu	1235 Kains Ave.
	LINDA SIKORSKI	1223 STANNAGE
	TERRENCE DILLON	1223 STANNAGE &
	DIANA E. WOOD	1139 Gilman St.

We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

Erika Lamm Ruby Samm 1209 Stannage

EVA O'CONNELL [Signature] 1217 STANNAGE

AJITH MASCARENHAS [Signature] 1235 STANNAGE

Gail Kurtz [Signature] 1232 Stannage

Jill Churchman Jill Churchman 1141 Stannage

Hairganoush Preisler HK Preisler 1125 Kains Ave

Sheila Cynthia Krikorian [Signature] 1123 Kains Ave

Jocelyn Newell [Signature] 1123 Kains Ave

Jean Molestky-Poz JM Poz 1220 Stannage Ave

Wendy P. Perez [Signature] 1220 Stannage Ave

We, the undersigned, support the Formal Appeal of
1201-1205 San Pablo Development project
Use Permit # EP2021-0070

	Name	Address	Signature
*	Mary Wyand	1206 Stannage Ave	Mary Wyand
*	Paul Vellutini	1206 Stannage Ave	Paul Vellutini
*	Leslie Barbarotte	1200 Stannage Ave	Leslie Barbarotte
*	Jason Morgan	800 Stannage Ave	Jason Morgan
	Carlos Blanco	1203 Stannage	Carlos Blanco
	Melissa Blanco	1203 Stannage	Melissa Blanco
*	SUSAN COHEN	1214 Stannage	Susan Cohen

* address within 300' of Proposed Project

1115 Harrison St
Berkeley CA 94706

Mikhail Jebraial

M ← —

Sadun Faybukhsh

~~1197 San Pablo Ave~~

1197 San Pablo Ave

M. FATHIAN FAROOQ

1199 San Pablo Ave



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
APRIL 28, 2022

1201-1205 San Pablo Avenue

Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units (including five Very Low-Income units), 1,680 square feet of commercial space, 2,514 square feet of usable open space, and 17 to 28 ground-level parking spaces.

I. Background

A. Land Use Designations:

- General Plan: AC – Avenue Commercial
- Zoning: C-W–West Berkeley Commercial District, Gilman and San Pablo Designated Node

B. Zoning Permits Required:

- Administrative Use Permit under Berkeley Municipal Code (BMC) §23D.04.020.C¹ to construct rooftop projections, such as mechanical appurtenances or architectural elements which exceed the maximum average height limit for the district;
- Use Permit under BMC §23E.64.030.A to construct a mixed-use development with floor area of more than 9,000 square feet;
- Use Permit under BMC §23E.64.030.A to construct new dwelling units; and
- Use Permit under BMC §23E.64.050.B, to create new gross floor area of 5,000 square feet or more.

C. Waivers/Concessions Pursuant to State Density Bonus Law:

- Waiver of BMC §23E.64.070.A to increase maximum FAR to 3.6 where 3.0 is the limit;
- Waiver of BMC §23E.64.070.B to increase maximum average building height to be 68'-3", where 50' is the limit for a mixed-use building;
- Waiver of BMC §23E.64.070.B to increase maximum number of stories to be 6 stories, where 4 stories is the limit for a mixed-use building; and

¹ The prior Zoning Ordinance was in effect at the time this application was deemed complete. The version of the BMC Title 23, Zoning Ordinance, that was in effect at the time this application was deemed complete is available online: [https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Zoning_Ordinance_Revision_Project_\(ZOR_P\).aspx](https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Zoning_Ordinance_Revision_Project_(ZOR_P).aspx)

- Concession to reduce the Usable Open Space requirement from 2,640 to 2,514 square feet.

D. CEQA Recommendation: It is staff's recommendation to ZAB that the project is categorically exempt pursuant to §15332 ("In-Fill Development Projects") of the CEQA Guidelines. The determination is made by ZAB.

The project meets all of the requirements of this exemption, as follows:

- The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
- The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
- The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
- The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by City Transportation Division which concurred with the findings of less than significant impacts. Standard Conditions of Approval would address potential impacts related to traffic, noise, air quality, and water quality.
- The site can be adequately served by all required utilities and public services.

Furthermore, none of the exceptions in CEQA Guidelines §15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code §65962.5, and (f) the project would not affect any historical resource. See Section III.E for discussion of the project's CEQA review.

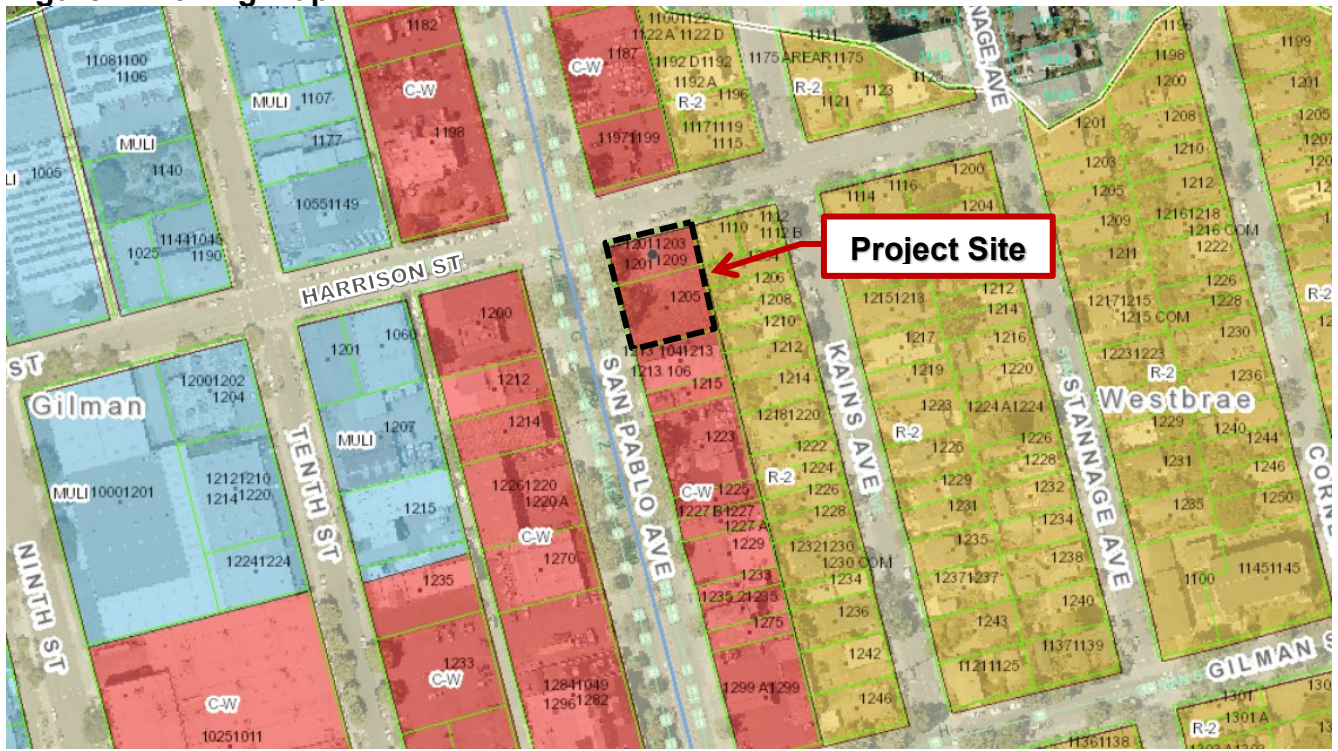
E. Parties Involved:

- Applicant Isaiah Stackhouse, Trachtenberg Architects, 2421 Fourth Street, Berkeley, CA 94710
- Property Owner Lanhai Su, 4500 Great America Parkway, Santa Clara, CA 95054





F. Application Materials, Staff Reports and Correspondence are available on the Internet:

https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/1201-1205_San_Pablo.aspx

Figure 1: Zoning Map



Legend

-  AC Transit Bus Route
-  C-W: West Berkeley Commercial District
-  MU-LI: Mixed Use-Light Industrial District
-  R-2: Restricted Two-Family Residential District

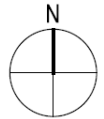


Figure 2: San Pablo Avenue Elevation (West)



Figure 3: Harrison Street Elevation (North)



Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant Land	C-W	AC
Surrounding Adjacent Properties	North	Auto Repair Shop		
	East	Single-Family Residential	R-2	
	South	Multi-family Residential	C-W	
	West	Tattoo Parlor/Art Gallery/ Fast Food Restaurant (vacated) – approved for 104-unit mixed-use building, November, 2020 (ZP2019-0192)		

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee & Affordable Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. & 66,617-N.S.)	No	These fees apply to projects with more than 7,500 square feet of net new non-residential gross floor area. The project includes 1,680 square feet of net new non-residential gross floor area. Therefore, the project would not be subject to these fees.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	Yes	The project would include five or more market rate dwelling units and is therefore subject to the affordable housing provisions of BMC 22.20.065.
Alcohol Sales/Service	No	The project is not proposing alcohol sales or service with this permit.
Coast Live Oaks	No	There are no oak trees on the project site.
Creeks	No	The project site is not within a creek buffer.
Density Bonus	Yes	The project would provide five Very Low-Income units, or 10% of the Base Project units, and qualifies for a 32.5% density bonus, or 17 bonus units (16 taken). See Section III.B for discussion.
Green Building Score	No	The project is not located in the C-DMU, Downtown Mixed Use District, and is not subject to this requirement.
Historic Resources	No	The project site is vacant, and does not to contain any known historic resource.

Characteristic	Applies to Project?	Explanation
Housing Accountability Act (Govt. Code 65589.5(j))	Yes	The project is a "housing development project" consisting of a mixed-use building, and requests no modifications to development standards beyond waivers and concessions requested under density bonus law. Therefore, the HAA findings apply to this project, and the project cannot be denied at the density proposed unless the findings for denial can be made. See Section III.C for discussion.
Public Art on Private Projects (BMC Chapter 23C.23)	Yes	The project is subject to the Percentage for Public Art on Private Projects Ordinance. The applicant is electing to pay the fee (0.8% of total building permit valuation) to comply.
Rent Controlled Units	No	The project site is vacant, and there are no rent-controlled units to be demolished.
Residential Preferred Parking	No	The site is not located in an RPP zone.
Seismic Hazards (SHMA)	No	The project site is located in an area susceptible to liquefaction, as defined by the State Seismic Hazards Mapping Act (SHMA). The applicant has submitted a geotechnical report that has been peer reviewed by the City's consultant. Conditions of approval will be included in the permit to ensure oversight by the applicant's geotechnical consultant.
Soil/Groundwater Contamination	Yes	The project site is located within the City's Environmental Management Area. The applicant has submitted a Phase I report. No further investigation is recommended. Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The project site is served by multiple bus lines (local, rapid, and Transbay) that operate along San Pablo Avenue, and is approximately 1.3 miles from the North Berkeley BART Station.

Table 3: Project Chronology

Date	Action
April 1, 2021	SB 330 Preliminary Application deemed complete
May 11, 2021	SB 330 Use Permit Application submitted
September 22, 2021	Application deemed complete; level of CEQA review determined by staff – Categorically Exempt
November 23, 2021	Public hearing notices mailed/posted
December 9, 2021	ZAB Preview
January 20, 2022	DRC Preliminary Design Review
March 29, 2022	DRC Preliminary Design Review (Cont'd)
April 13, 2022	Public hearing notices mailed/posted

April 28, 2022	ZAB Hearing
June 27, 2022	CEQA Determination Deadline

Table 4: Development Standards

C-W Standards, BMC §23E.64.070-080		Existing	Proposed	Permitted/Required
Lot Area (sq. ft.)		5,500 +7,500 ¹	13,000	n/a
Gross Floor Area (sq. ft.)		n/a	46,996	39,000
Commercial Floor Area (sq. ft.)		n/a	1,680	n/a
FAR		n/a	3.6	3
Dwelling Units		n/a	66	n/a
Building Height	Average	n/a	68'-3"	50' max./ 25' min. (in node)
	Maximum	n/a	68'-3"	n/a
	Stories	n/a	6	4 max. 2 min. (in node)
Building Setbacks	Front (Harrison)	n/a	0'-0" (1'-6" overhang into ROW)	0' min.
	Rear	n/a	0'-0"	0' min.
	Left Side	n/a	5'-0"	5' min.
	Right Side (San Pablo)	n/a	0'-0" (1'-6" overhang into ROW)	0' min.
Lot Coverage (%)		n/a	93	n/a
Usable Open Space (sq. ft.)		n/a	2,514	2,640 min. (40 s.f./d.u.)
Parking	Commercial (1,720 sq. ft.)	n/a	4	4 min. (2 spaces/1,000 sq.ft.)
	Residential	n/a	13 to 24 ²	0 min./33 max. (0.5 spaces/du max.)
	Total	n/a	17 to 28	4 min./37 max.
Bicycle Parking	Commercial - Short Term (1,720 sq. ft.)	n/a	2	2 (1 space/2,000 s.f. commercial)
	Residential - Long Term	n/a	64	26 (1 space/3 bedrooms)
	Residential - Short Term	n/a	6	2 (1 space/40 bedrooms, or 2)
	Total	n/a	64/8 (long term/short term)	26/4 (long term/short term)
[Grey Box] = Waiver or Concession requested to modify the district standard. ¹ Merger of two lots ² The applicant would determine the final amount of parking spaces/parking lifts prior to the application for building permits, based upon financial considerations. The amount proposed falls within the range of minimum and maximum parking requirements.				

II. Project Setting

- A. Neighborhood/Area Description:** The project site is located on the southeast corner of the intersection of San Pablo Avenue and Harrison Street, along the San Pablo Commercial Corridor, within the Gilman and San Pablo Node of the West Berkeley Area Plan. Adjacent parcels to the east are occupied by single- and multi-family residential developments in the R-2, Restricted Two-Family Residential District. Further north and south along San Pablo Avenue, in the C-W, West Berkeley Commercial District are mostly one-story commercial buildings, excepting the two parcels just south of the project site, which are occupied by a two-story apartment building and a one-story, single-family dwelling, respectively. Parcels directly west of the site, across San Pablo Avenue, are currently occupied by one-story commercial buildings. Entitlements for a six-story, 104-unit, mixed-use building were obtained for these three parcels in November, 2020 (ZP2019-0192). San Pablo Avenue is served by multiple bus lines (local, rapid, and Transbay). The site is approximately 1.3 miles from the North Berkeley BART Station (to the northeast). (See Figure 1: Zoning Map.)
- B. Site Conditions/Background:** The project site is composed of two rectangular parcels – 1200/1209, and 1205 San Pablo Avenue – which have a combined total area of 13,000 square feet, a combined frontage along San Pablo Avenue measuring 130 feet, and a combined frontage along Harrison Street measuring 100 feet. The parcels are vacant. Entitlements were obtained for the project site in 2006 to construct a five-story, 27-unit, mixed-use building, and an application for a building permit (B2019-05125) to construct the approved project was submitted in 2019, but never issued.

III. Project Description

- A.** The proposed project would involve the merging of two lots into one, and the construction of a mixed-use building with the following main components:
- Six stories, 68 feet, 3 inches in height
 - 66 dwelling units – 22 studios, 34 one-bedroom, and 10 two-bedroom
 - 76 bedrooms total
 - Five Very Low Income (VLI) units
 - 1,680 square feet of ground-floor commercial space
 - 2,514 square feet of usable open space – second-floor podium courtyard, private patios, and sixth-floor roof deck
 - 17 to 28 vehicle parking spaces in ground-level garage²
 - 64-space bike room

(See Figure 2 and 3: Elevations.)

- B. Base Project and Density Bonus:** By committing to provide five VLI units, the project is eligible for a density bonus under Government Code §65915. Under the City's

² The applicant would determine the final amount of parking spaces/parking lifts prior to the application for building permits, based upon financial considerations.

density bonus procedures, the Base Project was calculated to have 50 units, as the maximum allowable density for the site.³ The Base Project has an average unit size of 657 square feet in a four-story building. Five VLI units, or 10 percent of the Base Project, qualifies the project for a 32.5 percent density bonus or 17 bonus units, of which the project would utilize 16. The resulting Proposed Project would be a six-story building with 66 units, with an average unit size of 664 square feet. (See Table 5: Density Bonus.)

Table 5: Density Bonus – CA Gov’t Code 65915

Base Project Units*	Qualifying Units	Percent Density Bonus	Number of Density Bonus Units*	Proposed Project Units
50	5 VLI (10% of BP)	32.5%	16 (17 max.) (32.5%x50)	66
*Per Gov’t Code 65915(q), all unit calculations are rounded up to the nearest whole number.				

C. Housing Accountability Act: The Housing Accountability Act (HAA), California Government Code §65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

- 1) The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and
- 2) There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The Base Project complies with applicable, objective general plan and zoning standards. Further, §65589.5(j)(3) provides that a request for a density bonus “shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.” Therefore, the City may not deny the Base Project or density bonus request or reduced the density with respect to those units without basing its decision on the written findings under §65589.5(j), above. Staff is aware of no specific adverse impacts that could occur with the construction of the Base Project or the density bonus units. Therefore, §65589.5(j) **does apply** to the Proposed Project. All findings discussed below are subject to the requirements of Government Code §65589.5.

³ Per the City’s Density Bonus Procedures (DBP), the Base Project is the largest project allowed on the site that is fully compliant with district development standards (i.e. height, setbacks, usable open space, parking, etc.), or, the *maximum allowable density* for the site. The City uses the DBP to calculate the maximum allowable density for a site where there is no density standard in the zoning district, and to determine the number of units in the Proposed Project, which is the number of Base Project units plus the number of density bonus units that can be added according to the percentage of BMR units proposed, per Government Code, §65915(f).
 File: G:\LANDUSE\Projects by Address\San Pablo\1201-05\ZP2021-0070\DOCUMENT FINALS\2022-04-28 ZAB\2022-04-28_ZAB_SR_1201-1205 San Pablo.docx

IV. Community Discussion

A. Neighbor/Community Concerns: After receiving the application on May 11, 2021, the City mailed a Notice of Received Application to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations.⁴ Staff received one email from a neighbor on Stannage Avenue describing concerns over excessive building height, excessive density, and inadequate parking (17 spaces) provided in the project, which would contribute to congestion in the neighborhood.

On December 9 2021, a ZAB Preview for the project was held. Neighbor comments included concerns over not enough parking; increased traffic and impact to pedestrian safety; increased crime and refuse; impact to privacy; and impact to light. ZAB comments included concerns for more attention to the building interface with residential neighborhood, more parking needed, impact to solar panels on adjacent dwellings , breaking up building massing, and more attention to the appearance from the City of Albany approach to Berkeley.

On January 18, 2022 and January 20, 2022 staff received a total of five letters from neighbors expressing concerns regarding impact to sunlight and views; building design and aesthetics; building massing; impact to privacy; construction noise; inadequate parking; theft and vandalism to vehicles; increased traffic; a lack of green space; and the addition of another commercial spaces on San Pablo that may stay empty.

On April 5, 2022, staff received a letter from a neighbor expressing concerns regarding the building's incompatibility with the neighborhood and impact from project construction.

On April 13, 2022, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations.

Staff received twelve neighbor comment letters between April 18 and April 20, 2022 – see Attachment #4. The letters expressed concerns over:

- Not enough parking
- Loss of natural light (and impact on solar panels) and privacy
- Increased noise (especially during construction)
- Increased traffic in neighborhood
- Incompatible building design
- Density bonus Base Project is too large
- Not enough affordable housing in the project
- Increased density in the neighborhood

⁴ The Pre-Application Yellow Poster and Neighborhood Outreach components of the land use application submittal requirements were temporarily suspended at the time of the application submittal due to City emergency health orders. The suspension was lifted on July 1, 2021.

- Impact to pedestrian safety

No further communications regarding the project were received as of the writing of this staff report.

B. Landmarks Preservation Commission: This application is not subject to review by the Landmarks Preservation Commission.

C. Design Review Committee: The Design Review Committee held two Preliminary Design Review on December 16, 2021 and on March 29, 2022, and forwarded a favorable recommendation to the ZAB with the following direction for Final Design Review (FDR) [MOTION: (Kahn, Finacom) VOTE (5-0-0-2) Gaffney, Pink – absent]:

Condition

- At FDR, present an alternate design with open railings for the parapet on the eastern edge of the 5th floor.

Recommendation

- Consider reducing the unit floor plans to only studios on the eastern edge of the project on the highest floor to allow more sunlight on the adjacent residential parcels.

V. Issues and Analysis

A. SB 330 – Housing Crisis Act of 2019: The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development projects. A “housing development project” means a use that is: all residential; mixed use with at least two-thirds of the square footage as residential; or transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code §65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, then the city shall not conduct more than five hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act [Chapter 4.5 (commencing with §65920)].

The April 28, 2022 ZAB Hearing represents the fourth public hearing for the proposed project since the project was deemed complete. The City can hold one additional public hearing on this project, if needed. That hearing must be reserved for a potential appeal to the City Council.

2. Government Code §65913.10(a) requires that the City determine whether the proposed development project site is an historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is an historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

The site is vacant, and there is no known cultural resource associated with the site. Therefore, it was determined that the site is not an historic resource. Standard conditions of approval have been included to halt work if any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the California Environmental Quality Act. The project was deemed complete on September 22, 2021. Staff also determined on this date that the level of CEQA review was to be: "Categorically Exempt". The ZAB must determine whether the application is categorically exempt from CEQA before June 27, 2022.
4. Government Code §66300(d) prohibits the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished. The project does not propose the demolition of housing units. Therefore, this section does not apply to the project.

B. Density Bonus Waivers and Concessions: The project is entitled to two concessions (or incentives), under Government Code §65915(d) for providing at least 10 percent of total units to very low-income households, and an unlimited number of waivers, under §65915(e).

Concession. A concession or incentive is a modification of a zoning code requirement that results in identifiable and actual cost reductions to provide for affordable housing costs.⁵ The applicant is requesting one concession to reduce the Usable Open Space requirement from 2,640 to 2,514 square feet, to eliminate the cost of providing an additional occupiable roof deck.

The City may only deny the concessions if it finds that the concessions would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact⁶ without rendering the development unaffordable to low income, very low income, and

⁵ Because of revisions to Government Code, Section 65915 (Density Bonus) pertaining to incentives and concessions that became effective in January 2017, applicants cannot be required to submit a pro forma financial statement to support concession requests.

⁶ A "specific, adverse impact" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."

moderate-income households, or if the concession would be contrary to State or Federal law. Staff has identified no basis for making such a finding.

Waiver. A waiver is a modification of a development standard that would otherwise physically preclude the construction of the project with the permitted density bonus and concessions. Waivers for FAR and height (maximum height and number of stories) are requested because they are necessary to physically accommodate the full density bonus project on the site.

The City may only deny the waivers if it finds that the waivers would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low income, very low income, and moderate income households, or if the waiver would be contrary to State or Federal law. Staff has not identified any evidence that would support such a finding.

VI. Other Considerations

The following analyses of conformance with district purposes, use permit findings for non-detriment, and the 2002 General Plan goals and policies are provided for informational purposes only, to provide context; they are not required because the proposed project is HAA-compliant.

A. Findings for Use Permits in C-W District: Pursuant to BMC §23E.64.090.B, in order to approve any Use Permit in the district, the Board must make the following findings. The proposed use or structure must:

1. Be consistent with the purposes of the District. The project is consistent with the following district purposes:
 - Implement the West Berkeley Plan's designation of a Commercial District;
 - Provide locations for commercial services which primarily serve area residents and/or businesses;
 - Support the retention and attraction of a balance of both smaller and larger stores and restaurants;
 - Provide appropriate locations, consistent with West Berkeley Plan policies, for commercial services which serve a citywide or broader clientele;
 - To provide a relatively compact, clearly bounded set of commercial areas in West Berkeley, so as to both improve the quality of West Berkeley shopping environments and to prevent commercial overspill into industrial areas;
 - Increase the opportunities for development of housing in commercial areas to support local retailing and use of transit lines and opportunities for mixed use projects combining pedestrian-oriented neighborhood-serving uses with mixed income housing in locations abutting residential districts;
 - Encourage appropriately intense development in underutilized portions of commercial streets; and

- Promote development compatible with adjacent commercial, residential and industrial areas;
- 2. Be compatible with surrounding uses and buildings;
- 3. Be consistent with the adopted West Berkeley Plan;
- 4. Be supportive of an increase in the continuity of retail and service facilities at the ground level to the degree feasible and does not substantially degrade the existing urban fabric of the street and area;
- 5. Be, for projects which include construction of new floor area, providing an intensity of development which does not underutilize the property;
- 6. Be capable of meeting any applicable performance standards for off-site impacts; and
- 7. Not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

The proposed mixed-use building at this location would be an appropriate utilization of the currently vacant and underutilized site that would bring 66 new residential units (including five below-market-rate units) and 1,680 square feet of commercial space to the district and the neighborhood. The project would further the purposes of the district by increasing the neighborhood population with new residents of mixed income who would patronize the local businesses, and help to engage the adjacent residential neighborhood (R-2) to the east of the site to contribute to the livability and character of this underutilized portion of the San Pablo Avenue commercial corridor. New residents and business patrons from the project and surrounding neighborhood would increase street-level activity near this intersection of San Pablo Avenue and Harrison Street, and would extend the existing ground-level activation near the Tokyo Fish Market (1220 San Pablo) on the west side of San Pablo Avenue to the east side of the avenue. The project's corner commercial space and primary building orientation toward San Pablo Avenue, along with a similar configuration at the approved mixed-use building to be constructed across the street at 1200-1214 San Pablo, would serve to engage both the southwest and southeast corners of this intersection, and would contribute to the continuity of ground-level activation in the Gilman node of the West Berkeley Plan area.

At six stories tall, the proposed project would be taller than the existing one- and two-story residential and commercial buildings in the vicinity. The building design mitigates this height differential by stepping down toward the dwellings to the east of the site at the sixth floor, and again at the fifth floor. There is also a 43-foot-wide, 47-foot-deep podium level (second floor) garden, and a ten-foot setback along the length of the east property line at the ground level, to soften the transition to the residential neighborhood to the east.

The project would help realize the development potential in the C-W district along San Pablo Avenue in the West Berkeley Area Plan, which allows up to four stories by right (for mixed-use buildings), and would add to the trend of taller, mixed-use development along San Pablo Avenue, north of University Avenue, which includes projects such as: 1406 San Pablo – a three-story, mixed-use building, approved in 2004 and built soon after; 1500 San Pablo – a five-story, mixed use building approved in 2016, which

completed construction in 2021; 1800 San Pablo – a four-story, mixed-use building, approved in 2004 and built in 2006; and 1200-1214 San Pablo (across the street from the subject site) – a six-story, mixed-use building, approved in November, 2020, and currently obtaining building permits.

Finally, the project would be an appropriate intensity of use that would not exceed local traffic and parking capacities. The use permit for a similar, but denser (104 units), mixed-use building at 1200-1214 San Pablo (#ZP2019-0192) was approved in November, 2020 by the City with both a parking waiver and a parking reduction pursuant to State density bonus provisions. In addition, the City's parking reform ordinance (effective March, 2021) eliminated the residential parking requirement and established parking maximums for this district. The proposed 17 to 28 parking spaces falls within the minimum and maximum requirements.

- B. Findings for Use Permits in C-W District Node:** Pursuant to BMC §23E.64.090.C, in order to approve any Use Permit in a District Node, the Board must find that the use supports the development of a strong retail commercial, pedestrian oriented environment at the node. Factors the Board should consider shall include, but are not limited to, the placement of store entrances relative to the street and parking lots and the size and prominence of display windows and areas facing the sidewalk.

Though the specific use and tenant has not yet been determined, the commercial space has floor-to-ceiling windows all along the ground level, with its longer, entry side (west) oriented toward San Pablo Avenue, to activate both the Harrison Street and San Pablo Avenue sidewalks. Floor-to-ceiling windows continue along the ground floor, west side of the building at the residential lobby – which has a residents' lounge behind the windows – through the bike room. Together, floor-to-ceiling windows along the commercial space, lobby, and bike room line approximately 90 percent of the project's San Pablo elevation with active spaces behind transparent glazing.

The project's strong orientation toward the San Pablo Avenue streetscape would add to the pedestrian activity and interest on this portion of the Avenue that already draws visitors daily. The Tokyo Fish Market, across San Pablo and west of the project site, is a food market that has occupied its site for several decades, and is a popular lunchtime destination. The project would contribute to the existing pedestrian activity near this business by bringing new residents to the area, and by helping to draw in local visitors – potentially, those from beyond the immediate neighborhood.

- C. General Non-Detriment Finding:** BMC §23B.32.040.A states that before the ZAB approves an application for a Use Permit, it must find that 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.

Shadows: According to the shadow studies submitted for the project (See Attachment 1, Project Plans – Sheets A.0.4A through A.0.4E). New shadows would affect the existing residences to the east of the site and the existing apartment building to the south, casting new shadows in the winter and summer months in the hours before sunset. Shadows would be cast onto the approved mixed-use building to the west (when constructed) at 1200 San Pablo, in the hours after sunrise in the summer months.

Shadow impact on adjacent dwellings are to be expected, because the subject site is located in the C-W district, which allows heights of up to 50 feet and four stories for mixed-use buildings, by right. The proposal would include a waiver for additional height beyond the district height limits to accommodate the density bonus units (see section V.B for a discussion of waivers) and allow a 68-foot, 3-inch-tall, six-story building. The additional height above the district limits would cast shadows in the affected directions further than if the project were limited to the base district height standards. Staff believes that shadow impacts from the project would be reasonable and not detrimental.

Non-Detriment: The project is subject to the City's standard conditions of approval regarding construction noise and 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.

D. General Plan Consistency: The following is an analysis of conformance with the 2002 General Plan goals and policies, provided for informational purposes only:

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy LU-23–Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.
4. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
5. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

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

As discussed in section VI.A through VI.C, the project would improve the utilization of the site with development that is of appropriate intensity, that is compatible with the existing surrounding development, and that would further improve the neighborhood character and quality of life by increasing existing street-level activity, and bringing in new residents and new business patrons to an intersection in a designated node along a major commercial and transit corridor. The project site is served by multiple bus lines, including local, rapid, and Transbay lines, that operate along San Pablo Avenue, and a nearby BART Station.

7. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.
8. Policy H-19–Regional Housing Needs: Encourage housing production adequate to meet the housing production goals established by ABAG’s Regional Housing Needs Determination for Berkeley.
9. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)

The project would help Berkeley meet its regional housing needs by adding 66 net new housing units, including five VLI units. The project would be subject to standard conditions of approval that promote sustainable building design, including conditions for solar PV systems, electric vehicle charging, water efficient landscaping, and natural gas prohibitions.

VI. Recommendation

Because of the project’s consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2021-0070, pursuant to BMC §23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received March 23, 2022
3. Notice of Public Hearing
4. Neighbor Letters, received April 18 - 20, 2022

Staff Planner: Sharon Gong, sgong@cityofberkeley.info, (510) 981-7429

Draft Memorandum

Date: July 2, 2021
To: Lani Su
From: Sam Tabibnia, Fehr & Peers
Subject: 1201 San Pablo Avenue – Transportation Assessment

OK21-0423

Fehr & Peers conducted a transportation assessment for the proposed development, consisting of 66 multi-family residential units and 1,720 square feet of ground-level retail space at 1201 San Pablo Avenue in Berkeley, California (the Project). This memorandum summarizes the Project description, trip generation, vehicle miles traveled (VMT) screening, and access and circulation for the Project. Based on our analysis:

1. The Project would generate approximately 290 daily, 17 AM peak hour, and 25 PM peak hour automobile trips. The peak hour trips generated by the Project would not be noticeable nor change traffic operations.
2. Since the proposed Project would satisfy two of the City of Berkeley's VMT screening criterion, it is presumed to have a less than significant impact on VMT.
3. The Project would satisfy the City of Berkeley's Municipal Code requirements for automobile and bicycle parking. However, the site plan does not show the number of parking spaces with electric vehicle charging equipment as required by the City Code.
4. the Project would provide adequate access and circulation for pedestrians, cyclists, and motor vehicles.

Considering the low automobile vehicle trips generated by the Project, a detailed off-site assessment is likely not required, although the final determination will be made by City of Berkeley staff.

The remainder of this memorandum provides more detail on our analysis assumptions, methodology, and findings.



1. Project Description

The Project is located on the southeast corner of the San Pablo Avenue/Harrison Street intersection in Berkeley. The Project site is currently vacant, and the Project would consist of a six-level building providing 66 multi-family residential units (mix of studios, one-bedroom, and two-bedroom units for a total of 76 bedrooms), and about 1,720 square feet of ground-level commercial space. The Project would also include a ground-level garage with a full-access driveway on Harrison Street. The garage would provide either 17 non-lift standard parking spaces or up to 28 parking spaces (consisting of five non-lift standard spaces and 23 spaces accommodated with double-lifts). The Project would also provide a bicycle room that would accommodate long-term parking for 64 bicycles on the ground level. **Attachment A** shows the Project site plan.

2. Project Trip Generation

Trip generation is the process of estimating the number of vehicles that would likely access the Project on a typical day. **Table 1** summarizes the trip generation for the proposed Project. Trip generation data published by the Institute of Transportation Engineers (ITE) in the *Trip Generation Manual (10th Edition)* was used as a starting point to estimate the vehicle trip generation.

ITE's *Trip Generation Manual* is primarily based on data collected at single-use suburban sites where the automobile is often the only travel mode. However, the Project site is in a mixed-use urban environment adjacent to high-frequency transit corridor where many trips are walk, bike, or transit trips. According to the 2019 Five-Year Estimates of the American Community Survey (ACS), the Project census tract (4219) has an automobile mode share of 57 percent, compared to 87 percent for the US as a whole. Therefore, this analysis reduces the ITE based trip generation by 37 percent to account for the non-automobile trips (**Attachment B** provides the Census data and the derivation of the adjustment factors).

As summarized in Table 1, the proposed Project is estimated to generate about 290 daily, 17 AM, and 25 PM net new automobile peak hour trips. In order to present a more conservative analysis, the trip generation does not account for the following:

- The trip generation for the retail component of the Project is not adjusted to account for non-automobile trips.
- The trip generation for the retail component of the Project is not adjusted to account for pass-by trips, which are trips attracted to the site from adjacent roadways as an interim stop on the way to their ultimate destination. Pass-by trips consist of vehicles that would be on the roadway network regardless of the project; therefore, these trips result in changed travel patterns but do not add new vehicle trips to the roadway network.

**Table 1: Automobile Trip Generation**

Land Use	Size ¹	Daily ²	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
Apartments ³	66 DU	360	6	18	24	18	11	29
Non-Auto Reductions (-37%) ⁴		-130	-2	-7	-9	-7	-4	-11
<i>Adjusted Apartment Trips</i>		230	4	11	15	11	7	18
Commercial ⁵	1.72 KSF	60	1	1	2	3	4	7
Total Net New Automobile Trips		290	5	12	17	14	11	25

Notes:

1. DU = dwelling unit; KSF = 1,000 square feet
2. All daily trip generation numbers rounded to nearest 10.
3. ITE Trip Generation Manual (10th Edition) land use category 221 (Multi-Family Housing [Mid-Rise]) in general urban/suburban setting:
Daily = 4.44 trips per DU
AM Peak Hour Average Rate = 0.36 trips per DU (26% in, 74% out)
PM Peak Hour Average Rate = 0.44 trips per DU (61% in, 39% out)
4. Reduction based on mode share estimates (Table B08006) as compiled in the American Community Survey 2019 five-year estimate for Project census tract (4219) compared to national data (See attachment B for details).
5. ITE Trip Generation (10th Edition) land use category 820 (Shopping Center) in general urban/suburban setting:
Daily = 37.75 trips per KSF
AM Peak Hour Average Rate = 0.94 trips per KSF (62% in, 38% out)
PM Peak Hour Average Rate = 3.81 trips per KSF (48% in, 52% out)

Source: Fehr & Peers, 2021.

The Project is estimated to generate 25 or fewer peak hour automobile trips. Typically, peak hour traffic volumes have a five to ten percent fluctuation on a day-to-day basis. Thus, the peak hour trips generated by the Project would not be noticeable nor change traffic operations.

In addition, the San Pablo Avenue/Harrison Street intersection, which is adjacent to the Project site and most likely to be affected by Project-generated traffic, is currently side-street stop-controlled with stop signs on the eastbound and westbound Harrison Street approaches. Based on traffic data collected in December 2017 for the *1200 San Pablo Avenue Mixed Use Project Transportation Impact Analysis Report* (dated July 2018), the peak hour volume on the westbound Harrison Street approach is about 53 vehicles during the AM peak hour. Assuming that all outbound vehicle trips generated by the Project would use the westbound Harrison Street approach, the Project would add about 12 peak hour trips to this approach, which would result in a total of 65 vehicles per hour on the westbound Harrison Street approach at the intersection. This is below the minimum threshold of 100 peak hour vehicles on a stop-controlled approach that would meet the peak hour signal warrant in the *California Manual on Uniform Traffic Control Devices* (MUTCD). The Project would also add fewer than ten peak hour vehicles to the other approaches at this intersection and, therefore, would not meet the City's criteria for implementing mitigations at unsignalized intersections.



Since the San Pablo Avenue/Harrison Street intersection would be the most affected intersection by the Project and the Project would not trigger any mitigations at this intersection, it is not expected that the Project would affect other intersections in the area. Therefore, no intersection level of service analysis is recommended for this Project.

Multi-modal Trip Generation

Table 2 summarizes the total trip generation by different travel modes. The travel modes include automobile transit, bike, and walk. The Project is estimated to generate a total of 470 daily, 28 AM, and 41 PM peak hour trips.

Table 2: Trip Generation by Travel Mode

Mode	Mode Share Adjustment Factors ¹	Daily	AM Peak Hour	PM Peak Hour
Automobile	63%	290	17	25
Transit	22%	100	6	9
Bike	12%	50	3	5
Walk	6%	30	2	2
Total Trips		470	28	41

Notes:

1. Based on mode share estimates (Table B08006) as compiled in the American Community Survey 2019 five-year estimate for Project census tract (4219). See Attachment B for details.

Source: Fehr & Peers, 2021.

3. Vehicle Miles Traveled

In November 2020, the City of Berkeley adopted guidelines, thresholds of significance, and screening criteria for evaluating VMT in CEQA documents, as required by the State for all CEQA documents published after July 1, 2020. This section assesses impacts of the proposed development on VMT, in accordance with the adopted *City of Berkeley VMT Criteria and Thresholds*.

California Senate Bill 743

On September 27, 2013, California Governor Jerry Brown signed Senate Bill (SB) 743 into law and started a process that changed the way transportation impact analysis is conducted as part of CEQA compliance. These changes include elimination of automobile delay, LOS, and other similar measures of vehicular capacity or traffic congestion as a basis for determining significant impacts under CEQA. According to SB 743, these changes are intended to “more appropriately balance the needs of congestion management with statewide goals related to infill development, promotion of public health through active transportation, and reduction of greenhouse gas emissions.”



In December 2018, the State Office of Planning and Research (OPR) completed an update to the CEQA Guidelines to implement the requirements of SB 743. The Guidelines state that VMT must be the metric used to determine significant transportation impacts. The Guidelines require all lead agencies in California to use VMT-based thresholds of significance in CEQA documents published after July 2020.

The OPR Guidelines recommend developing screening criteria for development projects that meet certain criteria that can readily lead to the conclusion that they would not cause a significant impact on VMT. The OPR Guidelines also recommend evaluating VMT impacts using an efficiency-based version of the metric, such as VMT per resident for residential developments and/or VMT per worker for office or other employment-based developments.

VMT Screening

Some land use development projects have characteristics that are highly likely to meet thresholds for a less-than-significant impact on VMT, and the OPR guidance suggests the use of screening criteria to assess whether a project impacts on VMT can be presumed to be less-than-significant.

The adopted *City of Berkeley VMT Criteria and Thresholds* includes the following screening criteria applicable to the proposed development. VMT impacts could be presumed to be less than significant if one or more of the screening criteria outlined below are met:

- **Transit Priority Areas (TPAs):** The project is located within a 0.5-mile walkshed of a major transit stop¹ or within a 0.25-mile walkshed of a stop along a high-quality transit corridor² and does not have any of the following characteristics:
 - Has a Floor Area Ratio (FAR) of less than 0.75 for office uses
 - Includes more than 200,000 square feet of office or commercial space
 - Includes more parking supply than the project's estimated demand
 - Is inconsistent with the City's *General Plan*, an applicable Specific Plan, or an applicable Sustainable Communities Strategy (as determined by the City, with input from MTC)
 - Replaces affordable residential units with market-rate residential units
 - Has project-specific or location-specific information that indicates that the project will generate significant levels of VMT
- **Projects in Low VMT Areas:** Projects that are located in low-VMT areas and that have characteristics similar to other uses already located in those areas can be presumed to generate VMT at similar rates. The low-VMT areas in Berkeley for residential uses are defined as areas where the household VMT per capita in 2020 was at least 15 percent below

¹ Major transit stop is defined as an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods (Pub. Resources Code, § 21064.3).

² High-quality transit corridor is defined as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours (Pub. Resources Code, § R21155).



the Bay Area regional average based on the results of the Alameda County Transportation Commission (CTC) model and mapped.

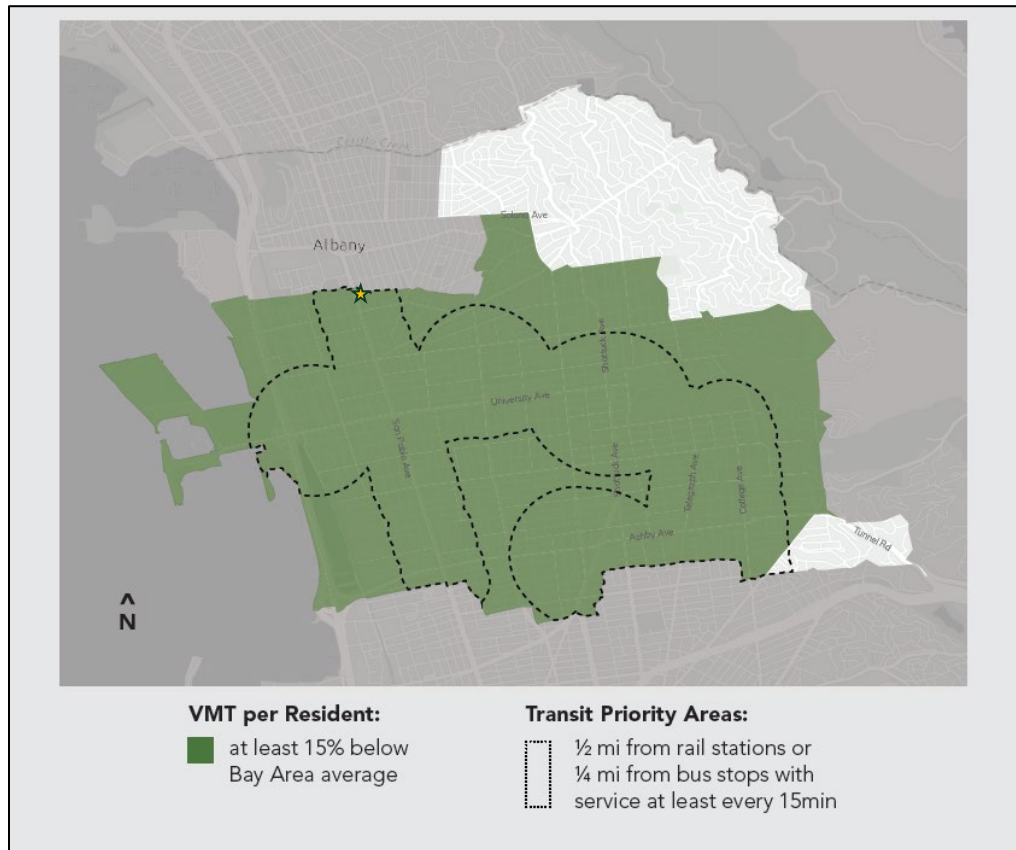
The Project would meet both screening criteria as described below:

- **TPA:** The proposed development is located on San Pablo Avenue, adjacent to bus stops in both directions served by AC Transit Line 52 which operates at 20-minute headways and Line 72/72M which operates at 10-to-15-minute headways during the weekday peak commute periods. The Project is also within 0.17 miles of bus stops on both directions of San Pablo Avenue at Gilman Street served by Line 72R which operate at 13-minute headways. Thus, the Project is within 0.25-mile walkshed of one or more bus stop along a high-quality transit corridor. The proposed development would satisfy the TPA criterion because it would also meet the following six conditions:
 - The proposed development would have a FAR of 3.6, which is greater than 0.75.
 - The proposed development would include less than 200,000 square feet of office or commercial space.
 - The Project would provide up to 28 parking spaces for 66 residential units, corresponding to about 0.42 parking spaces. According to the 2019 Five-Year Estimates of the American Community Survey (ACS), renter occupied household in the Project census tract have an average automobile ownership of 1.3 vehicles per household.³ Thus, the Project would not include more parking supply than the Project's estimated demand.
 - The proposed Project is consistent with the City of Berkeley General Plan.
 - There are no existing uses at the Project site; thus, the Project would not replace affordable residential units with market-rate residential units.
 - The Project does not have other project-specific or location-specific attributes that would indicate that the Project would generate significant levels of VMT.
- **Projects in Low-VMT Areas** – Based on the maps provided in the *City of Berkeley VMT Criteria and Thresholds*, and shown on **Figure 1**, the Project is located in a low-VMT area. Since the proposed Project is expected to be similar to current developments in the Project vicinity, it can be presumed that the Project would have similar VMT as the existing residential uses in the Project vicinity. Therefore, the Project would meet the Projects in Low-VMT Areas screening threshold.

VMT Evaluation Conclusion

The Project satisfies the TPA and Projects in Low-VMT Areas screening thresholds. Therefore, it is presumed to have a less-than-significant impact on VMT.

³ Average vehicle ownership for renters in Census Tract 4219 from the 2019 American Community Survey (Table B25044).



*Figure 1 - City of Berkeley Low VMT Areas for Residential Uses
 (Source: City of Berkeley VMT Criteria and Thresholds, June 2020)*

4. Project Access and Circulation

This section evaluates access and circulation for pedestrians, cyclists, and motor vehicles, as well as parking requirements for bicycles and motor vehicles based on a Project site plan dated July 2, 2021, and included in Attachment A.

Pedestrian Access and Circulation

All streets in the Project vicinity have sidewalks on both sides of the street. With the completion of the Project, San Pablo Avenue would continue to provide a 12.5-foot sidewalk, with tree wells, signposts, and parking meters adjacent to the street narrowing the sidewalk to a minimum of 8.5 feet. Harrison Street would continue to provide an 11.5-foot sidewalk along the Project frontage, with a planting strip narrowing the sidewalk to a minimum of 7.5 feet. The San Pablo Avenue/Harrison Street intersection is side-street stop-controlled with stop signs on the Harrison Street approaches, marked high-visibility crosswalks with advanced yield markings across both sides of San Pablo Avenue, regular crosswalks across both sides of Harrison Street, and one diagonal curb ramps with truncated domes at all four corners.



The primary pedestrian access for the residential component of the Project would be through a main lobby along the San Pablo Avenue frontage and the commercial component of the building would be at the northwest corner of the building with access on both San Pablo Avenue and Harrison Street.

Bicycle Access and Parking

The Project would provide long-term bicycle parking in a secure bicycle room in the southwest corner of the ground-level of the building. The bicycle room would accommodate 64 bicycles with access through the building lobby and garage. Short-term bicycle parking would be provided through bicycle racks accommodating six bicycles on the sidewalk along the Project frontages on San Pablo Avenue and Harrison Street

The City of Berkeley Municipal Code (23E.64.080) does not have any bicycle parking requirements for residential uses in the C-W zone and requires one space per 2,000 square feet of commercial space. The Code would require the Project to provide one bicycle parking spaces. The 64 long-term bicycle parking spaces and the six short-term bicycle parking spaces provided by the Project would exceed Municipal code requirements for bicycle parking.

The *City of Berkeley Bicycle Plan* (approved in May 2017) provides recommendations on the amount of bicycle parking for development Projects. **Table 3** summarizes the bicycle parking recommended per the *Bicycle Plan*. The 64 long-term bicycle parking spaces and the six short-term bicycle parking spaces provided by the Project would exceed the long-term and short-term spaces recommended by the *City of Berkeley Bicycle Plan*.

Table 3: Bicycle Parking Recommendations

Use	Size ¹	Long-Term		Short-Term	
		Ratio ²	Spaces	Ratio ²	Spaces
Residential Units	76 BD	1 space per 3 BD	25	1 space per 40 BD ³	2
Commercial	1.72 KSF	1 space per 10.0 KSF ³	2	1 space per 2.0 KSF ³	2
Total Bicycle Parking Recommended			27		4
Total Bicycle Parking Supply			64		6
Bicycle Parking Surplus			+37		+2

Notes:

1. BD= Bedroom; KSF = 1,000 square-feet
2. *City of Berkeley Bicycle Plan*, Appendix F
3. The *Bicycle Plan* recommends a minimum of two spaces per use

Source: Fehr & Peers, 2021.



Automobile Access and Circulation

The Project would include a garage on the east side of the building with a full-access driveway on Harrison Street. The garage would provide either 17 non-lift standard parking spaces or up to 28 parking spaces consisting of five non-lift standard spaces along the west side of the drive aisle and 23 spaces accommodated with double-lifts along the east side of the drive aisle. The parking garage would provide adequate space for vehicles to maneuver into and out of the standard surface parking spaces or to wait and maneuver into and out of the parking lifts if lifts are provided.

The Project driveway would provide adequate sight distance between vehicles exiting the garage and pedestrians on both sides of the driveway, where adequate sight distance is defined as a clear line-of-sight between a motorist ten feet back from the sidewalk and a pedestrian ten feet away on each side of the driveway.

The Project driveway would eliminate one on-street parking on Harrison Street at the driveway. Harrison Street along the Project frontage would accommodate parallel on-street parking for two vehicles between the driveway and San Pablo Avenue, and for one vehicle west of the Project driveway. Along the Project frontage on San Pablo Avenue, the Project would eliminate one metered parking space just south of the existing crosswalk to accommodate a 25-foot loading zone and would maintain four existing metered parking spaces.

Automobile Parking Requirements

Table 4 summarizes the off-street automobile parking requirement for the Project, based on the City of Berkeley Municipal Code (23E.64.080). The Code requires no off-street parking spaces for residential uses in the C-W zone and requires two spaces per 1,000 square feet of commercial space. Thus, the Project would need to provide three parking spaces to meet Code requirements. The 17 to 28 parking spaces provided by the Project would exceed City's Code requirement.

The garage would include two accessible parking spaces, including one van accessible parking space, which would meet the minimum requirements for garages providing 25 to 50 parking spaces.

The City of Berkeley Municipal Code (Section 19.37.040) requires parking facilities for new multi-family developments to have 20 percent of the parking spaces provide Level 2 electric vehicle (EV) charging stations, and 80 percent of the parking spaces be supplied with raceways.

Recommendation 1: Ensure the Project that at least 20 percent of the parking spaces provide Level 2 EV charging stations and 80 percent of the parking spaces are supplied with raceways.

**Table 4: Automobile Parking Requirements**

Use	Size ¹	Ratio ²	Required Parking
Residential Units	66 DU	None	0
Commercial	1.72 KSF	2 spaces per 1.0 KSF	3
Total Automobile Parking Required			3
Total Automobile Parking Supply			17-28
Meet Code Parking Requirements?			Yes

Notes:

1. DU = Dwelling Unit; KSF = 1,000 square-feet
2. City of Berkeley Municipal Code 23E.64.080

Source: Fehr & Peers, 2021

5. Conclusions

This concludes our transportation assessment for the 1201 San Pablo Avenue Project. Considering the relatively low trips generated by the Project, a detailed off-site assessment is likely not required, however, the final determination will be made by City of Berkeley staff. Since the proposed Project would satisfy the City's VMT screening criterion for Transit Priority Areas and Projects in Low-VMT Areas, it is presumed to have a less-than-significant impact on VMT. Based on the Project site plan dated July 2, 2021, the Project would provide adequate access and circulation for pedestrians, cyclists, and motor vehicles.

Please contact Sam Tabibnia (stabibnia@fehrandpeers.com or 510-835-1943) with questions or comments.

Attachments

Attachment A – Project Site Plan

Attachment B – US Census Data Summary

Attachment A – Project Site Plan

2421 Fourth Street
Berkeley, California 94710
510.649.1414
www.TrachtenbergArch.com



1201 SAN PABLO MIXED-USE

Berkeley, CA 94706

- 03.11.2021 SB-330 PRE-APPLICATION
- 04.29.2021 ZONING APPLICATION
- 07.02.2021 ZONING COMPLETENESS

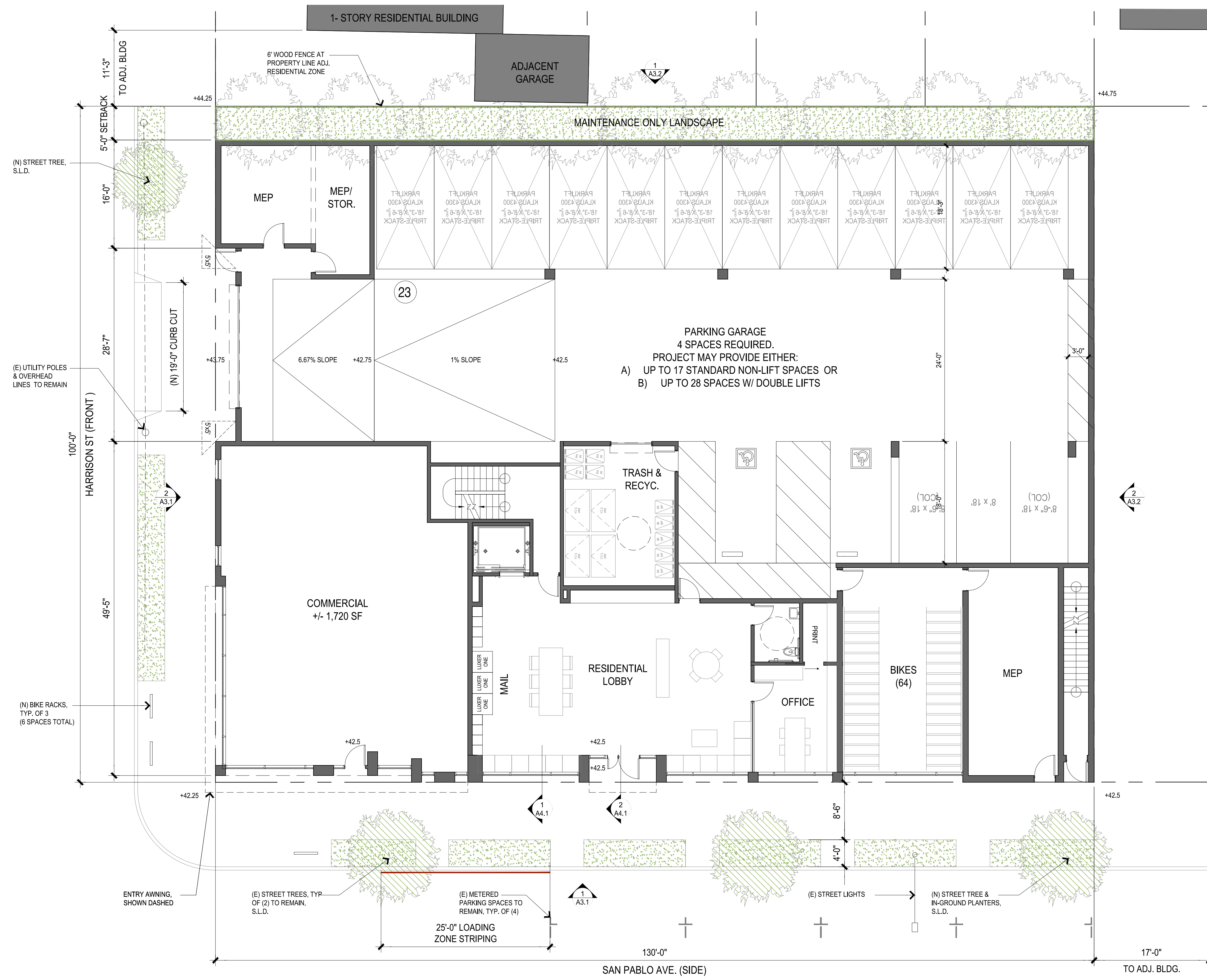
ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED WORK OF THE ARCHITECT AND MAY NOT BE DUPLICATED, USED OR DISCLOSED WITHOUT WRITTEN CONSENT OF TRACHTENBERG ARCHITECTS.

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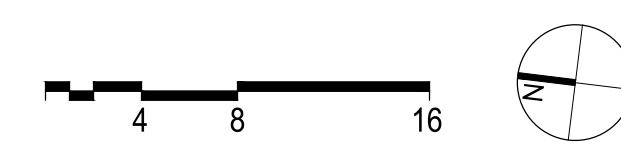
SHEET:

PLAN AT GROUND LEVEL/
SITE PLAN

A2.1



1 SITE PLAN / GROUND LEVEL PLAN
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36

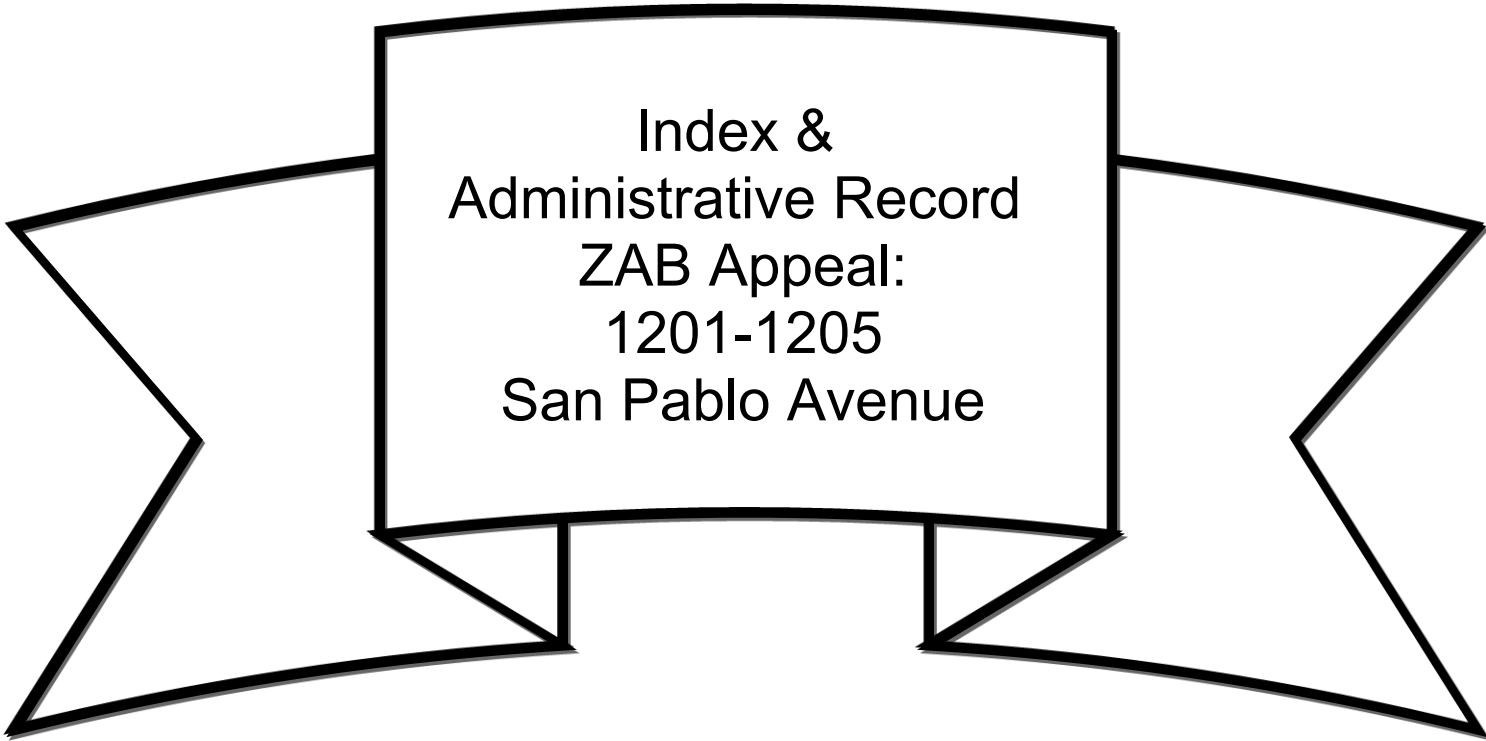


Attachment B – US Census Data Summary

Mode Adjustment Factors		
<p>The mode adjustment factors developed by comparing the mode share for the project census tract to the country as a whole and assuming that the US motor vehicle mode share corresponds to 100 percent of the ITE Trip Generation Manual trips.</p>		
ACS (2014-2019), Mode Shares (Table B08006)	Census Tract 4219	United States
Motor Vehicle	54.7%	86.8%
Transit	19.3%	5.0%
Bike	10.2%	0.6%
Walk	5.3%	2.7%
Work at Home	10.5%	4.9%
Total	100.0%	100.0%
Adjustment Factors		
Motor Vehicle	63.0%	100.0%
Transit	22.2%	5.8%
Bike	11.8%	0.7%
Walk	6.1%	3.1%
Work at Home	12.1%	5.7%
Total	115.3%	115.3%

Non-Auto Reductions

-37%



Index &
Administrative Record
ZAB Appeal:
1201-1205
San Pablo Avenue

These attachments are on file and available for review upon request from the City Clerk Department, or can be accessed from the City Council Website.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council's Web site:
<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

ZAB APPEAL: 1201-1205 SAN PABLO AVENUE, USE PERMIT #ZP2021-0070

Notice is hereby given by the City Council of the City of Berkeley that on **THURSDAY, SEPTEMBER 29, 2022 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of the decision by the Zoning Adjustments Board to APPROVE Zoning Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units (including five Very-Low-Income units), 1,680 square feet of commercial space, 2,514 square feet of usable open space, and 17 to 28 ground-level parking spaces.

The hearing will be held via videoconference pursuant to Government Code Section 54953(e) and the state declared emergency.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **SEPTEMBER 15, 2022**. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.

For further information, please contact Sharon Gong, Project Planner, (510) 981-7429 or SGong@cityofberkeley.info. Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Mark Numainville, City Clerk

Mailed: **SEPTEMBER 15, 2022**

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing*

or prior to the close of the last public hearing on the project.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available by request from the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.